

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :01/10/2020

Order passed on : 09/11/2020

REVP No. 110 of 2020

- Sheshnarayan Mishra S/o Puran Prasad Mishra, Aged About 52 Years, President-Sarwarakar, Shriram Janki Mandir Loknyas Samiti, Gidhwa, Tahsil- Bemetara, District- Bemetara, (C.G.), District : Bemetara, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through the Collector, Bemetara, District- Bemetara, (C.G.), District : Bemetara, Chhattisgarh
2. The Sub-Divisional Officer-Cum-Registrar (Public Trust), Bemetara, District- Bemetara, (C.G.), District : Bemetara, Chhattisgarh
3. The Tahsildar, Bemetara, District- Bemetara, (C.G.), District : Bemetara, Chhattisgarh
4. Radhelal S/o Dharam Das Kurmi, Aged About 68 Years, R/o Village- Gidhwa, Tahsil and District- Bemetara, (C.G.), District : Bemetara, Chhattisgarh

----Respondents

For Petitioner – Shri Goutam Khetrapal, Advocate.

For State/Respondents 1 to 3 – Shri Adil Minhaj, Govt. Advocate.

For Respondent No.4 – Shri Shobhit Koshta, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

09-11-2020

1. This petition has been brought seeking indulgence of this Court to review the order passed in WP227 No.296 of 2020 on 15-07-2020.

The petitioner had brought a petition praying for quashment of the order dated 22-02-2020 passed by the SDO exercising the powers of Registrar under the Provisions of Chhattisgarh Public Trusts Act, 1951 (in short 'the Act, 1951'). The petition was contested by the respondents side and by the order dated 15-07-2020 the petition was dismissed.

2. It is submitted by learned counsel for the petitioner that this Court made observation in paragraphs 10 and 11, that no working trustee informed the Registrar regarding the vacancies created under Section 25(1) of the Act, 1951

and no directions were issued by the Registrar under Section 25(2) of the Act, 1951 to make appointment of the trustees.

It is submitted that this Court has observed that no information was given by any working trustee to the Registrar regarding creation of the vacancies, whereas, the document is present, dated 06-01-2020 which is an intimation given by Tikam Yadav, the Chairman of Sriramchandra Swami Murty Mandir Trust, Gidhwa, District Bemetara, to the Collector Bemetara that the SDO Bemetara is not conducting election procedure for the vacancy to the post of Chairman of the Trust. It is submitted that this is an intimation as per the requirement of Section 25(1) of the Act, 1951, on the basis of which the Registrar should have given direction to the working trustee under Section 25(2) of the Act, 1951 to fill up the vacancy. It is submitted that this is important piece of information which could be produced earlier by the petitioner's side.

Prior to this, the then Chairman of the Trust had given intimation to the SDO/Registrar on 28-12-2019, that date of 05-01-2020 was fixed for election of Chairman. It is submitted that this document was though available on record, but was not considered. Subsequent to which, the election was conducted on 15-01-2020 and the petitioner was elected as a President.

It is further submitted that the petitioner had completed the legal obligation as required under Section 25(1) and (2) of the Act, 1951, regarding which documents are present, therefore, the review of the impugned order is prayed for.

3. Learned counsel for respondent No.4 opposes the argument submitted by learned counsel for the petitioner and submits that the petitioner was not a working trustee. This Court has observed in paragraph 12 of the impugned order that the trustee or the working trustee were never entrusted with any authority under Section 25(2) of the Act, 1951 to conduct election, neither the

trustee or other members of the Trust sought any such authority to conduct election. It has been clearly held that the so called election conducted on 15-01-2020 was unauthorized and illegal.

It is further submitted that the letter dated 28-12-2019 given by Tikam Yadav to the SDO has no relevance, which again shows that the then Chairman Tikam Yadav suo moto gave intimation to the Registrar regarding conducting of election on 05-01-2020, without there being any authorization under Section 25(2) of the Act, 1951. The said letter dated 06-01-2020 is in the form of complaint against the Registrar to the Collector that the Registrar has refused to take written intimation and has denied to conduct election, which again shows that no proceeding has taken place under Section 25(2) of the Act, 1951. Therefore, this Court has given full consideration on the facts and all the documents present and passed the orders.

It is further submitted that the present review petition is not maintainable as it does not satisfy the requirement in Rule 90 of the High Court of Chhattisgarh Rules, 2007. The petitioner has never mentioned that the documents on which he is placing reliance in this review petition were not available with him and he was unable to produce the same before the Court even after exercise of due diligence and he has not at all stated, that existence of the document was not within his knowledge.

Reliance has been placed on the judgment of Hon'ble the Supreme Court in case of **Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma and Ors.**, (1979) 4 SCC 389 and prayed that the review petition be dismissed.

4. In reply, it is submitted by learned counsel for the petitioner that no stage had arrived for exercise of jurisdiction under Section 26 and 27 of the Act, 1951. Apart from that, the circumstances are existing on the basis of which the petitioner has entitlement to pray for review of the impugned order.

5. Heard learned counsel for the parties and perused the documents.
6. Considered on the submissions. By the impugned order this Court made observation in paragraphs 10, 11 and 12 that:-

“10. Section 25(1) provides that the working trustee shall inform the Registrar regarding vacancies and his proposal for filling the same. Sub-section 2 of Section 25 of the Act, 1951, provides that the Registrar may direct the working trustee to fill up the vacancies in the manner not inconsistent with any instrument of trust or the mode of succession specified in the register, which shall be then complied by the working trustee and sub-section 3 provides for authority of the Registrar for filling up vacancies by the authority vested in it in case the working trustee fails to comply with the directions issued to him by Registrar under Section 25(2) of the Act, 1951.

11. In this particular case, there appears to be no such circumstance was brought to the notice of this Court, that any working trustee had informed the Registrar regarding the vacancies created under Section 25(1) of the Act, 1951 or issuance of any direction by the Registrar under Section 25(2) of the Act, 1951. The disputes had started earlier because of which the Registrar/SDO passed the order dated 07-04-2002, which is mentioned in the order dated 19-06-2018 of the Additional District Judge, to seek direction from the Court. In the matter before the Court of Additional District Judge Bemetara on the basis of the pleading made by both the sides, framed one issue that whether there is requirement of issuance of direction under Section 27 of the Act, 1951 and it was on that basis a direction was issued in paragraph 10 of that order which is mentioned hereinabove. Therefore, in this particular case, the proceeding have initiated directly after issuance of direction by the Court of learned Additional District Judge under the provisions of Section 27(2) of the Act, 1951.

12. Considering these development of things, it is found that the trustee or the working trustee were never entrusted with any authority under Section 25(2) of the Act, 1951 by the order dated 19-06-2018, neither the working trustee or other members of the Trust sought any such authority from any of the Court or from the respondent No.2 to conduct such election which is said to have been conducted on 15-01-

2020 and further the procedure to be followed under Section 25 of the Act, 1951 was already bypassed, after the SDO passed the order under Section 26(1) of the Act, 1951 in his order dated 07-04-2002 to seek direction from the Court. Therefore, there was no occasion and no authority for exercise of power under Section 25(2) of the Act, 1951 to conduct election of office bearers under this provision. The procedure to be adopted had to be a consequence of order under Section 27(2) of the Act, 1951 which appeared to have been followed in compliance with the order dated 16-09-2018 of learned Additional District Judge, regarding which there had been no order of restraint by the High Court in the orders passed by it in FAM No.222/2018. Therefore, I do not find any merit in this petition which is dismissed accordingly.”

7. Rule 90 of the High Court of Chhattisgarh Rules, 2007 says as under:-

90. (1) Every application for review made upon the ground of the discovery of new and important matter or evidence within the meaning of Order XLVII, Rule 1 of the Code of Civil Procedure shall be accompanied by an affidavit of the applicant stating together with documents, if any, relied upon, and stating in clear terms what such new and important matter or evidence is, the effect or purport thereof and that the same, after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree/order was passed.

(2) The Registry shall list the review petition within ten days of filing in the Chamber of the Judge(s) for consideration and if the Judge(s) reaches to the conclusion after consideration of the material placed that there is no sufficient ground for a review, then the same shall be rejected:

Provided that, if the Judge(s) is of the opinion that there is sufficient ground for review, the matter shall be listed for hearing.”

8. The application for review filed by the petitioner does not mention at all about any document the existence of which he discovered subsequently and that despite exercise of due diligence the same could not be produced before the Court before the orders were passed. It was at a later stage, in the review

matter, the petitioner has filed a covering memo on 06-08-2020 in which the documents dated 06-01-2020 and 28-12-2019 were filed. Submission has been made that the document dated 28-12-2019 was present in the record of WP227 No. 296 of 2020 which was not given consideration. It is true that this document was present in the original petition. There is no reference to these documents in the impugned order, however, validity of the same is fit to be considered in this order.

9. The order dated 28-12-2019 by the so called Chairman Tikam Yadav addressed to the SDO/Registrar giving intimation that the post of Chairman of the Trust has fallen vacant and date has been fixed for election on 05-01-2020. There is mention of this letter in the order sheets of the proceeding before the SDO which has culminated in the passing of the impugned order dated 22-02-2020. The intimation given by the so called Chairman Tikam Yadav dated 28-12-2019 was dismissed in the order passed in order sheet dated 31-12-2019 by the Registrar. There appears to be no legality of this intimation. Such intimation had to be given under Section 25(1) of the Act, 1951 which should have been followed by the direction of Registrar under Section 25(2) of the Act, 1951.

The stage for following the procedure under Section 25 of the Act, 1951 had already passed, because of which the said Tikam Yadav acting as Sarwarakar of the Trust was compelled to file application under Section 26(1) of the Act, 1951 before the Court of District Judge. The Court of District Judge passed the order dated 19-06-2018 and it is in compliance of that order the SDO/Registrar has conducted the election and passed the order dated 22-02-2020. Hence, for these reasons, I am of this view that there had been no authority left with said Tikam Yadav to give intimation dated 28-12-2019 or making the complaint given to the Collector on 06-01-2020 after his filing of application under Section 26(1) of the Act, 1951. Apart from this, the present

review petition does not satisfy the requirement in Rule 90 of the High Court of Chhattisgarh Rules, 2007 which in conformity with Order XLVII, Rule 1 of the Code of Civil Procedure. Therefore, this review petition is without any substance, which is liable to be dismissed and the same is dismissed accordingly.

On the prayer made by learned counsel for the petitioner, it is ordered that the order dated 22-02-2020 be not acted upon for further six weeks by the respondents side as this petitioner wants to challenge the present order and the impugned order passed in WP227 No.296 of 2020 in the Apex Court.

Sd/-

(Rajendra Chandra Singh Samant)
Judge