

(2010) 08 CHH CK 0025
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 1298 of 2007

Ramnarayan Agrawal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 227
Public Trusts Act — Section 17, 2(4), 22, 23, 25

Citation : (2010) 4 MPJR 117

Hon'ble Judges : Dhirendra Mishra, J

Bench : Division Bench

Judgement

Dhirendra Mishra, J.

The petitioner by the instant petition under Article 227 of the Constitution of India has prayed for quashing the order dated 18.1.2007 (Annexure - P/3) passed by the 11th Additional District Judge, Raipur whereby the petitioner's application u/s 25(3) of the public Trusts Act has been dismissed as not maintainable. The petitioner has also prayed for quashing the order dated 25-2-2006 (annexure - P/1) passed by the SDO, Raipur, respondent No. 4 whereby non - applicants have been appointed temporary trustees of the trust namely, "Ramchandra Swami Trust".

Case of the petitioner is that Thakur Ram Chandra Swami Dudhadh Math is a public trust registered under the Public Trusts Act in the year 1966. After the death of its sole chief trustee Shri Ramdwarika Lal Agarwal, the Registrar made a reference to the civil court u/s 26 of the Public Trusts Act (for short "the Act") on 27-7-1972 for appointment of trustee. During the pendency of the above reference, respondents no. 3 and 5 to 14, moved an application u/s 9 of the Act for appointment of trustee and the same was allowed and the Registrar appointed them temporary trustee.

Being aggrieved by the order of the Registrar, the petitioner preferred an

application u/s 25 (3) of the Act before the civil court and his application for temporary injunction was allowed by the civil Court. However, subsequently application under Order 7 Rule 11 CPC filed by the aforesaid respondents was allowed and the petitioner's application u/s 25 of the Act was dismissed as not maintainable.

Shri Prafull Bharat, learned counsel for the petitioner argued that for exercising jurisdiction under sub-section (2) of Section 9 of the Act, it is necessary that the report is received from the working trustee expressing his desire to change and the Registrar, after conducting enquiry, is satisfied that change is necessary in the entry. Thus in the absence of two basic ingredients of Section 9, the Registrar had no jurisdiction u/s 9 of the Act.

Sub-section (1) of section 25 casts a duty on the working trustee to intimate the registrar of any vacancy in the trust whereas sub-section (2) empowers the Registrar to issue direction to the working trustee regarding filling of such vacancy not inconsistent with any instrument of trust or mode of succession specified in the register; whereas, sub-section (3) of section 25 gives jurisdiction to the Registrar Public Trust in case working trustee fails to give information or appoint/fill vacancy. Sub-section (3) further prescribed that any person having interest in the public trust being aggrieved by the order of the Registrar may apply to the Court for setting aside the order of the registrar.

In the instant case, the sole working trustee expired in the year 1972 and a reference was made by the registrar to the civil Court in the year 1972, therefore, question of intimation by the working trustee regarding change does not arise and there was no question of making report of desire to have change under sub-section (1) of section 9. Since the working trustee had not intimated any change, sub - section (1) of Section 9 was not applicable. In the absence of any report submitted by the working trustee, the Registrar had no jurisdiction to make any enquiry and amend entry as provided u/s 9(2) of the Act. The only provision which could be invoked by the Registrar in the facts of the present case was u/s 25 of the Act. Since there was no working trustee, sub - sections (1) & (2) of Section 25 were not applicable and the Registrar had jurisdiction under sub - section (3) of Section 25 to fill vacancy which has been done in the instant case. Thus, the order of the Registrar (Annexure -P/1) was in exercise of the jurisdiction under sub-section 25(3) of the Act and the petitioner had remedy of moving an application u/s 25(3) in the civil Court and conclusion that the order passed by the Registrar was u/s 9 of the Act and, therefore, the same could be challenged by way of civil suit is wholly erroneous.

Reliance is placed in the matter of Phoolchand Jain and Others Vs. Registrar, Public Trusts, Satna, M.P. and Others,

On the other hand, Shri Vinay Harit, learned counsel for the respondent/ State would argue that the Collector vide its order dated 6-2-2006 (Annexure - R/1) delegated powers of the Registrar Public Trust for Raipur to respondent No. 4.

Respondent No. 4 in his capacity as Registrar of the Public Trust was authorized to pass any order. Sub - section (2) of Section 9 specifically confers powers on the Registrar to effect any change or amend any entry in the registrar of public trust in accordance with finding arrived at by him as a result of any enquiry. The Division Bench of the Madhya Pradesh High Court in the case of Shri Ramjanki Mandir Trust and Another Vs. State of Madhya Pradesh and Others, } has endorsed the above view. The petitioner's application u/s 25(3) of the Act against the order of Annexure - P/1 was erroneously registered as civil suit. Learned Additional District Judge, vide Annexure -P/3, rejected the contention of the petitioner that the order was passed u/s 25 of the Act and it has been held that the Registrar Public Trusts has appointed temporary trustee in the exercise of powers u/s 9 of the Act and the provisions of Section 25 are attracted only when permanent appointments of trustees are made u/s 25 of the Act and, therefore, the instant petition is not maintainable. From perusal of order of Annexure P/I, it is evident that the same has been passed in exercise of powers u/s 9 of the Act and, therefore, finding of the Civil Court that the petitioner's application u/s 25(3) is not maintainable as he had remedy of filing civil suit is strictly in accordance with law.

Shri Yashwant Tiwari, learned counsel appearing for private respondents advancing similar arguments contended that the impugned order of Annexure -P/ I was passed by the Registrar in a proceeding initiated u/s 9(1) of the Act. The Registrar has assigned reasons for appointment of temporary trustee as management and security of trust property was necessary during pendency of reference proceedings in civil Court. The order was interim in nature and for the period till appointment of trustee of trust in a pending proceeding u/s 26 of the Act. The remedy available to the petitioner, who is third party, is u/s 8 of the Public Trust Act and the instant petition is not maintainable. The civil Court has rejected petitioner's application u/s 25 of the Act and directed him to file civil suit before the competent civil Court. His application for appointing him as trustee in MJC No. 23/2004 {Public Trusts Vs. Ramdwarika Lal Agrawal} and his separate application u/s 25 of the Public Trusts Act in civil suit No. 19-A/2006 was not maintainable. A reference in MJC No. 23/2004 u/s 26(2) of the Act has also been rejected vide order dated 16-3-2009.

Heard learned counsel for the parties and perused the record.

From the pleadings of the respective parties, documents available on record and perusal of the impugned order, the undisputed facts are: -

The trust was registered in the year 1966 and Ram Kishore Sao was appointed Sarvarakar / Working Trustee. After his death, his son Ramdwarika Lal Agarwal was appointed as working trustee. It also appears that after the death of Ram Kishore Sao on 26-3-1969, his son Ramdwarika Lal Agarwal filed an application u/s 26(2) of the Act for appointment of trustee in the year 1972. During the pendency of the above application, the private respondents filed an application to appoint them as new trustees u/s 9(1) of the Act on the ground that Chief

Trustee Ramdwarika Lal Agrawal has died without leaving any legal heir. Their appointment as trustees, to save the property from misuse and to achieve objects of the trust, is necessary. The Registrar after registering the case invited objections / suggestions from the public at large and after recording statements of the applicants, appointed V.K. Singh as chief trustee, Leeladhar Chandrakar as Secretary, Atmabodh Agrawal as treasurer and other respondents as members of the Board of Trustees on temporary basis and till decisions in MJC No. 36/1972 pending in the Civil Court (Annexure - P/1). The petitioner challenged the above order by filing an application u/s 25(3) of the Act before the civil Court, which was registered as Civil Suit No. 19-A/2006 and order of temporary injunction was passed by learned District Judge (Annexure-P/2) restraining the private respondents from encroaching upon the suit property or undertaking any construction over the same. However, learned 11th Additional District Judge allowed the application preferred by the private respondents under Order 7 Rule 11 of the CPC and rejected the application preferred by the petitioner with a finding that application u/s 25 of the Act is not maintainable.

Shri Ramchandra Swami Trust is a registered public trust having moveable and immovable properties as mentioned in the register of public trust. Though no mode of succession has been provided but succession to trusteeship is confined to the members of founder Deena Nath Agrawal.

Late Ramdwarika Lal Agrawal was appointed as trustee by the District Judge vide his order dated 9-2-1973 due to death of his father late Shri Ram Kishori Lal.

From perusal of the order of Annexure -P/1 passed by the Registrar Public Trust, it is evident that the private respondents herein applied for their appointment as trustee of the public trust with averments that chief trustee Ramdwarika Lal has died and at present posts of the trust as vacant as there is no trustee and no legal heirs and manager of the trust. They organized a meeting of the trust and elected office bearers and members of the Board of Trustee. The Registrar treating the above application of the respondents as application u/s 9(2) of the Act after inviting objections from the public at large by publication or proclamation and after conducting enquiry passed by the impugned order of Annexure - P/1 and appointed the private respondents as office bearers of the trust temporarily as an alternative arrangement / interim management till decision in MJC no. 36/1972 with an observation that there is no - one to protect the interest of the registered public trust.

Public trust is defined in Section 2(4). Sub-section (2) of Section 3 provides that the Registrar of public trust shall maintain a register of public trust and such other books and registers as may be prescribed. Section 4 prescribes the procedure of registration of public trust whereas Section 5 prescribes that Registrar shall make an enquiry for registration in the manner prescribed under this section.

Section 7 cast a duty upon the Registrar to make entries in the register in

accordance with the finding recorded by him after enquiry and sub - section (2) of Section 7 envisages that entries made under sub - section (1) of Section 7 are final and conclusive. The finding of the Registrar recorded u/s 6 may be questioned by a working trustee or a person having interest in the public trust or any property to be trust property by way of civil suit in a civil Court.

Section 9 of the Act reads as under: -

9. Change: - (1) Where any change occurs in any of the entries recorded in the register, the working trustee shall, within ninety days from the date of the occurrence of such change or where any change is desired in such entries in the interest of the administration of the such public trust, report in the prescribed manner such change or proposed change to the Registrar. (2) If, no receipt of such report and after making such enquiry as the Registrar may consider necessary, the Registrar is satisfied that a change has occurred or is necessary in any of the entries recorded in the register in regard to a particular public trust, he shall record a finding with the reason therefor and subject to the provisions contained in sub-section (3) amend the entries in the said register in accordance with such finding.

(3) The provisions of section 8 shall apply to any finding under this section as they apply to a finding u/s 6.

Chapter V of the act deals with control of the public trust. Section 22 defines powers exercisable by the Registrar in the matter of public trust whereas Section 23 prescribes the procedure after the receipt of the auditor's report made u/s 17 of the Act. Section 25 under this chapter deals with filling of vacancy and Section 26 empowers the Registrar to move suitable application to the Court for direction under certain contingencies. Section 25 and 26 of the Act are reproduced as under: -

25. Filling of vacancies: - (1) Where a public trust is under the management of a Board of Trustees, the working trustee shall, as soon as a vacancy occurs in the Board, inform the Registrar of such vacancy and the time within the manner in which he proposes to fill the same. (2) On receipt of such information the Registrar may, if he considers it necessary, issue any directions to the working trustee regarding the filing of such vacancy not inconsistent with any instrument of trust or the mode of succession specified in the register and the working trustee shall comply with any such direction.

(3) If the working trustee fails to give any such information or to fill the vacancy within the time specified by him or to comply with any direction issued by the Registrar, the Registrar may, by order passed in writing, fill the vacancy and any person having interest in the public trust who may be aggrieved by the order of the Registrar, may apply to the court for setting aside the order of the Registrar within thirty days from the date of such order.

Application to Court for directions: - (1) If the Registrar on the application of any

person interested in the public trust or otherwise is satisfied that -

(a) the original object of the public trust has failed; (b) the trust property is not being properly managed or administered; or

(c) the direction of the court is necessary for the administration of the public trust; he may, after giving the working trustee an opportunity to be heard direct such trustee to apply to court for directions within the time specified by the Registrar.

(2) If the trustee so directed fails to make an application as required, or if there is no trustee of the public trust or if for any other reason, the Registrar considers it expedient to do so, he shall himself make an application to the Court.

From bare perusal of the scheme of the Act, it is manifestly clear that there is no provision of appointment of trustee by the Registrar Public Trust on temporary basis as an interim measure u/s 9 of the Act.

Section 9(1) of the Act provides that working trustee shall report to the Registrar about the change that occurs in any of the entries recorded in the register or whether he desires such change in the entries in the interest of administration of public trust. Sub-section (2) of the Act provides that where a Registrar is satisfied after making such enquiry as he considers necessary that change has occurred or is necessary in any of the entries in regard to public trust, he shall record a reasonable finding and amend entries in accordance with such finding. Sub-section (3) of Section 9 provides that any finding recorded under this section shall be open to challenge by way of filing civil suit by the aggrieved party as provided u/s 8 of the Act.

Thus from provisions of Section 9, it is clear that the Registrar can invoke all powers of change u/s 9 only on receipt of the report of the working trustee and not otherwise.

In the instant case, the Registrar initiated proceedings u/s 9 of the Act on application of the private respondents purportedly filed u/s 9(2) of the Act. The private respondents held a meeting, elected office bearers and submitted an application for their appointment as trustees, as vacancy has arisen after the death of chief trustee Ramdwarika Lal Agrawal. They also mentioned in their application that there is no legal heir / manager to manage the trust after the death of chief trustee Ramdwarika Lal Agrawal. Indisputably, an application u/s 26(2) of the Act for direction was filed in the Court after the death of Ramdwarika Lal Agrawal and the same was pending at the time of passing of order of Annexure- P/1.

Section 25(1) of the Act cast a duty upon working trustee to inform the Registrar regarding any vacancy occurs in the Board of Trustees and time within the manner in which he proposes to fill the same. Sub-section (2) empowers the Registrar that he may issue direction to the working trustee regarding filling of vacancy. Sub section (3) of Section 25 empowers the Registrar that he may

himself fill vacancy by passing an appropriate order in the event working trustee fails to give any such information or to fill vacancy within time specified by him or to comply with any direction issued by the Registrar. Sub - section (3) further provides that a person who is aggrieved by the order of the Registrar under sub - section (3) may apply to the Court for setting aside the order of the Registrar within a period of 30 days.

In the facts of the present case, a vacancy arose in the trust after the death of sole chief trustee Ramdwarika Lal Agrawal. A proceeding u/s 26 was initiated in the year 1972 for supplying the vacancies. The private respondents approached the Registrar and requested for their appointment as working trustee and the Registrar allowed their application by the order of Annexure P/1.

In the matter of Phoolchand Jain (Supra), the Division Bench of the Madhya Pradesh High Court, while considering the scope of filling of vacancy u/s 25 of the Act, held thus: -

The clear implication of sub- section (3) is that in case the working trustee fails to fill the vacancy within the time specified by him or comply with any direction issued by the Registrar, the Registrar has the power to fill the vacancy and any person aggrieved by such order has the right to apply to the Court, namely, the District Court for setting aside the order of the Registrar within thirty days from the date of such order. In Shri Ramjanki Mandir Trust and another (Supra), the SDO exercising his power under the Act of 1951 constituted a trust in respect of the petitioner. In appeal preferred by the aggrieved party against such constitution, the Collector took a view that the lower Court had not addressed itself at all to the question of merit of respondent to hold the office of Pujari. The matter was remanded to the court below to reassess merits of the respective candidates and to make fresh appointment of the Pujari of the temple on 15-1-1985. After the order of remand trust was declared, as prayed, in respect of the temple with an observation that no objection pursuant to the gazette notification was received and all the 12 persons named as trustees in the application were not recorded as trustees and only 7 of them were recorded as trustees. However, the Registrar in exercise of powers u/s 9 of the Act made changes on 3-7-1986 in the register in respect of entries concerning the names of the trustees earlier appointed vide order dated 3rd July 1986. The above order was challenged on the ground that the Registrar had no power under the Act to pass the impugned order. As soon as the order was passed, the Registrar became functus officio. Negating the above arguments, the Division Bench of the Madhya Pradesh High Court held that the Registrar becomes functus officio when a "Public Trust" is validly constituted under the Act in accordance with the provisions of the Act. His power to act u/s 9 or for that matter even u/s 25 to meet exigencies contemplated under this provision, suffer no derogation on account of the jurisdiction vested in the civil Court to act in accordance with the provisions of Sections 26 and 27. While Section 9 is wide enough to enable the Registrar to make any change in the entries recorded in the register "in the

interest of administration of a Public Trust". Section 25 specifically provides the Registrar with jurisdiction to make direction to the Working Trustees and also act himself for filling up of interim vacancy in the Board of Trustees in such a manner as is not inconsistent to the instrument of the trust or the mode of succession specified in the Register.

However, in the instant case, the facts are entirely different, as vacancy of the chief trustee caused on account of death of sole chief trustee Ramdwarika Lal Agrawal was required to be filled during the pendency of the proceeding u/s 26 pending in the civil court. In the absence of any report from chief trustee, the Registrar could not have assumed jurisdiction u/s 9(2) of the Act on the application of the private respondents and the vacancy could be filled only u/s 25 of the Act.

From bare reading of the order of Annexure -P/1, it is manifestly clear that vacancy was filled in by the Registrar considering the contention of the private respondents that for proper care and management of the trust property and for protecting it from its misuse, they be appointed as trustees. The only provision under which the SDO could have exercised jurisdiction is u/s 25(3) of the Act and the SDO had no jurisdiction to fill in vacancy by appointing "Temporary Trustee" in exercise of powers u/s 9(2) of the Act. Therefore, I am of the opinion that learned Additional District Judge was not justified in dismissing the suit registered on application u/s 25(3) of the Act by the petitioner.

In the result, the writ petition is allowed. The order of Additional District Judge dismissing the application u/s 25(3) of the Act is set aside and the matter is remanded back to the Additional District Judge to decide the application afresh on the merits after affording opportunity of hearing the parties.

Considering that the matter is pending since long, learned District Judge shall expedite hearing in the matter, of- course subject of cooperation of the parties, and conclude the same preferably within a period of 6 months from the date of receipt of a copy of this order. Parties are directed to appear before the Additional District Judge on 16th August, 2010.