

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.605 of 2015

Durga Prasad Mahobiya, aged about 53 years, S/o Late Itwari Lal Mahobia, R/o Baraipara, Tehsil and District Durg (C.G.)

(Applicant)
---- Petitioner

Versus

1. Mahant Yagyanand Bramhachari, S/o Guru Pita Mahant Goutamanand Brahmchari (Not mentioned in order impugned), R/o Narnarayan Mandir, Borsi, Durg, Tehsil and District Durg (C.G.)
(Objector)

2. Registrar Public Trust, Sub Divisional Officer, Durg, Tehsil and District Durg (C.G.)

---- Respondents

For Petitioner:	Mr. Avinash Chand Sahu, Advocate.
For Respondent No.1:	Mr. Sameer Oraon, Advocate.
For Respondent No.2:	Mrs. Astha Shukla, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/11/2016

1. Invoking the jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner herein seeks to challenge the order passed by the Registrar, Public Trusts under Sections 6 and 7 of the Chhattisgarh Public Trusts Act, 1951 (for short 'the Act of 1951'), rejecting the application for registration of public trust filed under Section 4 of the Act of 1951.

2. Essential facts necessary to adjudicate the plea raised at the Bar are as follows: -

2.1) The petitioner herein filed an application under Section 4 of the Act of 1951 for registration of Shri Narnarayan Temple Lok Nyas,

Borsi. On receipt of the application, notices were issued in the daily newspaper and objections were invited. Respondent No.1 herein submitted an objection that the application under Section 4 of the Act of 1951 is not maintainable as particulars required have not been furnished and it is a private trust. On the said application, on behalf of the petitioner; Durga Prasad Mahobia - the petitioner herein and Manoj Kumar Tamrakar were examined, whereas on behalf of respondent No.1; Swami Yagyanand Brahmachari - respondent No.1 herein, Vijay Kumar Gupta, R.L. Shrivastava, Ramkumar Agrawal and Ramesh Kumar Yadav were examined and thereafter, the matter was heard by the Registrar, Public Trusts and in a detailed order, the application has been rejected finding inter alia that the said temple is a private temple and public trust has not been created in accordance with the provisions of the Act of 1951, and it has also not been registered with the consent of all the trustees and since the application is not in accordance with the Act of 1951. Feeling aggrieved and dissatisfied with the order of the Registrar, Public Trusts, the instant writ petition under Article 227 of the Constitution of India has been preferred.

3. Mr. Avinash Chand Sahu, learned counsel appearing for the petitioner, would vehemently submit that inquiry has not been conducted under Section 5 of the Act of 1951 and it is not a private temple, it is a public trust and with the aid and assistance of a Member of Parliament that temple has been constructed. Since no finding has been recorded under Section 6 of the Act of 1951 with reasons, civil suit would not be maintainable and therefore the writ petition is maintainable.

4. Mr. Sameer Oraon, learned counsel appearing for respondent No.1, would submit that a clear cut finding has been recorded by the Registrar, Public Trusts holding that the application is not duly constituted and not maintainable and therefore it is a finding of the Registrar and civil suit would be maintainable and the writ petition would not be maintainable as when specific remedy has been provided under the Act of 1951, the petitioner cannot be allowed to maintain the writ petition.
5. Mrs. Astha Shukla, learned Panel Lawyer appearing on behalf of the State/respondent No.2 would however, support the impugned order and would submit that the petitioner has remedy of challenging the order of the Registrar, Public Trusts by filing civil suit under Section 8 of the Act of 1951.
6. I have heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the documents available in the file with utmost circumspection.
7. The first and preliminary question would be whether the petitioner has remedy to file civil suit under Section 8 of the Act of 1951 questioning the order / finding of the Registrar, Public Trusts rejecting his application under Section 4 of the said Act or this writ petition is maintainable.
8. In order to consider the plea raised the Bar, it would be appropriate to have a brief survey of the provisions of the Act of 1951 leading to filing of application for registration of public trust and upon inquiry, finding has to be recorded by the Registrar, Public Trusts.
9. Section 4(1) of the Act of 1951 provides that the working trustee of

public trust can make an application to the Registrar, Public Trusts having jurisdiction for the registration of the public trust. Sub-section (2) of Section 4 is with regard to fees. Sub-section (3) of Section 4 provides the requirements which the application must contain giving the particulars like origin, nature and object of the public trust and various particulars that have to be furnished along with the application for registration. Section 4(3) of the Act of 1951 provides as under: -

"(3) The application shall be in such form as may be prescribed and shall among other things contain the following particulars, namely,-

- (i) the origin, nature and object of the public trust;
- (ii) the place where the principal office or the principal place of business of the public trust is situate;
- (iii) the names and addresses of the working trustee and the manager;
- (iv) the mode of succession to the office of the trustees;
- (v) the list of the movable and immovable trust property in the State and such description and particulars as may be sufficient for the identification thereof;
- (vi) the approximate value of the movable and immovable property;
- (vii) the income derived from movable and immovable property and from any other source, if any, based on the gross annual income during the three years immediately preceding the date on which the application is made or of the period which has lapsed since the creation of trust whichever period is shorter and in the case of a newly created public trust the estimated income from such sources;
- (viii) amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the period to which the particulars under clause (vi) relate;
- (ix) the address to which any communication to the working trustee or manager in connection with the

public trust may be sent; and

(x) such other particulars as may be prescribed :

Provided that the rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein."

10. Section 5 of the Act of 1951 provides Inquiry for registration. Section 6 provides that on completion of inquiry, the Registrar has to record his findings with reasons therefor. Section 7 stipulates that the Registrar has to make entries in the register in accordance with the findings recorded by him and shall publish the same on the notice board of his office. Section 8 provides for civil suit against the finding of the Registrar.

11. A careful perusal of the aforesaid provisions would show that on completion of inquiry provided for under Section 5 of the Act of 1951, the Registrar shall record his findings with reasons and consequently make entries under Section 7 of the Act in the register so maintained and entries so made under Section 7(1) shall be final and conclusive and they can be challenged under Section 8 by filing civil suit by any working trustee or person having interest in a public trust within six months from the date of the publication of the notice under sub-section (1) of Section 7, to have such finding set aside or modified.

12. Mr. Avinash Chand Sahu, learned counsel appearing for the petitioner, relying upon the judgment of the Supreme Court in the matter of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others¹ would submit that alternative remedy would not be a bar whereas it has been held by the Supreme Court that the

1 1998 AIR SCW 3345

jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or it is wholly without jurisdiction.

13. Way back in the year 1966, the Supreme Court in the matter of

Hasan Nurani Malak v. S.M. Ismail, Assistant Charity

Commissioner, Nagpur and others² has considered the provisions of Sections 7 and 8 of the Madhya Pradesh Public Trusts Act, 1951, which has now been adopted in the State of Chhattisgarh as the Chhattisgarh Public Trusts Act, 1951, and clearly held that where the finding has been recorded by the Registrar either in negative or affirmative under Section 6 and the Registrar has made entries in the register, civil suit will be maintainable under Section 8 of the Act of 1951. Their Lordships laid down as under: -

"(7) ... It will be noticed that there is nothing in Section 7 (1) to show that he is required to make an entry only if the finding is in the affirmative. On the other hand sub-s. (1) of Section 7 expressly provides that he shall cause entries to be made in accordance with the findings recorded by him under Section 6. Section 6 shows that he has to record his findings and the reasons therefor whatever the findings are, whether in the affirmative or in the negative. Since entries under Section 7 (1) are to be made in accordance with such findings, either positive or negative, it follows that entries have to be made irrespective of whether the trust is found to be a public trust or not. To say that he is required to make an entry of finding only if the finding is that the trust is a public trust would be contrary to the express language of Sections 6 and 7 and would unnecessarily curtail the language and the scope of the two sections. This construction is also supported by Section 8. Under that section, though it is the entry made under S. 7 which has been given finality a right of suit is conferred on both the working trustee and all persons having interest in the

2 AIR 1967 SC 1742

trust or any property belonging to it and who is aggrieved 'by any finding'. The section no doubt provides that such a suit has to be filed within six months from the date of the publication of the entry. But that provision is clearly one fixing limitation. That does not mean that the suit is to set aside the entry. The section in so many terms states that such a suit would be to set aside the finding given by the Registrar and where such a finding is set aside the Registrar has to correct the entry made in the register in accordance with his findings. The cause of action for such a suit thus is the finding and not the entry which is merely consequential. It is therefore not right to say that a suit cannot be filed unless the Registrar has made the entry. The legislature, besides, could not have left the right to file a suit on the mercy of the Registrar who may or may not make the entry. It is equally not correct to say that the Registrar has not to make an entry if his finding is in the negative. Suppose the Registrar in a given case gives his finding that the trust in question is not a public trust and does not make an entry on the ground that the register maintained by him is the register of public trusts and not of trusts which are not public trusts. What is a person interested in the trust or its properties to do if he is aggrieved by that finding? Does it mean that he has no remedy by way of a suit? That surely cannot be the meaning to be given [to Sections 7 and 8](#). If the making of the entry is the condition precedent for such a suit such a person would have no remedy of a suit [under Section 8](#). It is precisely to avoid such a result that the section provides in explicit language that any person, aggrieved by the finding and not the entry, has a right to file a suit and to have such a finding set aside, whether the finding is positive or negative. There is nothing [in S. 8](#) which restricts the right of a suit in cases where the finding is in the affirmative. If that was so giving a right to sue to a person interested in the trust would be superfluous as he would never be aggrieved by a finding that the trust is a public trust. The High Court was, therefore, in error when it held that the Registrar was not obliged to make the entry as his finding was in the negative. In our view, reading [Ss. 5, 6, 7 and 8](#) of the M.P. Act it is clear that the Registrar is enjoined upon to make an entry in the register of public trusts irrespective of whether his finding is in the affirmative or in the negative. For the entry he has to make is the entry "in accordance with his finding" whatever that finding is."

14. Thereafter, in the matter of **Seth Chand Ratan v. Pandit Durga**

Prasad (D) By LRs. and others³ while dealing with the provisions of

Sections 4 to 8 of the Act of 1951, the Supreme Court has again held

3 (2003) 5 SCC 399

that when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution, and relegated the parties to remedy of civil suit under Section 8 of the Act of 1951 by holding as under in paragraphs 14 and 15: -

"14. For the reasons stated, we are clearly of the opinion that the High Court committed manifest error of law in entertaining and allowing the writ petition filed by Pandit Durga Prasad and, therefore, orders passed by the learned Single Judge on 2-9-1994 and by the Division Bench in letters patent appeal on 7-3-1995 are liable to be set aside.

15. In view of [Section 8](#) of the Act, a person feeling aggrieved by any finding of the Registrar recorded under [Section 6](#) of the Act, can institute a civil suit within six months of publication of notice under sub-section (1) of [Section 7](#) of the Act to have such finding set aside or modified. Since the Registrar had passed an order on 31-12-1956 for recording Shri Madan Mohan Mandir as a private trust of Pandit Kamta Prasad, there was no occasion for him to file a civil suit to establish his right. Having regard to the peculiar facts of the present case, we consider it in the interest of justice that an opportunity be given to the contesting respondents to establish their right by instituting a civil suit, which they may do within three months from today."

15. It is true that in **Whirlpool Corporation** (supra), the Supreme Court has held that the alternative remedy shall not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. None of the circumstances is shown to be present in the instant case. Whereas in **Hasan Nurani Malak** (supra) and **Seth Chand Ratan** (supra), which relates to the Chhattisgarh Public

Trusts Act, the Supreme Court has clearly held that against the finding of the Registrar under Section 7 of the Act of 1951, writ petition would not be maintainable and civil suit under Section 8 of the Act of 1951 would be maintainable.

16. In view of aforesaid discussion, in light of Section 8 of the Act of 1951 and the principles of law laid down by the Supreme Court in **Hasan Nurani Malak** (supra) and **Seth Chand Ratan** (supra), I am of the considered opinion that the writ petition as framed and filed against the finding of the Registrar, Public Trusts would not be maintainable and the petitioner's remedy would be to file civil suit under Section 8 of the Act of 1951 to establish his right.

17. At this stage, Mr. Avinash Chand Sahu, learned counsel for the petitioner, submits that the petitioner may be allowed to prefer an appeal in accordance with Section 8(1) of the Act of 1951 before the jurisdictional civil court. The petitioner is at liberty to move the jurisdictional court, in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the case.

18. The writ petition is dismissed as not maintainable with no cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge