

**HIGH COURT OF CHHATTISGARH, BILASPUR****Second Appeal No.415 of 2018**

Prakash Chand Gujrati S/o Late Tribhuwan Gujrati, aged about 69 years, R/o Gujarati Hotel, Near Shyam Takies, Bilaspur, Tahsil & Dist-Bilaspur (CG)

**----Appellant**

**Versus**

Shri Ram Mandir (Balkhandidas Baba) Trust, through President-Moolchand Khandelwal S/o Shri Chirounjilal Khandelwal, R/o Sai Mangalam Premises, Vyaper Vihar, Bilaspur, Tahsil & Dist-Bilaspur (CG)

**---- Respondent**

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For Appellant : Mr. Anoop Mazumdar, Advocate

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**Hon'ble Shri Justice Sanjay K. Agrawal**

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**Order on Board**

**29/08/2018**

1. This is defendant's second appeal under Section 100 of the Code of Civil Procedure against the judgment and decree of the First Appellate Court affirming the judgment and decree of the trial Court granting decree for eviction against appellant/defendant.
2. Mr.Anoop Mazumdar, learned counsel for the appellant/defendant, would submit that in absence of any pleading and evidence led by the plaintiff to claim benefit under notification dated 7.9.1989, issued under Section 3(2) of the Chhattisgarh Accommodation Control Act, 1961 (hereinafter called as "the Act of 1961"), learned Courts below could not have granted the benefit of said notification. He would further submit that in the suit filed all the trustees were necessary parties and in absence of other trustees, the plaintiff's suit could not have been decreed by the Courts below.
3. Heard learned counsel for the appellant on question of admission

of appeal.

4. The trial Court after appreciating the material available on record has come to the specific conclusion that the present trust is covered by notification dated 7.9.1989 issued under Section 3(2) of the Act of 1961 and thereby exempted the properties of the trust under the provisions of the Act of 1961 for educational, religious and charitable purpose of the trust and is not obliged to prove that the properties of the trust were not being utilized for religious and charitable purpose of the trust and suit was validly instituted as all the trustees were not necessary parties.
5. The constitutional validity of notification dated 7.9.1989 was upheld by the Supreme Court in the matter of **Betibai and others v. Nathooram and others**<sup>1</sup> and thereafter again in the matter of **Ramgopal and another v. Balaji Mandir Trust and others**<sup>2</sup> held that a registered institution registered under the provisions of the Public Trust Act, 1951 is entitled for eviction without taking recourse to Section 12(1) of the Madhya Pradesh Accommodation Control Act, 1961.
6. In the Madhya Pradesh High Court, there was conflict of opinion whether in each and every case a registered religious charitable public trust is obliged to prove that its income is being utilized for religious and charitable purpose of the trust and the finding conflict with decision in case of **Boolchand Vs. Atal Ram Sindhi Dharamshala Trust**<sup>3</sup>, and **Reg. Vidhichand Dharamshala Trust through it's President and Trustee**

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1 (1999) 6 SCC 368

2 (2003) 5 SCC 17

3 (1998(1) MPWN 113

**Omprakash Garg Vs. Shyam Singh and others**<sup>4</sup>, the matter was referred to the Division Bench in case of **Scindia Devasthan, Regd. Charitable Trust Vs. Praveen Kumar Nigam and others**<sup>5</sup>, on the following question of law:-

“Whether in each and every case a registered religious charitable public trust is obliged to prove that its income is being utilized in religious and charitable purpose of the Trust?”

7. Resolving the conflict, the Division Bench of Madhya Pradesh High Court in case of **Scindia Devasthan, Regd. Charitable Trust** (supra), held as under:-

"31. In the aforesaid decision of the Division Bench, it was held that 'Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of the provisions of the Act or notification at different times on different grounds. Once the notification has been considered by the Supreme Court and the validity of the same was upheld it must be presumed that all grounds which could validly be raised were raised and considered by the Court and the decision would be binding under Article 141 of the Constitution'. It was further held that the law laid down by the Apex Court is binding on all notwithstanding the fact that it is against or in favour of the party and it is binding on even those who were not parties before the Court. It is also held that once an authority of law is laid down it is no longer open to re-canvass the same on new grounds or reasons that may be put forth in its support. Every new discovery or argumentative novelty cannot undo a binding precedent. It does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. It was held that the law which has been declared by the Apex Court under Article 141 of the Constitution is binding. It can only be substituted or clarified or reconsidered by the Supreme Court and not by this Court on the doctrine of per incuriam and sub-silentio, which are in the nature of exceptions to the rule of precedent in relation to law declared under Article 141 of the Constitution. Thus, in such premises also, by giving

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4 2010(3) MPLJ 428

5 2014(1) MPJR 20

any further interpretation to the above mentioned decisions of the Supreme Court the public trust could not be directed to prove in each case that its received income is being utilised for the object and purpose of the trust.

32. In view of the aforesaid discussion our answer on the question referred is:-- 'that in each and every case a registered religious and charitable public trust is not obliged to prove that its income is being utilised in religious and charitable purpose of the trust'. Accordingly, after such answer of the question referred, the Registry is directed to place this matter before the Single Bench for further hearing and adjudications of these appeals on merits."

8. The Madhya Pradesh Accommodation Control Act, 1961 was in force in the State of Madhya Pradesh and upon formation of new State of Chhattisgarh w.e.f. 01/01/2000, it has also been made applicable to the State of Chhattisgarh and there is no legislative change in Section 3(2) of the Act of 1961 in the State of Chhattisgarh. Thus, the decision of the Division Bench in **Scindia Devsthan, Redg. Charitable Trust** (supra) squarely applies to the facts of the present case against appellant/defendant and it cannot be held that the plaintiff/trust is obliged to prove that it's income is being utilized in religious and charitable purpose of the trust.
9. In view of above-stated legal analysis, I do not find any substantial question of law involved in first submission made by learned counsel for the appellant.
10. Next submission of Mr.Mazumdar is that trustees were necessary parties in the suit. In absence of trustees being necessary parties in the suit, the suit could not have been decreed. The trial Court as well as by the First Appellate Court have recorded a finding that resolution Ex.P/5 dated 4.11.1995 was passed by the

trustees to file a suit and authorized Mr.Babulal Bajaj, one of trustee to file a suit and authorized Mr.Babulal Bajaj to take necessary steps for institution of suit and after death of Mr. Bajaj, Mr. Moolchand Khandelwal was authorized by trustees in the meeting dated 7.10.2004 (Ex.P/7), resolution vide Ex.P/6 was also passed on 21.2.1998 by the trustees in this behalf and suit was filed in the name of trust through the President and the issue has been answered in negative by the Courts below. Admittedly, the suit was filed for and on behalf of trust with sanction of all trustees which is apparent from Exs.P/5, P/6 and P/7, which are copies of resolution passed by all trustees, as such, the suit filed is in accordance with law laid down by the Madhya Pradesh High Court in this behalf in the matter of **Laxman Prasad v. Shrideo Jankiram**<sup>6</sup>.

11. In view of foregoing analysis, the concurrent finding recorded by both the Courts are pure and simple finding of fact based on material available on record. It is neither perverse nor contrary to law and binding on this Court.
12. I do not find any substantial question of law in this second appeal. Accordingly, the second appeal is dismissed in *limine*. No cost(s).

Sd/-

(Sanjay K. Agrawal)  
Judge

B/-