

(1981) 07 MP CK 0008

In the Madhya Pradesh High Court

Case No : Civil Revision Petition No. 474 of 1980

V.V. Dravid

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 27-07-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 75
Madhya Pradesh Public Trust Act, 1951 — Section 26, 27

Citation : AIR 1982 MP 159 : (1982) JLJ 195

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : G.M. Chaphekar, for the Appellant; S.L. Jain, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.—This revision petition has been filed by the petitioner against an order passed by Seventh Addl. District Judge, Indore, dt. 5-5-1980.

2. The non-applicant No. 2 claiming to be a trustee of Gandhi Mazdoor Smarak Nidhi submitted an application to the Registrar of Public Trusts. This application was submitted on 16th May 1979 and the non-applicant No. 2 sought a relief of permission to file appropriate proceedings against the Chairman, the present petitioner. The Registrar of the Public Trusts issued a notice to the Chairman (the petitioner) and after the reply was filed by him. the Registrar without further enquiry into the matter, sent the file to the court of District Judge for suitable action. On receiving these papers, the learned Additional District Judge issued notices to all the parties and also to the Registrar and thereafter passed the impugned order sending the matter to one Shri N. B. Sirpurkar, Advocate for recording evidence as he may think necessary. It is against this order that the present petition is filed.

3. Learned counsel for the petitioner contended that u/s 26 of the Madhya Pradesh Public Trusts Act, it was open to the Registrar, Public Trusts, after

enquiry either to file an application himself before a competent court or to direct the concerned person to file an application but he had no jurisdiction or authority to send the case and its file to the court of District Judge and the court of District Judge (Additional District Judge) could not have taken cognisance of such file if sent by the Registrar without any application made by the Registrar. It was further contended that the learned Additional District Judge having taken cognisance of the matter, which he could not have, instead of further enquiring into the matter, himself which was his function, left it to the Commissioner and directed him that he may, if he so thinks, examine witnesses and thereby again committed material irregularity in exercise of jurisdiction. The learned counsel contended that all these proceedings are without Jurisdiction and cannot be allowed to remain.

4. The learned counsel for the non-applicants contended that so far as the order of the learned Judge leaving the matter to the Commissioner, Shri Sirpurkar Advocate is concerned, he does not support the order passed by the Additional District Judge but he contended that as the matter itself was sent by the Registrar to the court of District Judge, the application made to the Registrar should be considered as an application made to the court of Additional District Judge and, therefore, the court below was right in taking cognisance of the matter.

5. The order-sheet of the Registrar, which also, it appears, has been sent along with the papers to the court of District Judge, shows that the Registrar of Public Trusts finally passed an order dt. 4-2-1980 and this order only says that as this application has been moved about irregularities being committed in the trust and irregularities are found, therefore, the whole proceedings be sent to the court of District Judge for appropriate action and the order-sheet of the learned District Judge who received this file, shows that the learned District Judge felt that the Registrar of Public Trusts had sent this file for action u/s 26 of the M. P. public Trusts Act and, therefore, he, in his turn, passed it on to the court of Additional District Judge, Indore.

6. Section 26 of the Madhya Pradesh Public Trusts Act provides:--

"26. Application to court for directions:--

(1) If the Registrar on the application by any person interested in the Public trusts 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."

The first clause of this provision requires the Registrar of public trusts to be satisfied about the management of the trust in such a manner where any one of Sub-clauses (a), (b) and (c) is attracted. He has been conferred with powers to direct the trustee whose application it was, to file an application to the court. Apparently, the order-sheets of the Registrar and the last order passed by the Registrar do not show that action u/s 26 (1) was taken by the Registrar, as apparently, he did not issue any direction to the applicant, that is, non-applicant No. 2 to approach the court. Clause (2) of this section contemplates an application by the Registrar himself under certain circumstances. Apparently, no such application was made to the District Court by the Registrar. It is, therefore, clear that the manner in which this file was sent by the Registrar to the District Court neither amounts to an application under Clause (1) nor an application under Clause (2) and in absence of any application as contemplated u/s 26 the District Court cannot exercise jurisdiction u/s 26 of the Madhya Pradesh Public Trusts Act.

7. The learned counsel for the non-applicant No. 2 relied on a decision noted in Short Notes in 1961 Jab LJ 227. This decision does not help the non-applicant No. 2 in any manner. It is not in dispute that there is no other provision except Section 26 under which the District Court could take cognisance of the matter. Apparently, therefore, the learned Additional District Judge has exercised jurisdiction not vested in him by law, in entertaining these proceedings and proceeding further with the matter.

8. It is strange that the learned Additional District Judge by the impugned order sent the matter to the Commissioner for enquiry and left it to the discretion of the Commissioner to record evidence if he thinks necessary in view of Section 27 (2). The learned court below omitted to consider that powers conferred on the court u/s 27 could not be delegated to the Commissioner as Section 27 does not authorise the court to delegate such functions. It appears that the learned court below appointed the Commissioner u/s 75 of the Civil P. C. Section 75 contemplates appointment of a Commissioner only to do what has been provided for in S. 75 itself. Section 75 reads:--

"75. Power of court to issue Commissions. Subject to such conditions and limitations as may be prescribed, the court may issue a commission.

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts; or
- (d) to make a partition;

(e) to hold a scientific, technical or expert investigation;

(f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the court pending the determination of the suit;

(g) to perform any ministerial Act. In the impugned order, the learned Judge has not appointed Shri Sirpurkar Advocate only as a Commissioner to examine a witness or to make any local investigation but has directed as under:--

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9. This order passed by the learned court below apparently could not be passed u/s 75 of the Civil P. C., nor could it be passed under any provision of the Madhya Pradesh Public Trusts Act. What the learned Judge has done by the impugned order appears to be that he abdicated his function as a Judge and left the matter to be dealt with by the Commissioner so that he may, after doing all that what he thinks fit, submit his suggestions what should be done in "he matter. It is because of this that the learned counsel for the non-applicant also conceded that it is not possible for him to support this order passed by the learned Additional District Judge. It is unfortunate that an Additional District Judge of standing should pass such orders without even bothering to look at the provisions of the Madhya Pradesh Public Trusts Act or the Civil P. C.

10. Section 27, no doubt, authorises the Court either to hold an enquiry or to cause an enquiry to be made; As the language indicates that:--

"The Court shall make or cause to be made such enquiry as it deems fit."

This clearly, shows that what enquiry is to be made has to be determined by the Court itself. It is only when the Court decides as to the questions on which the enquiry is to be made and feels that that enquiry should be caused to be made by some one else that the aid of Section 75 of the Civil P. C. could be taken for appointment of a Commissioner. But it does not justify the court completely abdicating Us own functions and leaving it to the Commissioner to hold such enquiry as he thinks proper and, therefore, the order passed by the learned court below could not be justified.

11. The revision petition is, therefore, allowed. The order passed by the learned Additional District Judge, dt. 5-5-1980 is set aside. The orders passed by the learned Court below entertaining these proceedings u/s 26 also are set aside and it is directed that the learned District Judge will send back the papers and the file sent by the Registrar of the Public Trusts so that the Registrar may proceed with the matter in accordance with law. In the circumstances of the case, parties are directed to bear their own costs.