

(2009) 08 CHH CK 0044
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 4266 of 2009

Shri Dattatraya Mandir Trust

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 11-08-2009

Acts Referred:

Chhattisgarh Public Trusts Act, 1951 — Section 6, 8, 8(1), 9, 9(1)
Constitution of India, 1950 — Article 226

Citation : (2009) 3 CGLJ 392

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Virendra Sharma, for the Appellant; Arun Sao, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Heard.

2. The Petitioner has filed this petition, impugning the order dated 25.7.2009 (Annexure P/1), passed by the Sub Divisional Officer and Registrar Public Trust, Raipur in Case No. 01 B/113(4) year 2008-09 (Yashwant Rao Girpunje and Anr. v. State of Chhattisgarh).

3. Learned Counsel appearing for the Petitioner submits that the Petitioner Shri Dattatraya Mandir Trust is a registered trust. On 19.8.2008 (Annexure P/2) the Petitioner-Trust, through its trustee namely Shri Yashwant Rao Girepunje/ Respondent No. 6 filed an application u/s 9(1) of the Chhattisgarh Public Trusts Act, 1951 (for short "the Act, 1951") in prescribed format to the Respondent No. 3 for change of the entries in trust register for change of names of some of the trustees. The Respondent No. 2 after following the prescribed procedure passed the order on 12.1.2009 u/s 9(2) of the Act, 1951. This order was conditional where names of the trustees were directed to be entered on furnishing five points information/documents within seven days, failing which the order was to be cancelled automatically. The requisite conditions were fulfilled on 19.1.2009

and consequently the entries were made in the register as per the order dated 12.1.2009.

4. Thereafter, the Respondent No. 5 (Shri Chetan Dandawate), Secretary of the Trust, filed an application on 2.7.2009 before the Respondent No. 3 for quashing of the order dated 12.1.2009. By the impugned order dated 25.7.2009 (Annexure P/1) the Respondent No. 3 cancelled the order dated 12.1.2009, hence this petition.

5. Learned Counsel appearing for the Petitioner further submits that Section 8(1) of the Act, 1951 provides that any working trustee or person having interested in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar may institute a suit in a Civil Court to have such finding set aside or modified. The Respondent No. 6 instead of filing a civil suit, being aggrieved by the order dated 12.1.2009, passed by the Registrar, had filed an application/complaint on 2.7.2009. The Respondent No. 3, contrary to the provisions of Section 8 of the Act, 1951 entertained the application/complaint made by the Respondent No. 6 and by the impugned order dated 25.7.2009 (Annexure P/1) recalled the order dated 12.1.2009, which is not sustainable in law.

6. I have heard learned Counsel appearing for the parties and perused the documents appended thereto.

7. Section 8 of the Act, 1951 provides for filing of civil suit against any of the findings of the Registrar, Public Trust. The Registrar, Public Trust has passed the order dated 25.7.2009 (Annexure P/1) under the provisions of Section 9(2) of the Act, 1951. Sub-section (3) of Section 9 of the Act, 1951 provides that "The provisions of Section 8 shall apply to any finding under this section as they apply to a finding u/s 6." Thus, if a finding is recorded under the provisions of Section 9(1) and (2) of the Act, 1951, an aggrieved party may move the civil Court against the finding of the Registrar, Public Trust. Thus, the Petitioner has alternative statutory remedy of challenging the order of the Registrar, Public Trust, passed u/s 9 of the Act, 1951, in civil suit.

8. Having perused the relevant provisions of law, it is obvious that an alternative effective statutory remedy is available to the Petitioner u/s 8 of the Act, 1951. It is well settled that normally the High Court should not interfere if there is an adequate, statutory, efficacious alternative remedy is provided by the statute, party must exhaust the statutory remedy before resorting to writ jurisdiction.

9. A Constitution Bench of the Hon"ble Supreme Court in K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , observed that "the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere." The said decision has been referred and followed subsequently in a catena of decisions that if a relief cannot be granted by the appellate authority, the writ

jurisdiction may be invoked. In the present set of facts, all the relief sought for by the Petitioner can be granted by the civil Court.

10. On the question of availability of alternative remedy, the Supreme Court in *State of H.P. and Ors. v. Gujarat Ambuja Cement and Anr.* (2005) 6 SCC 499, observed as under:

17. We shall first deal with the plea regarding alternative remedy as raised by the Appellant State. Except for a period when Article 226 was amended by the Constitution (Forty-second Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy, it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

11. Further, applying the said ratio in *U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another*, , the Court observed as under:

21. In *U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Seru Nigam S. Karmachari Sangh*, it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To the same effect are the decisions in *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke*, *Rajasthan SRTC v. Krishna Kant*, *Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad* and in *Scooters India v. Vijai E.V. Eldred*.

12. This Court in *Writ Petition (C) No. 2164 of 2008 (Shivratan Agariya and Anr. v. State of Chhattisgarh and Ors.)* in para 6 and 7 observed as under:

6. This Court in *M/s Thobhani Auto Mobiles v. State of Chhattisgarh and Ors.*, while dealing with the issue of alternative remedy observed that "normally the High Court should not interfere if there is an adequate, efficacious alternative remedy where hierarchy of appeals is provided by the statute, party must exhaust the statutory remedy before resorting to writ jurisdiction, except when a very strong case is made out for making a departure".

7. Applying the well-settled dicta laid down by the Hon'ble Supreme Court as well as this Court on the issue of availability of alternative remedy to the facts of the case, this petition is dismissed as not maintainable, as no strong case has

been made out for exercise of extraordinary discretionary jurisdiction in favour of the Petitioners. However, liberty is reserved to the Petitioners to take recourse to the alternative statutory forum that may be available to them under the provisions of law. Consequently, interim order passed earlier stands vacated.

13. In view of the foregoing, the petition is dismissed as not maintainable. However, liberty is reserved to the Petitioner to avail the alternative statutory remedy, in accordance with law, if so advised.