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HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (227) No. 404 of 2015

(Arising out of judgment/order dated 7.5.2015 in M.J.C. No.114 of 2014 of the learned District Judge, Durg, District Durg, Chhattisgarh)

Shri Balram Krishi (Utpaad Evam Vipanan) Co-Operative Society SABKO, Durg,
 District Durg, (Chhattisgarh), Civil & Revenue District Durg, (Chhattisgarh)

---- **Petitioner**

Versus

1. State of Chhattisgarh Through The Collector, District Durg (Chhattisgarh)
2. Yagyanand Brahmchari Resident of Tamerpara, Durg (Chhattisgarh)
3. Shankarlal Tamrakar S/o Late Manglu Sao Tamrakar Resident of Tamerpara,
 Durg, District Durg (Chhattisgarh)
4. Laxminath Tamrakar S/o Late Pannalal Resident of Maithilipara, Durg
 (Chhattisgarh)

---- **Respondents**

For Petitioner : Shri B.P. Sharma, Advocate.

For Respondent/State : Shri R.K. Gupta, Deputy Advocate General.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Order on Board

04/12/2017

1. Heard the learned counsel for the Petitioner and the learned Deputy Advocate General on this petition under Article 227 of the Constitution. The Petitioner is a Co-Operative Society.
2. This matter arises from a proceeding pending before the Registrar under the provisions of Chhattisgarh Public Trust Act, 1951, for short 'the Act'. An application under Section 4 of that Act was filed in February, 2004 by Mahant Shri Gautamanand Brahmachari Sarvarakar. That application was for registration of a Public Trust in relation to the properties, including temples, elaborated in that application, which is Annexure- P/2 to this petition. It appears that the proceedings dragged on and ultimately the applicant therein died in October, 2012 and thereupon the Registrar proceeded with the matter as a *suo motu* one, showing the State of Chhattisgarh and Respondents No.2 to 4 herein as well as

the Petitioner– Co-Operative Society as parties. During the course of such proceedings, an order was issued by this Court on 16.07.2014 in Writ Petition (227) No.523 of 2014 directing culmination of proceedings by the Registrar within a period of two months. That did not happen. However, while the Registrar pursued the effort to give opportunity to the parties to examine themselves, the cross-examination of the 3rd Respondent by the Petitioner was objected. The Registrar upheld that objection in view of the direction of the High Court for culmination of the proceedings in a time bound manner. The Petitioner invoked Section 27 of the Act and moved the District Judge against that decision. That was dismissed. Hence, this petition under Article 227 of the Constitution.

3. Having heard the submissions by the learned counsel for the parties appearing at hearing, it is apposite to note that the finality of the entries made by the Registrar and the conclusiveness of that finality is subject to the decision of the Court in a suit challenging the findings of the Registrar. In ***Hasan Nurani Malak Vs. S.M. Ismail, Assistant Charity Commissioner, Nagpur; AIR 1967 SC 1742***, the Hon'ble Supreme Court held that the cause of action for such a suit is the finding of the Registrar and not the entry. It is thus manifest that the Registrar has to enter a finding on the question, among other issues, as to whether the Trust in question exists; and whether it is a Public Trust. The identity of the immovable and movable Trust properties and the particulars thereof, as well as their approximate value, are matters to be placed before the Registrar along with the application for registration of the Trust. Section 5 of the Act provides for inquiry on the application for registration. It enjoins that different matters enumerated in Sub-section (1) of that section have to be ascertained by inquiring in the prescribed manner. The question whether any property is the property of such Trust is also to be inquired. The Registrar is obliged to give a finding as to whether there is a Trust and if so, whether it is a Public Trust. That authority is obliged to enter a finding in that regard, only after complying the mandatory provisions of Sections 5,

6 and 7 of the Act. ***Vaishnav Das Vs. Registrar, Public Trust, 1962 JLJ SN 207 (DB)*** is authority for the position that adequate opportunity should be given to the person challenging the declaration of a Public Trust. These principles are fundamental. They are mentioned here and now, having regard to the plea of the Petitioner before the Registrar and the District Court that it holds title to the property in question, on the basis of a transaction which is traced to the earlier true owner who is stated to be predecessor of the 2nd Respondent herein.

4. Though, it may be doubtful whether an application under Section 27 of the Act was maintainable before the Court on the issue in hand, and as against the refusal of the Registrar to permit cross-examination; with the passage of time, it needs to be noted that further proceedings before the Registrar remain stayed by this Court through interlocutory orders in this writ petition from 15.05.2015. It will not be in the interest of any of the parties to prolong the litigation at this end, further delaying the final disposal of the matter pending before the Registrar. Therefore, this being an application under Article 227 of the Constitution, I have considered as to what ought to be the proper course to be adopted to secure ends of justice in the case in hand and to prevent miscarriage of justice.
5. The nature of the contentions put forward by the Petitioner – Co-Operative Society in opposition to the registration of the Public Trust in relation to the properties which it claims, is an issue that is fundamental for determination on the question of registration of a Public Trust by including that item also as trust property. The Registrar's jurisdiction and duty to decide on an application for registration of the Public Trust in terms of the statutory provisions and the scope of the Registrar's inquiry include the power and duty to determine the issue as to whether there is a Trust as claimed; if so, whether it is Public Trust and whether any property is a property of such Public Trust. These are matters which are required to be enquired into for the purpose of considering the question of registration of a Public Trust. The finding of the Registrar which would be rendered on completion of the

inquiry is required to be recorded with reasons. This is what is provided for in Section 6 of the Act. Any person having interest, *inter alia*, in any property found to be a trust property, is eligible to file a civil suit in terms of Section 8 of the Act. Therefore, the inquiry under Section 5 of the Act is essentially one which is required to be carried out by providing opportunity of hearing to all persons who are interested in the question of registration of the Public Trust, for which purpose the application is filed. This is also, clearly and particularly, reflected by the contents of sub-section (2) of Section 5 of that Act. Hence, the Petitioner-Society which claims to be the transferee of the property which is sought to be made trust property following the registration of a Public Trust, is eligible to contest the proceedings for such registration. That opportunity includes the eligibility to cross-examine the persons who have applied for the registration of the Public Trust.

6. In the aforesaid view of the matter, the impugned decisions of the Court below and the Registrar result in manifest miscarriage of justice. They are to be set aside, leading to issuance of further requisite directions by this Court to secure the ends of justice.
7. In the result, this writ petition is allowed setting aside the impugned order of the Court below and the impugned decision of the Registrar. It is directed that the Petitioner will be provided opportunity to cross-examine Respondent No.3 and/or Respondent No.4 as it may desire to sustain its defence to the application of Respondents No.3 and 4 for registration of a Public Trust in relation to the property in question. Taking note of the fact that the proceedings before the Registrar stood stayed by this Court in this writ petition, it is directed that further proceedings following this order will be expedited and concluded within an outer limit of four months from the date of receipt of a certified copy of this order. The writ petition is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE