

(2012) 08 CHH CK 0058
In the Chhattisgarh High Court
Case No : Writ Appeal No. 259 of 2009

Shri Dattatraya Mandir Trust

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 — Section 2(1)
Madhya Pradesh Public Trust Act, 1951 — Section 6, 7, 8, 9, 9(1)

Citation : (2012) 5 MPHT 92

Hon'ble Judges : Gulam Minhajuddin, J; Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Meena Shastri in W.A. No. 259/2009 and Mr. Suresh Tandon in W.P. 227 No. 5329/2010, for the Appellant; A.S. Kachwaha, Dy. Advocate General for the Respondent Nos. 1 to 3 in W.A. No. 259/2009 and W.P. (227) No. 5329/2010, Mr. Ashish Shrivastava, Advocate for the Respondent No. 5 in W.A. No. 259/2009 and Respondent No. 4 in W.P. (227) No. 5329/2010 and None for the Respondent No. 4 in W.A. No. 259/2009 and Respondent No. 5 in W.P. (227) No. 5329/2010, for the Respondent

Judgement

Abhay Manohar Sapre, J.—The decision rendered in this appeal shall also govern disposal of the Writ Petition (227) No. 5329/2010 (Yashwant Rao Girpunje Vs. State of Chhattisgarh and others) because both the matters, i.e., writ appeal and the writ petition involve identical points and arise out of the same order passed by the Registrar. Public Trust. This is an appeal filed by the writ petitioner of W.P. (C) No. 4266/ 2009 u/s 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 against the order dated 11th August, 2009 passed by the learned Single Judge in the aforementioned writ petition.

2. There is a trust known as "Shri Dattatraya Mandir Trust", Raipur (hereinafter called "the Trust"). It is governed by the provisions of the Chhattisgarh/ Madhya Pradesh Public Trust Act, 1951 (for short "the Act, 1951").

3. An order was passed by the Registrar, Public Trust & SDO, Raipur in Case No. 01-B/113 (4) year 2008-09, Yashwant Rao Girpunje and another Vs. State of

Chhattisgarh, on 12-1-2009 (Annexure P-3 in the writ petition) u/s 9(1) of the Act, 1951, at the instance of the respondent No. 6 (Yashwant Rao Girpunje) for recording change in the entries made by the Registrar in the record of the trust.

4. It appears that the respondent No. 5-Chetan Dandawate became aggrieved of the said order dated 12-1-2009 and accordingly moved to the same Registrar on 2-7-2009 for recalling of the order dated 12-1-2009. It is this application, which was entertained by the Registrar and eventually allowed by the order dated 25-7-2009 (Annexure P-1 in the writ petition), wherein the Registrar recalled his original order dated 12-1-2009 as being bad in law and illegal. It is against this order, the Trust felt aggrieved and filed writ petition being W.P. (C) No. 4266/2009 out of which this appeal arises, questioning its legality and propriety.

5. By the impugned order dated 11th August, 2009, the learned Single Judge dismissed the writ petition holding that remedy of writ petitioner lies in filing a suit u/s 8 of the Act, 1951, against the order dated 25-7-2009. It is against this order, the writ petitioner has felt aggrieved and filed this appeal.

6. Having heard learned Counsel for the parties and on perusal of the record we are constrained to allow the appeal and while setting aside of the order passed by the learned Single Judge allow the writ petition out of which this appeal arises and in consequence set aside the order passed by the Registrar, dated 25-7-2009 (Annexure P-1 to the writ petition) with directions and liberty to the parties concern, as mentioned infra.

7. Sections 8 and 9 of the Act, 1951, which are relevant for the disposal of this appeal, read as under:-

8. Civil suit against the finding of the Registrar.-- (1) Any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar u/s 6 may, within six months from the date of the publication of the notice under sub-section (1) of Section 7, institute a suit in a Civil Court to have such finding set aside or modified.

(2) In every such suit, the Civil Court shall give notice to the State Government through the Registrar, and the State Government, if it so desires, shall be made a party to the suit.

(3) On the final decision of the suit, the Registrar shall, if necessary, correct the entries made in the register in accordance with such decision.

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 therefore, 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.

8. One cannot perhaps dispute that the order dated 12-1-2009 passed by the Registrar was an order passed u/s 9(1) of the Act, 1951. Indeed, the first paragraph of the order itself shows that the order was passed by invoking the provisions of Section 9(1) of the Act, 1951. It is reproduced infra:-

9. Once an order was passed by the Registrar u/s 9(1) of the Act, 1951, then such order could be challenged by the aggrieved party only by filing a civil suit as provided u/s 8 read with Section 9(3) of the Act, 1951, quoted supra.

10. In the light of such clear legal position emerging from the reading of Sections 8 and 9 of the Act, we have no hesitation in holding that the Registrar did not have jurisdiction to even entertain the application made by the respondent No. 5 for recalling of the order dated 12-1-2009 nor had any jurisdiction to pass an order dated 25-7-2009.

11. We are constrained to observe that the Registrar simply usurped his powers for recalling of his own order dated 12-1-2009, when he had no jurisdiction to do so under the Act.

12. With respect, therefore, we cannot concur with the view taken by the Single Judge while dismissing the writ petition and granting liberty to the appellants to challenge the order dated 25-7-2009 in filing a suit u/s 8 of the Act, 1951. In other words, the Writ Court erred in dismissing the writ petition when he asked the appellant (writ petitioner) to challenge the order dated 25-7-2009 by filing a suit u/s 8 of the Act, 1951. Instead, the Writ Court should have set aside the order dated 25-7-2009 passed by the Registrar as being totally without jurisdiction and then asked the respondent No. 6 to file a suit u/s 8 against the main order dated 12-1-2009 because it is this order, which attracted the rigour of Section 8 and not the subsequent order dated 25-7-2009. In other words, if the order dated 12-1-2009 was questionable u/s 8 in civil suit because it was passed u/s 9(1) of the Act, 1951, the order dated 25-7-2009 was questionable in the writ petition because it did not fall u/s 9(1) *ibid*. This distinction, the Writ Court failed to notice and hence committed an error of law requiring interference of this Court.

13. Accordingly, and in the light of the foregoing discussion, the appeal succeed and is hereby allowed. The impugned order passed by the learned Single Judge in the writ petition is set aside. As a consequence, the writ petition filed by the appellant is allowed. The impugned order dated 25-7-2009, passed by the Registrar, Public Trust (Annexure P-1), is quashed by issue of the writ of

certiorari.

14. Taking into account the fact that the issue was subjudice in the writ petition and then in appeal, we consider it just and appropriate to grant six months time to the respondent No. 6 to file a civil suit u/s 8 of the Act to challenge the order dated 12-1-2009 passed by the Registrar. On such civil suit being filed within time fixed by this Court before the Competent Civil Court of jurisdiction, the Civil Court shall decide the civil suit strictly in accordance with law after affording an opportunity of hearing to the parties.

15. While deciding the suit, the Civil Court would not be influenced by any of the orders passed by the Registrar, because the same has since been set aside. In the light of the foregoing discussion, the Writ Petition (227) No. 5329/2010 has become infructuous because therein also the challenge was to the order dated 25-7-2009, which we have quashed in this appeal.

No costs.