

(2022) 02 CHH CK 0036
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 106 Of 2022

Seth Kirodimal Charity Trust

APPELLANT

Vs

State Of Chhattisgarh ?

RESPONDENT

Date of Decision : 04-02-2022

Acts Referred:

Chhattisgarh Public Trust Act, 1951 — Section 22, 23, 26, 27

Citation : ????

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Dr. Rajesh Pandey, Rakesh Pandey, Chandresh Shrivastava, Amit Sharma?

Final Decision : Allowed

Judgement

1. Challenge in the present writ petition is to the order dated 13.12.2021 (Annexure P/1) passed by the Registrar, Public Trust, Raigarh. Vide the said impugned order, the Registrar Public Trust, Raigarh, has passed an order of removal of petitioners No.2, 3 and 4 as trustees from the Seth Kirodimal Charity Trust, Raigarh, and have also passed an order for deleting the three names from the register of the said trust.
2. The challenge to the impugned order primarily is on the ground that the Registrar, Public Trust as such does not have the jurisdiction and competence to pass an order of removal of a trustee.
3. For better understanding of the issue, it would be appropriate at this juncture to look into the provisions of the Chhattisgarh Public Trust Act, 1951 (in short, the Act, 1951). Sections 22 and 23 of the Act are the provisions where powers provided upon the Registrar in respect of a trust and the procedure to be adopted by the Registrar in the event of an adverse report so far

as administration of a public trust is concerned. For ready reference, Sections 22 and 23 of the Act, 1951 is quoted hereunder:

â??22. Power of the Registrar.- The Registrar shall have powers,-

(a) to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

(b) to call for or inspect any extract from any proceedings of the trustees of any public trust or any book or account in the possession of or under the control of the trustees;

(c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust :

Provided that in entering upon any property belonging to the public trust the officer making the entry shall give reasonable notice to the trustee and

shall have due regard to the religious practices or usages of the trust.

23. Procedure after receipt of the report by the Registrar. -(1) If the report of the auditor made under Section 17 shows, in the opinion of the

Registrar, material defects in the administration of the public trust, the Registrar may require the working trustee to submit an explanation thereon

within such period as he thinks fit.

(2) If on the consideration of the report of the auditor, the accounts and explanation, if any, furnished by the working trustee, the Registrar is, after

holding an inquiry in the prescribed manner and giving opportunity to the person concerned, satisfied that the trustees or any other person has been

guilty of gross negligence, a breach of trust, misapplication or misconduct which has resulted in the loss to the public trust he shall determine,-

(a) the amount of loss caused to the public trust;

(b) whether such loss was due to any breach of trust, misapplication, or misconduct on the part of any person;

(c) whether any of the trustees, or any other person is responsible for such loss;

(d) the amount while any of the trustees or any other person is liable to pay to the public-trust for such loss.

(3) The amount surcharged on any trustee or other person in accordance with clause (d) of sub-section (2) shall, subject to any order of the Court

under Section 24, be paid by the trustee or person surcharged within such time as the Registrar may fix.â??

4. It would also be relevant at this juncture to take note of the provisions of Sections 26 and 27 of the Act, 1951, which again for ready reference is being reproduced hereinunder:

â??26. 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.

27. Court's power to hear application. - (1) On receipt of such application the Court shall make or cause to be made such inquiry into the case as

it deems fit and pass such orders thereon as it may consider appropriate.

(2) While exercising the power, under sub-section (1) the Court shall, among other powers, have power to make an order for;-

(a) removing any trustee;

(b) appointing a new trustee;

(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(d) providing a scheme of management of the trust property;

(e) directing how the funds of a public trust whose original object has failed, shall be spent, having due regard to the original intention of the author of

the trust or the object for which the trust was created;

(f) issuing any directions as the nature of the case may require.

(3) Any order passed by the Court under sub-section (2) shall be deemed to be a decree of such Court and an appeal shall lie therefrom to the High

Court.

(4) No suit relating to a public trust under Section 92 of the Code of Civil Procedure, 1908 (V of 1908), shall be entertained by any Court on any matter in respect of which an application can be made under Section 26.â??

5. From the plain reading of the aforesaid four provisions of the Act, 1951, it is evidently clear that the powers which could be exercised by the

Registrar has been spelt out specifically in Section 22 and the powers which can be exercised by the courts hearing an application upon being made by

the Registrar, is also specifically envisaged under Section 27 of the Act, 1951.

6. Sections 23 and 26 deal with the procedures to be followed in the event of an adverse report is received or a complaint is received by the Registrar.

7. From the plain reading of the aforesaid provision, it is also emphatically clear that the Registrar as such has not been conferred with the power to

pass orders of removal of the trustees and at the same time, such a power has only been given to the courts. Once when the provision of law does not

empower the Registrar to pass an order of removal of a trustee, more particularly when a dispute in respect of the petitioners Trust is already seized

before the competent court, the Registrar should not have initiated a proceedings nor should he have passed an order of removal of the trustees.

Nothing prevented the Registrar from moving an appropriate application in accordance with Sections 26 and 27 of the Act, 1951, to be placed before

the concerned Civil Court for an appropriate action to be taken by the court.

8. Given the said facts, if we look into the operative part of the impugned order dated 13.12.2021, which again for ready reference is reproduced

hereinunder:

It is evidently clear that vide the said order the Registrar has taken a decision for removal of the petitioners No.2, 3 and 4 as trustees from the

petitioner No.1-Trust and have also ordered for removal of their names from the register of the trust.

9. The impugned order dated 13.12.2021 therefore in the light of the statutory provisions itself is evidently in excess of jurisdiction which is otherwise

conferred upon the Registrar. The same therefore is not sustainable and deserves to be and is accordingly set aside/quashed. Consequences to follow.

10. It is made clear that the impugned order dated 13.12.2021 has been interfered by this court only on the ground of jurisdiction and competence and

that this court has not expressed any opinion on the merits of the case as also in

respect of the other proceedings pending elsewhere.

11. The writ petition accordingly stands allowed and disposed of.