
(2013) 02 MP CK 0045
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2559 of 2013

Sudip Gupta and Another

APPELLANT

Vs

Shri Khedapati Hanuman Mandir Trust and others

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 92
Madhya Pradesh Public Trust Act, 1951 — Section 3, 4, 5, 6, 6

Citation : (2013) 02 MP CK 0045

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : K.S. Wadhwa, for the Appellant;

Final Decision : Allowed

Judgement

Rajendra Menon, J.—Challenging an order passed by the learned District Judge, Bhopal rejecting a prayer made by the petitioner seeking leave for instituting a suit under the provisions of Section 92 of the Code of Criminal Procedure, this writ petition has been filed. Shri Khedapati Hanuman Mandir Trust, New Market, TT Nagar, Bhopal is a Trust registered under the MP Public Trust Act, 1951 (hereinafter known as the "Act of 1951"). A Temple, known as Khedapati Hanuman Mandir, is functioning under the control of the said Trust. The bye-laws of the Trust have been filed as Annexure P/1 and the bye-laws contemplate a provision for filling up various vacancies that may be created in the Trust. According to the petitioners, during the functioning of the Trust as various vacancies arose with regard to certain Trustees, a meeting of the Trust was held on 12.10.2011, and as a resolution was passed to appoint three Trustees against the vacancies so created. Accordingly, respondents 5 to 7 were appointed as Trustees and based on the resolution dated 12.10.2011, the matter was referred to the Registrar for change of the entries in the record of the Registrar u/s 9 of the Act of 1951, and as the change has been permitted and the name of the new Trustees entered in the register, the petitioners approached the court below

namely the Court of District Judge, seeking leave for institution of the suit mainly on the ground that induction of the three Trustees is contrary to the statutory provisions, namely the bye-laws of the Act of 1951, and, therefore, petitioners wanted to challenge the resolution and the change made in the register for inducting three new Trustees. This application has been rejected by the learned District Judge and, therefore, petitioners are before this Court.

2. Shri K.S. Wadhwa, learned counsel for the petitioners, took me through the provisions of sections 8 and 9 of the Act of 1951, and by referring to sub-section (3) of Section 9, argued that if any change in the entries recorded in the register is made by exercising the powers u/s 9, then all the provisions of section 9 are made applicable and in the present case the learned District Judge without taking note of the requirement of sub-section (3) of section 9, has rejected the prayer only on the ground that change of name of three Trustees and their induction is not covered u/s 8 or section 7 and, therefore, permission cannot be granted.

3. Having heard learned counsel for the petitioners, I find much force in his objection.

4. Admittedly, a Trust is registered after conducting the procedure contemplated under Chapter II, from section 3 to 7 onwards, and once the registration is permitted the Registrar is to make entries in the register with regard to registration of the Trust u/s 7. Any entry made u/s 7 and the finding recorded by the Registrar is subject to the provisions of filing of civil suit u/s 8.

5. In the present case, after the Trust has been registered due to certain vacancies that arose, a resolution was passed on 12.10.2011 and three more Trustees were inducted. After they were inducted, the change as required u/s 9 of the Act of 1951, was sought for and this change was permitted and petitioners sought leave for challenging this change made u/s 9. The learned District Judge has rejected it on the ground that a change with regard to induction of three Trustees is not covered under the provisions of section 8 and, therefore, permission cannot be granted.

6. However, while doing so, the learned District Judge has not taken note of the requirement of sub-section (3) of section 9. A civil suit against the finding of a Registrar recorded in a proceeding held for registration u/s 6 and the entry made u/s 7, is subject to a suit being filed u/s 8 and, therefore, the learned District Judge may be right in contending that if an entry is not made u/s 7 and when the induction of only three Trustees is not covered u/s 6, the provisions of section 8 is not attracted. A bare reading of section 8 may give such an impression, but if a change is made in the constitution of a Trust and the entries in the Register are changed by exercising the powers conferred u/s 9(1) and 9(2), then the change made under this section namely section 9 is further subject to applicability of the provisions of section 8, by virtue of sub-section (3) of section 9.

7. Sub-section (3) of Section 9 reads as under:

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

8. This clearly shows that even if any change is made in the register or working of the Trust by virtue of exercise of powers u/s 9, then in the light of sub-section (3) of section 9, the provisions of section 6 are made applicable to any finding u/s 9, as they apply to a finding u/s 6 of the Act of 1951.

9. That being so, learned District Judge having rejected the application without taking note of the aforesaid statutory provision i.e. ... sub-section (3) of section 9, the matter is remanded back to the learned District Judge for reconsideration in accordance to the requirement of law as indicated hereinabove.

10. Accordingly, the petition is allowed and disposed of with the aforesaid directions. Certified copy as per rules.