

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.2323 of 2016**

1. Kundanmal Gandhi S/o Gopilal Gandhi, Aged About 73 Years R/o Village-Janta, Saja, District-Bemetara (Chhattisgarh), (Revisioner)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through-The Secretary, Department Of Religious Trusts And Endowments, Mahanadi Bhawan, Mantralaya, Post And P.S. Mandir Hasaud, Raipur (Chhattisgarh)
2. Lal Narendra Singh, S/o Pyaresingh Thakur, Aged About 50 Years R/o Saja, District-Bemetara (Chhattisgarh), (Complainant)
3. The Board Of Revenue, Chhattisgarh, Bilaspur, Through Its President Officer, Circuit Court, Bilaspur, District-Bilaspur (Chhattisgarh)
4. Collector, Bemetara, Collectorate, Bemetara (Chhattisgarh)

---- Respondent

For Petitioner Shri Sanjay Agrawal, Advocate

For Respondent/State Shri P.K. Bhaduri, Govt. Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****19/09/2016**

1. Petitioner is aggrieved by the impugned order passed by the Board of Revenue, Chhattisgarh at Bilaspur, directing entry of the name of the Collector as Manager of Sri Ram Janki Mandir in the revenue records.
2. It appears there is idols of Lord Ram & Lord Laxman in the temple at village Saja known as Sri Ram Janki Mandir. The temple premises is on the property having 30 - 40 decimal land and it also owns some other agricultural lands. One Lal Narendra Singh Chandel moved a complaint before the Revenue Authorities that the villagers have contributed for construction and operation of the temple, therefore, it is a public property/public trust and not the personal property of the petitioner.
3. Upon perusal of the documents, it is revealed that on 21-4-1969 the Sub Divisional Officer (Revenue), Saja (*'the SDO' henceforth*) initiated an enquiry and concluded that the temple and its property is private property of the petitioner. The Collector, Durg, did not agree with the findings recorded by the SDO and, as such, the Collector, Durg, remitted the matter back to the SDO for making fresh enquiry and the SDO, in turn, directed the Tahsildar, Saja,

on 8-2-1999 for making enquiry and submit a report. This order of the SDO was assailed by preferring a revision before the Divisional Commissioner, which was dismissed. Thereafter, another revision application was preferred before the Board of Revenue, which has passed the impugned order.

4. The issue as to whether or not the temple or any other property is a public trust or a private property is to be enquired by the Registrar, Public Trust under the provisions of the Chhattisgarh Public Trust Act, 1951 (*'the Act, 1951' henceforth*).
5. Section 4 of the Act, 1951 provides for registration of public trusts; whereas Section 5 provides for inquiry for registration; and Section 6 speaks about findings of the Registrar and thereafter, the Registrar is enjoined to make entries in the register as provided under Section 7.
6. Section 8 of the Act, 1951 provides that 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 under Section 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. Sub-section (2) of Section 8 provides that 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 whereas sub-section (3) of Section 8 provides that on the final decision of the suit, the Registrar shall, if necessary, correct the entries made in the register in accordance with such decision.

7. The papers annexed with the writ petition, particularly the enquiry report submitted by the Tahsildar, Saja; order passed by the SDO, Saja on 24-1-1998; the order passed by the Additional Commissioner, Raipur Division, on 24-1-2002 (Annexure – P/6); and the order passed by the Board of Revenue does not disclose that the initial order was passed by the SDO as Registrar, Public Trust or that the procedure prescribed for making an enquiry for registration as provided under Section 5 of the Act, 1951 was followed by the said SDO or the Registrar, Public Trust before passing the order.

8. The circular issued by the Department of Religious Trust, Government of Chhattisgarh, on 6-7-2007 and previous circulars issued by the State of Chhattisgarh or the erstwhile State of Madhya Pradesh in this regard were for making entry of the name of the Collector as Manager of the property belonging to the public trust.
9. Although in the concluding para of the notification dated 6-7-2007 it is mentioned that the name of the Collector be entered as Manager of the property belonging to Math/temples, public trusts so that the property is not disposed of without legal necessity in the trust, the impugned order has referred to the circular dated 6-7-2007, however, the Board of Revenue has recorded an express finding in para 4.3.3 that in view of the State Government's circular the temple in question shall be deemed to be a public trust, therefore, the circular would apply and the name of the Collector should be entered in the revenue records as Manager, in respect of the lands belonging of Sri Ram Janki Mandir.
10. It appears, the Board of Revenue has understood the circular to mean that the name of the Collector is required

to be entered as Manager of the property which is a public trust, however, in the case at hand, the Sri Ram Janki Mandir, Saja, and the property belonging to it has never been enquired by the Registrar, Public Trust for declaring the same as a public trust and making an entry to this effect in the register of public trust maintained under the provisions of sub-section (2) of Section 3 read with Section 7 of the Act, 1951.

11. It is the settled proposition of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all.
12. The Supreme Court in **Meera Sahni v. Lieutenant Governor of Delhi and Others**¹, held thus :

35. It is by now a certain law that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner prescribed and in no other manner. In this connection we may appropriately refer to the decision of this Court in Babu Verghese v. Bar Council of Kerala wherein it was held as under: (SCC pp.432-33, paras 31-32)

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be

1 (2008) 9 SCC 177

done in that manner or not at all. The origin of this rule is traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor* who stated as under: (IA pp. 381-82)

‘where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.’

32. This rule has since been approved by this Court in *Rao Shiv Bahadur Singh v. State of Vindh Pradesh* and again in *Deep Chand v. State of Rajasthan*. These cases were considered by a three-Judge Bench of this Court in *State of U.P. v. Singhara Singh* and the rule laid down in *Nazir Ahmad* case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law.”

13. Even otherwise, the order passed by the SDO was not passed as Registrar, Public Trust. Similarly, the Act, 1951 does not provide for any appellate or revisional jurisdiction to the Collector, Divisional Commissioner or the Board of Revenue to challenge the order passed by the Registrar.
14. For the foregoing, it appears the matter is first required to be enquired by the concerned Registrar, Public Trust,

under the Act, 1951 for making an enquiry as provided under Chapter II Sections 3 to 7 of the Act, 1951 to ascertain as to whether the Sri Ram Janki Mandir, Saja, is a public trust or not. If the Registrar, Public Trust decides that the temple and its property are public trust, the petitioner or any party aggrieved by any finding recorded by the Registrar, Public Trust, would be at liberty to institute a civil suit as provided under Section 8 of the Act, 1951 or otherwise.

15. Let the concerned Registrar, Public Trust register a case, issue notice to all concerns including prominent members of public as also the complainant/respondent No.2 and thereafter, complete the enquiry within a period of nine (09) months from the date of receipt of certified copy of this order. Till the enquiry is completed and finding is recorded by the Registrar, Public Trust, the effect and operation of the impugned order shall remain stayed, however, the petitioner shall not be entitled to dispose of the property belonging to Sri Ram Janki Mandir. The petitioner shall maintain account of the offerings made to the deity during pendency of the enquiry before the Registrar, Public Trust.

16. Learned counsel appearing for the State is directed to send a copy of this order to the concerned Registrar, Public Trust and ensure compliance of the same.
17. Accordingly, the writ petition is disposed of with the observations as stated *supra*. No order as to costs.

Sd/-

Judge
Prashant Kumar Mishra

Gowri