

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.87 of 2006****Judgment Reserved on :12.09.2019****Judgment Delivered on: 14.10.2019**

1. Kawardha Rajpariwar Sarvajanik Mandir Nyas (Registered) dwara Smt. Shashi prabha Devi, aged about 62 years, Pramukh Nyasi Avam Sarvarakar Kawardha Raj Pariwar Sarvajanik Mandir Nyas Niwasi Moti Palace, Kawardha, Zila – Kawardha (Chhattisgarh)

----- Appellant/Defendant No.3

2. Yogeshwar Raj Singh, aged about 35 years, S/o Shri Vishwa Raj Singh, Nyasi, Kawardha Raj Sarvajanik Mandir Nyas Niwasi Moti Palace, Kawardha, Zila – Kawardha (Chhattisgarh)

----- Appellant/Defendant No.1**Versus**

1. Mahant Rambali Das, aged about 55 years, Guru Mangal Das, Niwasi Gram Ramhepur, Tahsil Sahaspur Lohara, District Kawardha (Chhattisgarh)

----- Respondent No.2/Plaintiff

2. State of Chhattisgarh dwara Collector, Kawardha, District Kawardha (Chhattisgarh)

----- Respondents

For Appellants/Def.No.1&2 : Mr.Ashish Shrivastava and
Mr.Anurag Verma, Advocates
For Res.No.1/Plaintiff : Mr.P.K.Verma, Senior Advocate

Mr.Virendra Verma and

Mr.Anoop Mazumdar, Advocates
For Respondent No.2/State : Ms Shivali Dubey, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Judgment**

1. The substantial questions of law involved, formulated and to be answered in this second appeal

preferred by defendants No.1 and 3 are as under:-

"1. Whether the suit filed by the plaintiff in the capacity of Sarvarakar of the suit temple and the properties thereof was not maintainable in view of Section 32 of the M.P. Public Trust Act, 1951 ?

2. Whether the Courts below committed an error of law in holding that the Jamat Mandir and its assets were not the properties included in the Public Trust created by the defendant by order dated 27/11/57 and the creation of the same was not valid in accordance with law ?"

[For the sake of convenience, the parties would be referred hereinafter as per their status shown in the suit before the trial Court].

2. Sole plaintiff-Rambalidas Guru brought a suit for declaration of title, permanent injunction and possession with respect to the property shown in Schedule 'A' appended with the plaint stating inter-alia that Jamat Mandir was constructed and deity was installed therein 15 years prior to the date of institution of suit by Shri Harivyasi Mahanirwani Akhada and according to the custom prevalent, he is Mahant and Sarvarakar of that temple and maintaining the suit temple since last 16 years and the suit land appended to Schedule 'A' of said temple was also given on lease to some persons, but defendant No.1 has dispossessed him in the month of June, 1996

and therefore, he is entitled for the aforesaid reliefs, which was opposed by defendant No.1 by filing written statement and thereafter, defendant No.3/public trust was impleaded as party defendant. Defendant No.3 filed separate written statement stating inter-alia that in the year 1949, Kawardha Rajpariwar constructed 17 temples including the suit temple i.e. Jamat Mandir and constituted temple committee for management of these temples. In the year 1954-55, Rajmata Smt. Devkumari Devi made an application for registration as public trust for all these temples, but the Sub-Divisional Officer, Kawardha by order dated 9.8.56 only recommended 6 temples to be included as public trust excluding Jamat-Mandir, against which, appeal was preferred before the Collector. Shri R.P. Mishra, the then Additional Collector, Durg by order dated 27.11.57 (Ex.D-14) directed Jamat Mandir to be also included as public trust and also held that it is the property of defendant No.3/trust and therefore, the plaintiff is not entitled for any decree of declaration of title and permanent injunction and the suit deserves to be dismissed.

- 3.** The trial Court decreed the suit of the plaintiff holding that the order directing the said temple to

be included as public trust was passed on 27.11.57 (Ex.D-14) by the Additional Collector, Durg, who has no jurisdiction under Section 3 of the Chhattisgarh Public Trusts Act, 1951 (hereinafter called as "the Act of 1951") in the light of judgment rendered by the Madhya Pradesh High Court in the matter of **Budhoolal Vishwakarma and another v. Registrar, Public Trusts, Jabalpur and others**¹, which was upheld by the first appellate Court. Questioning the judgment and decree passed by the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/defendants No.1 and 3, in which substantial questions of law have been framed by this Court, which have been set-out in opening paragraph of this judgment.

4. Mr.Ashish Shrivastava, learned counsel for the appellants/defendants No.1 and 3, would submit that under Section 3 of the Act of 1951 though the Collector was empowered to register a trust under the Act of 1951, but in the present case, the Additional Collector has passed order on 27.11.57 (Ex.D-14) directing inclusion of suit temple and its property into public trust, but thereafter in order to validate the order dated 27.11.57 (Ex.D-14) passed by the Additional Collector, Durg and others,

1 1964 M.P.L.J. 887

the Madhya Pradesh Public Trusts (Amendment and Validation) Act, 1964 (hereinafter called as "the Validation Act of 1964") was enacted, which came into force w.e.f. 25.9.64 and all things done prior to 10th July, 1964 was made valid and therefore, the judgment rendered by the Madhya Pradesh High Court in Budhoolal Vishwakarma (supra) was inapplicable and wrongly applied by both the Courts below by not noticing the provisions contained in Section 4 of the Validation Act of 1964, as such, Ex.D-14 is a valid document in which the suit temple has already been included as public trust, which cannot be held illegal by two Courts below particularly when the order dated 27.11.57 (Ex.D-14) was not even questioned seeking declaration or cancellation of that order by the plaintiff. He would further submit that the suit as framed and filed was not maintainable in view of Section 32 of the Act of 1951, as such, the second appeal deserves to be allowed and the impugned judgment and decree deserves to be set aside and the suit be dismissed with cost.

5. Mr.P.K.Verma, learned Senior Counsel assisted by Mr.Virendra Verma and Mr.Anoop Mazumdar, learned counsel for respondent No.1/plaintiff, would submit

that the plaintiff has already filed applications under Order 6 Rule 17 and under Order 41 Rule 27 of the CPC for admitting the additional evidence on record as now the suit temple has already been registered as public trust by order dated 24.4.2007, therefore, the suit as framed and filed would be maintainable and bar under Section 32 of the Act of 1951 would not apply. He relied upon the judgment of the Madhya Pradesh High Court in the matter of Jawaharlal Chunnilal v. Ramkrishna Malik alias Jafarmal². He would further submit that the plaintiff's suit has been decreed on the basis of adverse possession by recording concurrent conclusion by two Courts below, as such, the second appeal deserves to be dismissed.

6. I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove thoughtfully and also went through the records with utmost circumspection.

Answer to substantial question of law No.1:-

7. In order to consider the above-stated substantial question of law, it would be appropriate to notice Section 32 of the Act of 1951, which states as under:-

"32. Bar to hear or decide suits.- (1) No

suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any court.

(2) The provisions of sub-section (1) shall apply to claim or set off or other proceedings to enforce a right on behalf of such public trust."

8.A studied perusal of the aforesaid provision would show that it creates a bar against the public trust which is required to be registered under the Act. The bar is with regard to hearing and deciding of any suit, claim or set off or any other proceeding to enforce a right on behalf of such a public trust. The intention of creating such a bar appears to be that such trusts are discouraged in working without registration under the Act.

9. The Madhya Pradesh High Court in the matter of Kesa alias Keshuram and others v. Kalu Devaji and others³ while highlighting the object behind enacting Section 32 of the Act of 1951 held that it doesn't bar any suit being filed against the unregistered public trust and observed as under:-

"2. Section 32 of the Madhya Pradesh Public Trusts Act provides that no suit to enforce a right on behalf of a public Trust which has not been registered under the Act shall be heard or decided by any Court. This section does not prohibit any suit being filed against the public Trust. If this is so, it must be held that if any decree is

3 1973 JIJ 918

passed against the public Trust, it will have a right to challenge the same in appeal and that would not be treated as any attempt to enforce a right on behalf of the public Trust. There is, therefore, no question of the appeal being stayed till the public Trust is registered under the Madhya Pradesh Public Trusts Act. If the right to appeal is denied to the public Trust, which is made the defendant, it would create a very anomalous situation. All sorts of unwarranted decrees would be obtained against the public Trust and it would be denied the right to challenge the validity of the decrees only for the reason that the Trust was not registered. Apart from this I do not find any justification for vacating the stay order already named by the lower appellate Court. If the hearing of the appeal was to be stayed, it was also necessary that the execution of the decree should be stayed."

10. In the matter of Jawaharlal Chunnilal v.

Ramkrishna Malik @ Jafarmal⁴ the High Court of Madhya Pradesh has clearly held that the bar provided by Section 32 of the M.P. Public Trusts Act, 1951 is against the hearing or deciding of suits or appeals and not against their institution. Therefore, where an objection to the tenability of a suit filed on behalf of the trust on the ground of its non-registration as a public trust is successfully raised, the procedure to be adopted should be to stay the decision on merits to enable the party to obtain its registration.

11. Reverting to the facts of the present case in

4 1962 MPLJ 461

light of the provisions contained in Section 32 of the Act of 1951 and as interpreted by the Madhya Pradesh High Court in the matters of Kesa alias Keshuram (supra) and Jawaharlal Chunnilal (supra), it is *quite vivid* that the instant suit from which this second appeal has arisen was not filed to enforce a right on behalf of unregistered public trust, but the suit was filed by the plaintiff herein in his individual capacity against the registered public trust/defendant No.3 who was impleaded as defendant No.3 by order of the trial Court dated 06.12.2000 claiming his own right, title and interest over the property attached with Jamat-Mandir against defendant No.3, therefore, the bar contained in Section 32 of the Act of 1951 would not be applicable and the plaintiff's suit cannot be said to be not maintainable on that score.

12. In view of the aforesaid analysis, it is held that the suit as framed and filed by the appellant/plaintiff against defendant No.3/public trust was maintainable and it was not barred by the provisions contained in Section 32(1) of the Act of 1951. Accordingly, the substantial question of law is answered in favour of the plaintiff and against defendants No. 1 & 3.

Answer to substantial question of law No.2

13. Defendant No. 3 is a public trust registered under the provisions contained in Section 4 of the Act of 1951 by the order dated 27.11.1957 (Ex.D-14) passed by Shri R. P. Mishra, Additional Collector directing registration of seven temples including *Jamat-Mandir* as a public trust holding the suit property to be held by that temples by partly accepting the recommendations of Sub-Divisional Officer dated 08.05.1956 (Ex.D-13). In a suit filed by the plaintiff against defendant No.1-Yogeshwar Raj Singh, defendant No.3/public trust was added as party defendant by order dated 06.12.2000 and relief was sought that defendant No. 1 & 3 have unauthorizedly dispossessed the plaintiff from the suit premises, agricultural lands held by him for maintenance and upkeep of Jamat temple. Defendant No. 1 & 3 set-up their defence that the suit property is the trust property attached with Jamat-Mandir duly declared so by the Registrar, Public Trusts by order dated 27.11.1957 (Ex. D-14), therefore, the plaintiff has no right/title over the suit property and the suit is liable to be dismissed. The trial Court by its judgment, while deciding the issue No. 3 which relates to whether

the *Jamat-mandir* is a temple held by defendant No.3, returned a finding that order dated 27.11.1957 (Ex. D-14) was passed by the Additional Collector under Section 3 of the Act of 1951, which is *ex facie* illegal and not binding on the plaintiff in view of judgment rendered by Madhya Pradesh High Court in the matter of Budhoolal Vishwakarma (supra).

14. In Budhoolal Vishwakarma (supra), Their Lordships have clearly held that under Sections 3 & 4 of the Act of 1951 the Collector is a *persona designata* and he alone could act as Registrar of the Public Trusts and no one else. It was further held that the Additional Collector would have no power to act as Registrar of the Public Trusts and order passed by the Additional Collector as Registrar, Public Trusts is without jurisdiction and without authority of law.

15. Thereafter, the competent legislature enacted the Madhya Pradesh Public Trusts (Amendment and Validation) Act, 1964 (hereinafter called as 'Act of 1964) to amend the Madhya Pradesh Public Trusts Act, 1951 and to validate things done, proceedings and actions taken and orders passed by certain officers under the said Act, and inserted following provision in the principal Act of 1951.

"34-A. Delegation of powers by Registrar.-

Subject to the provisions of this Act and to such restrictions and conditions, as may be prescribed, the Registrar may, by order in writing, delegate all or any of his powers and duties under this Act to any revenue officer of his district not below the rank of a Sub-Divisional Officer."

3. Section 2 to have retrospective effect. -

The principal Act shall be read and construed as if the amendment made by Section 2 had formed part of the principal Act from the commencement thereof.

4. Validation of things done, actions and proceedings taken and orders passed by certain officers under the principal Act. -

Notwithstanding anything contained in the principal Act, all things done, proceedings and actions taken and orders passed by the officers whose names and designation are specified in the Schedule below purporting to act as Registrar under the principal Act at any time prior to the 10th July, 1964 shall, for all purposes, be deemed to be and to have always been, validly done, taken or passed as if the Registrar of the district to which they were for the time being posted had, at all material times empowered them in this behalf under Section 34-A and the validity of any such thing done, action or proceedings taken or order passed shall not be called into question in any court of law or before any authority whatsoever, on the ground of defect in the delegation of powers to any such officer.

5. Repeal and saving - (1) the Madhya Pradesh Public Trusts (Amendment and Validation) Ordinance, 1964 (No. 6 of 1964), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act were in force on the date on which such thing was done or action was taken."

16. The Schedule enacted under Section 4, name,

designation and the district was given. Entry No. 19 is relevant to case in hand which states as under:-

Schedule			
S. No. (1)	Name (2)	Designation (3)	District (4)
1-18	****	****	****
19.	Shri R.P.Mishra	Additional Collector	Durg

17. The Validation Act, 1964 was enacted on 25.09.1964 inserting Section 34-A in the Principal Act by which the Registrar is authorized to delegate all or any of his powers or duties under the Act to any Revenue Officer not below the rank of the Sub-Divisional Officer. Section 4 of the Validation Act of 1964 validates the proceeding taken and order passed by certain officers under the principal Act *i.e.* Act of 1951 by holding all things done, proceedings and actions taken and orders passed by the officers whose names and designation are specified in the Schedule below purporting to act as Registrar under the Principal Act at any time prior to the 10th July, 1964 shall, for all purposes, be deemed to be and to have always been, validly done, taken or passed as if the Registrar of the district to which they were for the time being posted had, at all material times

empowered them in this behalf under Section 34-A and the validity of any such thing done, action or proceedings taken or order passed shall not be called into question in any court of law or before any authority whatsoever, on the ground of defect in the delegation of powers to any such officer.

18. The Effect of validation was considered by the Supreme Court in the matter of Bhubaneshwar Singh and another v. Union of India and others⁵ and it was held as under:-

"11. From time to time controversy has arisen as to whether the effect of judicial pronouncements of the High Court or the Supreme Court can be wiped out by amending the legislation with retrospective effect. Many such Amending Acts are called Validating Acts, validating the action taken under the particular enactments by removing the defect in the statute retrospectively because of which the statute or the part of it had been declared ultra vires. Such exercise has been held by this Court as not to amount to encroachment on the judicial power of the courts. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a well-known device of validating legislation. This Court has repeatedly pointed out that such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time, any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a Validating Act by merely saying so unless the defect which has been

5 (1994) 6 SCC 77

pointed out by the court is removed with retrospective effect. The validating legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored."

19. Reverting to facts of the case, it is *quite vivid* that Smt. Deokunwar Dal, Rajmata of Kawardha filed an application under Section 4 of Act of 1951 for registration of 17 temples as public trust including *Jamat-mandir* to whom the suit properties belong. The Sub-Divisional Officer (R.) while making an enquiry on an application filed under Section 4 of the Act of 1951 on behalf of defendant No.3, did not make any recommendation for registration of *Jamat-mandir* as public trust and made recommendation with regard to 6 temples to the Registrar, Public Trusts, for registration. The following paragraphs of the recommendation (Ex.D-13) made by the SDO (R.) is relevant and extracted for sake of convenience:-

In the Court of Sub-Divisional Officer, Kawardha
 Revenue Case No. 2 XXXIII/9 of 54-55
 Applicant :- Shrimati Deokunwar Das Rajmata, Saniba
 Kawardha

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-::Report::-

This is an application presented by Shrimati Deokunwar Dal Rajmata of Kawardha, through her counsel Shri Thoke, under Section 4 of the M.P. Public Trust Act, 1951 for registration of 17

mandirs as public Trusts. The applicant has deposited Rs. 5/- for registration fees as required by Section 5(iii) of the M.P. Public Trust Rules along with other documents in accordance with the provisions 1 to 10 of Section 4(3) of the Act.

(2) On receipt of the application & notice in form IV was published in the official Gazette no. 6-8-54, for inviting objections of interested persons in the public Trusts, but no objections were filed within the stipulated time.

(3) During the pendency of the enquiry, one Shri Mangal Das Bairagi and another Shri Narendra Singh Parihar as Secretary of the temple committee filed their objections on 9.9.55 and 30.8.55 respectively. These objections were not filed within limitation. However, they were allowed.

(4) The applicant has applied for registration of the following temples under the Act:-

1. Dantesuwari temple.
2. Shri Shihwashini.
3. Jamat Mandir.
4. Jhima temple.
6. Shri Hanumanjee.
7. Bademandir of Radhe Krishna.
8. Mathmandir.
9. Kalidevi.
10. Shitladevi.
11. Bhoramdeo.
12. Budha Mahadeo.
13. Satbahiniya.
14. Vindhya washini.
15. Mandir Rajanawagaon.
16. Shri Sheomandir.
17. Jaleshwar Mahadeo.

(8) Another objector Mangal Das in Sarwarkar of Jamat Mandir. He has stated that the claim of the trust committee over the Jamat Mandir is totally false. The management of Jamat temple is done by Nihang Gadai of Sadhus of Maha Nirbani Akhada and not by the Rajya pawar of Kawardha. The appointment of Sarwarakar is done by the Mahants and members of the Nirmoni Digamber and Nirbani Akhada of Sadhus only. The property attached to Jamat mandir is managed by the Sarwarakar (Mahant). The objector Mangaldas has separately filed an application for registration of this mandir as public trust vide Revenue Case No. XXXIII/5/9 of 54-55. This temple also is therefore excluded from the claim of the applicant. Thus the applicant's claim for six temples only hold good and they can be registered in favour of the applicant. The names of these temples are given below:-

(1) Bademandir (2) Shri Hanumanjee (3) Satbahiniya
(4) Vindhyawashini (5) Rajanawagaon and (6) Shri Sheo mandir.

(17) It is, therefore, recommended that the six temples as show below may be registered as a Public Trust under Section -7 of the M. P. Trust Act, 1951.

1. Bademandir at Kawardha.
2. Shri Hanumanjee ---do---
3. Satbahaniya ---do---
4. Vindhyawashni ---do---
5. Rajanawagaon temple ---do---
6. Shri Sheomandir at Dullapur

Submitted to the Additional Deputy Commissioner,

Durg.

20. The recommendation so made by the Sub-Divisional Officer for registration of temples as trust under Section 7 of the Act of 1951 was placed before Shri R. P. Mishra, Additional Collector Durg, he considered the report and by order dated 27.11.1957 (Ex.D-14) held that *Jamat-mandir* was built by the Kawardha royal family and the royal family had donated lands to that temple and therefore, directed for inclusion of *Jamat-mandir* and property attached to that temple to be public trust and directed to be recorded in the name of Kawardha Raj Pariwar Mandir Nyas in exercise of jurisdiction under Section 6 & 7 of the Act of 1951. The order dated 27.11.1957 (Ex.D-14) states as under:-

Copy of order dated 27.11.1957 passed by Shri R. P. Mishra Addl. Collector Durg in the case No. 2XXXIII-9/1953-75 of the Registrar, Kawardha regarding registration of public trust - "Kawardha Rajya Pariwar Mandir Trust".

O R D E R

Read the report of the Sub-Divisional Officer Kawardha in the two cases No.2 XXXIII/9 of 1954-55 and No. 5 XXXIII/9 of 1954-55 and have heard the arguments of the learned counsels appearing in the court. This order will govern the decisions in both the cases.

So far as the six temples recommended by the learned SDO Kawardha there is no complaint

and I order that the six temples mentioned by him in para 17 of his report dated 9-8-56 in case no. 2 XXXIII/9 of 1954-55 he registered in the name of the Kawardha Rajya Pariwar Mandir Nyas as a Public Trust. The dispute is only in regard to the temple called Jamat temple at Kawardha. The Kawardha Rajya Pariwar Mandir Nyas also claim that mandir as trust property and requests that the said mandir shall also be intended in the trust property of the Nyas which Mangaldas wants that it shall be registered as a separate trust. I have very carefully weighed the evidence adduced by both sides in respect of this temple and I feel that the claim of Mangaldas to have the temple registered as a separate trust is not tenable. There is evidence to show that the temple was built by one of the Kawardha royal family and the managing comity or mahant of this temple was appointed by the royal family. The royal family had donated lands in to the temple and Rajmata Deo Kumari Devi had appointed trustees for the management of this temple also including other temples in the year 1949. I therefore include this temple also in the list of the trust property of the Kawardha Rajya Pariwar Mandir Nyas and declare to register it as a separate trust.

The properties belonging to these seven temples (6 recommended by the SDO Kawardha in para 17 of his report dated 9-8-56 and the Jamat Mandir) will be recorded in the name of the Kawardha Rajya Pariwar Mandir Nyas.

Other recommendations of the SDO

regarding trustees etc. accepted.

Sd/-

R. P. Mishra
Addl. Collector

27.11.57

21. The trial Court and the first appellate Court both have held that the order directing registration of *Jamat-mandir* and its property to be included in public trust by order dated 27.11.1957 passed by Shri R. P. Mishra, Additional Collector, Durg in exercise of power under Section 6 & 7 of the Act of 1951 is without jurisdiction in light of the decision rendered by Madhya Pradesh High Court in the matter of Budhoolal (supra). It is established from records that both the Courts have failed to notice the provisions contained in Section 4 of the Validation Act of 1964 which has validated the order dated 27.11.1957 passed by Shri R. P. Mishra, Additional Collector, Durg under Section 7 of the Act of 1951 which declared and registered that Jamit-Mandir be recorded in the name of defendant No.3/public trust, passed prior to 10.07.1964. Section 4 of the Act of 1964 also provides that the validity of the order passed shall not be called into question in any court of law on the ground of defect in delegation of powers to any such officer, as such, the order dated 27.11.1957 had become final. Shri R. P. Mishra,

Additional Collector who passed order under Section 7 of the Act of 1951 directing registration of *Jamat-mandir* and its property to be trust property would stand validated by Section 4 of the Validation Act of 1964, but both the Courts below have committed grave legal error in holding that the order dated 27.11.1957 (Ex.D-14) to be without noticing Section 4 of the Act of 1964 and Schedule appended thereto clearly validating the order passed that order under Section 7 of the Act as Registrar, Public Trusts under the Act of 1951 directing registration of *Jamat-Mandir* and its property as public trust, as such, both the Courts below have committed grave legal error in holding that the suit property is not the trust property of defendant No.3 by holding the order dated 27.11.1957 (Ex.D-14) without jurisdiction and without authority of law.

- 22.** There are two additional reasons for not upholding the judgment and decree of two Courts below. First is that the plaintiff while filing the suit though impleaded defendant No.3/trust as party defendant pursuant to the order of the trial Court dated 05.10.2000, but after amending the cause title did not question legality and validity of order dated 27.11.1957 (Ex.D-14) in his suit though collaterally

pleaded that he is owner and title-holder of the suit properties. Since the suit property was declared to be trust property of defendant No.3 by order dated 27.11.1957 of the Registrar, Public Trusts, the plaintiff was required to seek declaration or cancellation of order dated 27.11.1957 by way of consequential relief which he omitted to do so, and as such, the suit is hit and barred by proviso to Section 34 of the Specific Relief, 1963. In this regard, the principles of law laid down by the Supreme Court in the matter of Jugraj Singh v. Yashwant Singh⁶ may be noticed herein profitably, which reads thus:-

"11. In these circumstances, we are satisfied that there was proper execution of the document and registration. It is hardly necessary in view of our decision, to say anything more about this case. We are also satisfied that the appellants were not entitled to a declaration. We have reproduced the paragraph in which the reliefs were asked in the plaint. It will be noticed that they neither asked for the cancellation of the order of the Collector nor for any injunction, two of the reliefs which they were entitled to ask in the case in addition to the declaration. Such a suit would be hit by Section 42 of the Specific Relief Act and we would be quite in a position to deny them the declaration without these specific reliefs. Indeed they had only to ask for the setting aside of the order."

23. Secondly, the Registrar, Public Trusts, by its order

6 AIR 1971 SC 761

dated 27.11.1957 passed order directing entries to be made in accordance with findings recorded by him under Section 6 of the Act. Section 7(1) & (2) of the Act states as under:-

"7. Registrar to make entries in the register.- (1) The Registrar shall cause entries to be made in the register in accordance with the findings recorded by him under Section 6 and shall publish on the notice board of his office the entries made in the register.

(2) The entries so made shall, subject to the provisions of this Act and subject to any change recorded under any provision of this Act or a rule made thereunder, be final and conclusive."

24. A careful perusal of the aforesaid provision would show that where after an enquiry under Section 5 of the Act, the Registrar recorded his finding and that he also caused entries to be made in accordance therewith in the prescribed register, the entries must be regarded, as enacted in Section 7(2) of the Act, to be final and conclusive. [see **Temple Shri Jagannathji v. Satharu Prasad**⁷].

25. In view of the aforesaid legal analysis, I am of the considered opinion that both the Courts below have committed grave legal error in holding that the order dated 27.11.1957 (Ex.D-14) is without jurisdiction and without authority of law clearly ignoring the

provisions contained in Section 4 of the Validation Act of 1964 read with Schedule appended thereto validating the order passed by Shri R. P. Mishra, Additional Collector under Section 7 of the Act of 1951 directing *Jamat-mandir* and its property to be registered as public trust of defendant No.3 and Section 4 of the Act of 1951 also bars challenge of the said order in any court of law on the ground of defect of delegation of power to any such office. It is held accordingly.

26. Consequently, I.A.No.3 i.e. application under Order 41 Rule 27 of the CPC for taking additional documents on record and application for amendment of plaint both filed by respondent No.1/plaintiff stands rejected having no merit.
27. The substantial question of law No.1 is answered in favour of the plaintiff, whereas substantial question of No.2 is answered in favour of defendants No.1 & 3. Resultantly, the judgment and decree passed by two Courts below are set-aside and thereby the plaintiff's suit would stand dismissed.
28. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

29. A decree-be drawn-up accordingly.

Sd/-
(Sanjay K.Agrawal)

Judge

B/-