

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 5684 of 2006**

Krishna Kumar Padi S/o Late Lallu Prasad Padi, aged about 42 years,
R/o Power House Road, Bhairamdev Ward Jagdalpur, District Bastar
(CG)

Versus

1. Registrar Public Trust (Sub Divisional Officer Revenue) Jagadalpur,
Collector Jagadalpur, District Bastar, Chhattisgarh
2. Manager Temple Estate, Public Religious Trust for the Danteshwari Mai
Temple, Jagadalpur, District Bastar, Chhattisgarh
3. Hariram Goyal, President, Trustee, Public Religious Trust, Jagadalpur,
District Bastar, Chhattisgarh
4. Pukhraj Daga, Manager Trustee, Public Religious Trust, Jagadalpur,
district Bastar, Chhattisgarh
5. Sitaram Kapur, Trustee, Public Religious Trust, Jagadalpur, District
Bastar, Chhattisgarh
6. Alok Awasthi S/o Late Shri Basant Awasthi, Aged about 38 years,
Resident of Nayapara Jagdalpur, District Bastar (Chhattisgarh)

---- Respondents

For Petitioner	:	Mr. Praful N. Bharat, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

08.06.2020

1. The challenge in the present writ petition is to the order dated
27.08.2004 passed by the Sub Divisional Officer(R) who was also
discharging the duties of Registrar under the Public Trusts Act in
District Jagdalpur.

2. The grievance of the petitioner is that he had initially moved an application before the Sub Divisional Officer(R)/Registrar, Public Trust Act in respect of the functioning of the trustees of Danteshwari Mai Temple, Jagdalpur. According to the petitioner, the Trustees of Danteshwari Mai Temple, Jagadalpur were in fact non-functional and were not discharging their responsibilities and duties. Inasmuch as, the accounts of the temple were not being properly accounted or audited and the trustees also were not taking any active participation in the administration of the affairs of the temple. The Sub Divisional Officer (R) vide the impugned order dated 27.08.2004 has in fact ordered for appointment of 10 different persons as new trustees of the said temple which is under challenge in the present writ petition.
3. The sole contention of the counsel for the petitioner is that the said order is per se contrary to the provisions of Sub Section 2 of Section 26 of the Chhattisgarh Public Trust Act, 1951 (in short "the Act of 1951"). It is the contention of the petitioner that the Registrar as such could not have appointed trustees in exercise of the powers under Section 26 of the Act of 1951. In fact the only power vested with the Registrar is that in the event if he finds any merits in the compliant/application moved by any person, he can only refer the matter to the concerned Civil Court under section 26 of the Act of 1951. The concerned Civil Court in turn shall take appropriate steps and pass an order under Section 27 of the Act of 1951.
4. Counsel for the petitioner relied upon the judgment of the Madhya Pradesh High Court in the case of Phoolchand Jain and others v. Registrar, Public Trusts, Satna, Madhya Pradesh and others reported in

1973 MPLJ 658 whereby the Division Bench of Madhya Pradesh High Court in identical set of facts dealing with the provisions of Sections 25, 26 & 27 of the Public Trust Act, 1951 has held that the Registrar, as such has no power under Sections 26 or 27 of the Act to appoint trustees and the power stands vested with the concerned Civil Court on a reference being made by the Registrar.

5. At this juncture, counsel for the State submits that in fact, the impugned order dated 27.08.2004 was passed at the behest of an application moved by a local MLA at that point of time and it is only subsequently that an application was moved by the petitioner on 04.10.2004 which is still pending consideration before the Registrar and no decision on the said application has been taken.
6. Having heard the contentions put forth on either side and on perusal of record, it would be relevant at this juncture to refer to the statutory provisions involved in the case. For ready reference Sections 25, 26 & 27 of the Chhattisgarh Public Trusts Act, 1951 are being reproduced hereinunder:

“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.

26. Application to Court for directions.- (1) If the Registrar on the application of any person interested in the public trust or otherwise is satisfied that -

- (a) the original object of the public trust has failed;
- (b) the trust property is not being properly managed or administered; or
- (c) the direction of the court is necessary for the administration of the public trust;

he may, after giving the working trustee an opportunity to be heard direct such trustee to apply to court for directions within the time specified by the Registrar.

(2) If the trustee so directed fails to make an application as required, or if there is no trustee of the public trust or if for any other reason, the Registrar considers it expedient to do so, he shall himself make an application to the court.

27. Courts power to hear application.- (1) On receipt of such application the court shall make or cause to be made such inquiry into the case as it deems fit and pass such orders thereon as it may consider appropriate.

(2) While exercising the power under sub-section (1) the court shall, among other powers, have power to make an order for:-

- (a) removing any trustee;
- (b) appointing a new trustee;

(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

(d) providing a scheme of management of the trust property;

(e) directing how the funds of a public trust whose original object has failed, shall be spent, having due regard to the original intention of the author of the trust or the object for which the trust was created.

(f) issuing any directions as the nature of the case may require.

(3) Any order passed by the Court under sub-section (2) shall be deemed to be a decree of such court and an appeal shall lie therefrom to the High Court.

(4) No suit relating to a public trust under section 92 of the Code of Civil Procedure, 1908 (V of 1908), shall be entertained by any court on any matter in respect of which an application can be made under section 26. ”

7. Keeping in view the aforesaid three sections of the Act of 1951, it would be relevant at this juncture now to refer the impugned order dated 27.08.2004 which is reproduced hereinunder:

27.8.04

प्रकरण तहसीलदार/व्यवस्थापक टेम्पल

ईस्टेट जगदलपुर से न्यासियों के पुनरीक्षित प्रस्ताव सहित प्राप्त ।

2. प्रकरण का परीक्षण किया मैं तहसीलदार जगदलपुर/व्यवस्थापक टेम्पल ईस्टेट जगदलपुर के प्रस्ताव से सहमत हूँ।

तदनुसार निम्न सदस्यों को टेम्पल ईस्टेट, जगदलपुर का लो.या. अधि. 1951 की धारा 25 के तहत ट्रस्टीज न्यासी नियुक्त किया जाता है:—

1. पदेन सांसद बस्तर संसदीय क्षेत्र जगदलपुर।
2. रदेन विधायक वि.स. जगदलपुर।
3. श्री निवास मिश्रा, जगदलपुर।
4. श्री छबि लेश्वर जोशी जगदलपुर।
5. श्री शेषनारायण तिवारी जगदलपुर।
6. श्री ज्वाला प्रसाद पानीग्राही जगदलपुर।
7. श्री मदन लाल गर्ग जगदलपुर।
8. श्री रमेश गांधी जगदलपुर।
9. श्री कालीचरण कश्यप जगदलपुर।
10. श्री रविन्द्र रथ जगदलपुर।

8. The question that arises for consideration in this case is whether the

order passed by the Registrar on 27.08.2004 meets the requirement of law under Section 26 of the Act of 1951. It would be relevant further to take note of the decision of the Division Bench of Madhya Pradesh High Court in the case of Phoolchand Jain(supra) where in paragraphs 5 & 6, the Division Bench of Madhya Pradesh High Court has dealt with the aforesaid provisions of law. The relevant portion of paragraphs 5 & 6 are reproduced hereinunder:

“The clear implication of Sub-section (3) is that in case the working trustee fails to fill the vacancy within the time specified by him or comply with any direction issued by the Registrar, the Registrar has the power to fill the vacancy and any person aggrieved by such order has the right to apply to the Court, namely, the District Court, for setting aside the order of the Registrar within thirty days from the date of such order. Thus, the Registrar can take action under Sub-section (3) of Section 25 of the Act to give direction to the working trustees and he can also call for information from the working trustee and ask him to fill the vacancy. The contention of the learned counsel for the petitioners was that the phrase, 'filling up the vacancy' means individual vacancy and not holding of the general election of all the trustees. In this connection we might observe that the wording of Sub-section (3) of Section 25 of the Act is wide enough to include the power to give a direction in the matter of holding general election and if such direction is not complied with can the Registrar fill up the vacancies thus created in the Board of Trustees? The Registrar in the present case had called upon the working trustees to hold the elections as the last appointment of the trustees was in the year 1965 and according to the trust-deed, the election of the trustees must take place in the month of 'Kunwar' after every three years in a general annual meeting of the members of the trust. It is also provided that in the event of a vacancy in the Board of Trustees, the vacancy would be filled up by election by primary members of the trust in a general meeting and the manager would be appointed by the trustees and the post of the manager would be a paid office. As such, the election of the trustees was due in the year 1968. But in spite of a direction given by the Registrar of Public Trusts, no action was taken by the managing trustee and, therefore, the Registrar purported to act in the manner that he did.

6. It is clear that the Registrar has the power to give a direction to the managing trustee to hold elections as required by the constitution of the trust. But the further

question is as to what is to be done if that order is not complied with. It was urged on behalf of the petitioners that fresh elections were held on 28-11-1971 and, therefore, the direction should be deemed to have been complied with. It is also urged that an intimation to that effect was given to the Sub-Divisional Officer, Nagod, on 1-12-1971. From the record we do not find any such thing. The order of the Sub-Divisional Officer, functioning as Registrar, was passed on 2-5-1972, and the petitioners had appeared before him on the relevant dates. As such, the petitioners very well knew that the case had been sent back to the Sub-Divisional Officer, Raghurajnagar, and the Sub-Divisional Officer Nagod, had no seisin of the case. Thus, there would be no point in intimating the Sub-Divisional Officer, Nagod, of any fresh election that might have been held. However, there is nothing on record either in the return or in the shape of documents to conclude that any such election had been held by the managing trustee. Therefore, we conclude that no such election had been held. The real question is whether the Registrar could nominate all the trustees treating the office of the trustees vacant because of non-compliance with his directions we may observe that the process involves removal of the present trustees and nominating fresh ones upon failure of the managing trustee to hold the elections. As per the terms of the trust-deed, we do not find that the trustees are to vacate the office automatically after the period of three years, although the provision is that election should be held every third year in the month of Kunwar. Therefore, if elections are not held, the Registrar can Certainly give a direction to the managing trustee to hold such elections and in the event of non-compliance, the only course open to the Registrar will be to apply to the Court for removal of the trustees and for appointment of fresh trustees. But, we do not think that the Registrar himself has the power to nominate the trustees. In this connection it is pertinent to note the provision of Section 27 (2) of the Act, which is as follows: --

"Section 27.-- Court's power to hear application.-

(1)

(2) While exercising the power under Sub-section (1) the Court shall, among other powers, have power to make an order for-

(a) removing any trustee;

(b) appointing a new trustee;

(c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust:

(d) Providing a scheme of management of the trust

property;

(e) directing how the fund of a public trust whose original object has failed, shall be spent, having due regard to the original intention of the author of the trust or the object for which the trust was created;

(f) issuing any directions as the nature of the case may require."

Further on, Sub-section (3) of the said Section provides for an appeal to the High Court and Sub-section (4) further provides that no suit relating to a public trust under Section 92 of the Code of Civil Procedure shall be entertained by any Court on any matter in respect of which an application can be made under Section 26. Thus, as the process involves removal of the existing trustees and 'appointment of fresh trustees, we think that that power can only be exercised by the Court and the word "Court" as per Section 2 Sub-section (1) of the Act means the principal civil court of original jurisdiction in the district, which means the Court of the District Judge or the Court of the Additional District Judge, if the District Judge empowers him in that behalf under Section 7 (2) of the M. P. Civil Courts Act 1958. Thus, from any point of view we feel that the Registrar had no power to nominate fresh trustees upon failure of the managing trustee to hold election. But the only course left open to him was to apply to the District Court for removal of the existing trustees and for appointing fresh trustees in the event of non-compliance by the managing trustee in the matter of holding elections in the month of Kunwar after three years. "

9. From the plain reading of the provisions of Sub Section 2 of Section 26 of the Act of 1951 and taking into consideration the authoritative law laid down by the Madhya Pradesh High Court in the Case of Phoolchand Jain (supra), this Court has no hesitation in reaching to the conclusion that the requirement of law is that on an application being moved by any person interested any public trust, the Registrar has to get himself personally satisfied whether the contents of the said application are correct or not. If the contents of the application are found to be correct, the only recourse available for the Registrar is to make a reference to the concerned Civil Court under Sub Section 2 of

Section 26 of the Act of 1951. It is thereafter for the concerned Civil Court to take appropriate decision on the said reference made by the Registrar. It is also pertinent to take note of the fact that as per Section 26 of the Act of 1951, before making a reference to the concerned Civil Court, the Registrar also requires to give an opportunity of hearing to the existing trustees seeking their explanation and if required to conduct a fresh election for appointment of trustees and only on failure of discharge of the said Act by the Trustees, the Registrar would make a reference. It is also necessary to mention at this juncture that Annexure P-5 is a document which could suggest that the existing trustees have given their consent to the Registrar that they in fact do not have any objection in the Registrar making a reference to the Civil Court under Sub Section 2 of Section 26 of the Act of 1951.

- 10.** Given the said factual matrix of the case, the appointment of trustees by the Registrar vide impugned order Annexure P-6 dated 27.08.2004 is per se in contravention to the statutory provisions and also is not in consonance to the judgment of the Madhya Pradesh High Court in the case of Phoolchand Jain (supra).
- 11.** Thus, the impugned order is not sustainable and the same accordingly stands set aside/quashed.
- 12.** At this juncture, taking note of the submission that the State counsel has made and which has not been disputed by the petitioner that there is already an application made by the petitioner to the Registrar on 04.10.2004 and which is still pending consideration, the Registrar, Public Trusts Act, Jagdalpur is directed to take an appropriate decision on the said application in accordance with law at

the earliest. Considering the fact that the matter is quite old and is pending consideration since 2004, it is expected that the Registrar shall take an appropriate decision in accordance with law within a period of 90 days from the date of receipt of copy of this order.

13. The writ petition accordingly stands disposed of.

**Sd/-
P. Sam Koshy
Judge**

Khatai