

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 03-12 -2018

Judgment delivered on 12-12--2018

FA No. 41 of 2014

- Mahant Haridas Tyagi, Shri Guru Shri Shri Anant vibhushit Yogadhirajbrahm Rishi Shri Barfani Dada Mahraj Ji, R/o Raipura, Mahadev Ghat Road, Raipur C.G., Chhattisgarh

---- Appellant

Versus

1. Satyanarayan Sharma S/o Jagdish Prasad Sharma aged about 67 Years Vidhayak and Purva Mantri M.P. And C.G. State, R/o 1 Makan No. 13/1, Babu Jagjeevan Ram Ward, Raipur C.G., 2 F-5, Anand Niketan, Avanti Vihar, Raipur C.G., 3 Plot No. C-56, Sector-01, Devendra Nagar, Raipur C.G.
2. Mahant Shyamsundar Das Saurabh S/o Jagannath Das Sharma Aged About 35 Years R/o 1 Nagaridas Temple, Purani Basti, Raipur C.G., 2 Murli Manohar Mandir Ke Piche, Purani Basti, Raipur C.G., 3 Shri Saurabh Sharma, Advocate Niwas Ke Paas, Shanti Vihar Colony, Danganiya, Raipur, District : Raipur, Chhattisgarh.
3. Shri Ramchandra Swami Mandir Sarvajanik Nayas S/o Aminpara, Purani Basti, Raipur, Thru- Nyasi- S.K. Agrawal, Advocate, Age- 68 Yrs, R/o Turi Hatri Ke Paas, Purani Basti, Raipur, District : Raipur, Chhattisgarh.
4. Registrar Public Trust, Through Collector, Distt. Raipur C.G.

---- Respondents

FA No. 43 of 2014

- Mahant Govind Sharan Das Dead Through Shyam Sunder Das Saurabh, Sarvarakar, Shri Ramchandra Swami Nagridas Mandir, Purani Bast, Amin Para, Civil and Revenue Distt. Raipur C.G.,

---- Appellant

Versus

1. Ramchandra Swami Mandir Public Trust, Through- S.K. Agrawal, R/o Turi Hatari, Purani Basti, Raipur C.G.
2. Goverdhan Prasad Agrawal, Lahor Chowk, Purani Basti, Raipur C.G.
3. Jagdish Prasad Infront of Nagri Das Mandir, Raipur C.G.
4. Registrar, Public Trust, Through- Collector, Raipur, Civil And Revenue Distt. Raipur C.G.

---- Respondents**FA No. 51 of 2014**

- Mahant Govind Sharan Das Dead through Shyam Sunder Das "saurabh" (Sarvarakar), Shri Ramchandra Swami Nagridas Mandir, Purani Basti, Amin Para, Distt. Raipur C.G., R/o Nagridas Mandir Purani Basti, Amin Para, Civil and Revenue District Raipur (CG), son of late Shri Guru govind Sharma @ Guru Govind Sharn Sharma aged about 41 years r/o. Nagridas Mandir Purani Basti, Raipur, Civil and Revenue Distt. Raipur C.G..

---- Appellant**Versus**

1. Shri Ramchandra Swami (Nagridas) Mandir Public Trust, Through- Satya Narayan Sharma, S/o Jagdish Prasad Sharma, R/o Purani Basti, Raipur C.G.
2. Mahant Haridas Tyagi, Shri Guru Anant Vibhushit Maharshi Yogadhiraj Barfani and 6 Other Trustee (Proposed)P, Maharaj Dattatrey Mandir Parisar, Bramhapuri, Raipur (CG).
3. Ramchandra Swami Mandir, Public Trust, Through- S.K. Agrawal, R/o Turi Hatri, Purani Basti, Raipur, Chhattisgarh
4. Registrar, Public Trust, Through- Collector, Raipur, Civil and Revenue Distt. Raipur C.G.

---- Respondents

For Appellant in : Shyri Mahant Haridas Tyagi is present
FA No.41 of 2014 in person.

For respondent: Shri Y.C. Sharma, Advocate
No.2 .

For appellants : Shri Y.C. Sharma, Advocate.
In FA No. 43/2014 &
51 of 2014.

For respondents : Dr. N.K. Shukla, Sr. Advocate
in FA Nos.43 of 2014 with Shri Ashwin Panicker, Adv.
& 51 of 2014.

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. As all the aforesaid three appeals arise out of common order, they are heard analogously and are being disposed of by this common judgment.

2) All the three appeals have been preferred under Section 96 of the Code of Civil Procedure, 1908 against the order dated 30-1-2014 passed by 4th Additional District Judge, Raipur in M.J.C.No. 15 of 2011 & 29 of 2007 on a reference made by the Registrar, Public Trust (Under The Madhya Pradesh Public Trusts Act, 1951) (for short, "the Act, 1951") whereby the said court deprived the appellant Shyam Sunder Saurabh (appellant herein FA No. 43 of 2014 & 51 of 2014) to become trustee of Shri Ramchandra Swami (Nagridas) Mandir, Raipur which is a public Trust. Appeal No.

41 of 2014 is filed by the appellant for appointing him and other persons named by him as trustees of the said Temple Trust.

3. As per the appellants, in all the appeals, the Registrar, Public Trust in collusion with present trustees namely Satyanarayana Sharma and S.K. Agrawal, have made one Krishna Avatar Agrawal as working trustee and they have alienated the property of the said Trust and leased out the land of the Trust against the interest of the Trust and the persons proposed to be trustees of the said Trust are not fit to be appointed as Trustees, therefore, the appellant Mahant Haridas Tyagi (in FA No. 41 of 2014) and the persons named by him should be appointed as Trustees. Appellant Shyam Sunder Saurabh in Appeal No. 43 of 2014 in 51 of 2014 pleaded that he should be appointed as Trustee as he is a disciple of earlier Trustee Mahant Govind Sharan Das. It is further pleaded by the said appellant that Master and disciple have been appointed as Mahants of the said Temple since the year 1837 when Gulabdas succeeded as religious head of the institution after Mahand Artidas and so on and so forth.

4. As per version of this appellant, he can better manage of the property of the Trust but the trial Court has passed an order against him debarring him to be Trustee on unproved

charges which is not liable to be sustained, therefore, he should be appointed as Trustee.

5. The first question for consideration of this Court is as to what is the procedure for filing of vacancy of a Trustee of the Public Trust. Section 25 of the Act, 1951 deals with the issue of filing of vacancies of Trustee which may be read as under:

“Section 25 -Filling of vacancies. - (1) Where a public trust is under the management of a Board of Trustees, the working trustee shall, as soon as a vacancy occurs in the Board, inform the Registrar of such vacancy and the time within and the manner in which he proposes to fill the same.

(2) On receipt of such information the Registrar may, if he considers it necessary, issue any directions to the working trustee regarding the filling of such vacancy not inconsistent with any instrument of trust or the mode of succession specified in the register and the working trustee shall comply with any such direction.

(3) If the working trustee fails to give any such information or to fill the vacancy within the time specified by him or to comply with any direction issued by the Registrar, the Registrar may, by order passed in writing, fill the vacancy and any person having interest in the public trust who may be aggrieved by the

order of the Registrar, may apply to the Court for setting aside the order of the Registrar within thirty days from the date of such order”.

6. The above provisions go to show that the Registrar, Public Trust is empowered to fill the vacancy and if anyone is aggrieved by the order of the Registrar, he may apply to Court. In the present case, it appears from the record that earlier scheme of management is framed for administration of present temple Trust by the First Additional District Judge, Raipur in the year 1981. By the said scheme, administration of Shri Ramchandra Swami Mandir (Nagridas), Raipur and its property shall vest in the committee of Trustees subject to the directions of the Court and the Registrar as may be given from time to time exercising the power under Section 25 of the Act, 1951. It is under the scheme that nine trustees who were holding office in the year 1981 shall hold the office of the Trustees during the term of their natural lives unless resigned or removed by the Court for misconduct, incapacity, continued absence from his duties exceeding a period of 12 months. In case of death, resignation or removed by any members of the Committee, the remaining trustees shall elect a suitable Hindu gentleman as Trustee to the vacancy so caused subject to the approval of the court. It is further mentioned in the scheme that present working trustee Shri

Krishna Avatar Agrawal will act as working trustee of the Trust until the trustees elect by their majority votes from amongst themselves any other person as working trustee.

7. This scheme of management has never been challenged or modified by the superior court. Order dated 30-1-2014 passed by the 4th Additional District Judge, Raipur in MJC No. 15 of 2011 goes to show that the said Court has observed that looking to serious allegations against the appellant Shyam Sunder Saurabh, it is not fit to give him right of Trustee for the said temple and ordered the Registrar, Public Trust to convene a meeting for appointment of Trustees and for taking action for irregularities committed by whosoever.

8. Now the point for consideration of this Court is whether Shyam Sunder Saurabh can be debarred from being a trustee of the said Trust looking to the allegations against him. The Madhya Pradesh Public Trusts Act 1951 and The Madhya Pradesh Public Trusts Rules 1962 have not embodied any provision for disqualification to be Trustee. As per Section 28 of the Act, 1951, there is provision of inquiry against the Trustee that if he is found , *prima facie*, for gross negligence, a breach of trust, misapplication or misconduct which has resulted in the loss to the public trust, but it appears that no inquiry was conducted against the

appellant Shyam Sunder Saurabh. If he has committed anything against the Trust, inquiry against him should be conducted and the finding should be recorded, but since no inquiry is initiated against him and no finding is given by the Registrar or any authority, therefore, debarring him to be Trustee of the said Trust is not proper. If there is prima facie case for any inquiry, it should be conducted against him and finding should be recorded. Before recording finding, his case can be considered, if found suitable by the present trustees if vacancy occurs.

9. Appellant Mahant Haridas Tyagi in FA No. 41 of 2014 is not debarred by the trial Court and no one has right to be trustee of the said Temple on account of being disciple of previous Mahant, therefore, this court cannot order that his case should be considered to be Trustee. Present Trustees are free to take their own view on merit for appointing a suitable person to be Trustee to the vacancy, therefore, his case is without substance.

10. The appellants have no right to be trustees of the said Trust on the basis that they are disciples of any previous Mahant or Trustees. The Act or the scheme of management does not provide any succession on that count. The only thing is that any one cannot be debarred from the zone of consideration without inquiry and finding against such

person, but ultimately election of Trustees is in the domain of remaining trustees/Registrar, Public Trust/Court. From the judgment of the trial Court debarring part against Shyam Sunder Saurabh is overruled, but the fact remains that he can be considered for election as Trustee only by remaining Trustees and the authority.

11. With the aforesaid observation, all the appeals are liable to be and are hereby dismissed.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju