

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****RESERVED ON 16-3-2020****DELIVERED ON 17-3-2020****MA No. 85 of 2019**

Atul Bajaj S/o Late Shri Shankarlal Bajaj Aged About 44 Years
 R/o Bajaj Bhavan, Marwari Line, Lajpat Rai Nagar, Bilaspur,
 Tahsil And District Bilaspur, CG

---- Appellant**Versus**

1. Shewbhagwan Rameshwarlal Charitable Trust Bilaspur Marwari Line, Khaparganj, Bilaspur, Tahsil And District Bilaspur, CG
2. Kamal Bajaj S/o Late Shri Ramniwas Bajaj R/o Bajaj Bhawan, Marwari Line, Lajpat Rai Nagar, Khaparganj, Bilaspur, Tahsil And District Bilaspur, CG
3. Chirag Bajaj S/o Shri Kamal Bajaj R/o Bajaj Bhavan, Marwari Line, Lajpat Rai Nagar, Khaparganj, Bilaspur, Tahsil And District Bilaspur, CG
4. Rishab Bajaj S/o Shri Kamal Bajaj R/o Bajaj Bhavan, Marwari Line, Lajpat Rai Nagar, Khaparganj, Bilaspur, Tahsil And District Bilaspur, CG
5. Ananya Bajaj S/o Shri Govind Bajaj R/o Bajaj Bhavan, Marwari Line, Lajpat Rai Nagar, Khaparganj, Bilaspur, Tahsil And District Bilaspur, CG
6. Registrar Public Trust, Bilaspur Cum Sub Divisional Officer (R), Bilaspur, District Bilaspur, Chhattisgarh, Through Authorized Officer.
7. State Of Chhattisgarh Through District Collector, Bilaspur, CG

---- Respondents

For appellant	Mr. Rajesh Ranjan, Adv. And Abhyuday Singh, Adv.
For R-1 to 5	Mr. B.P. Sharma, Adv.
For R-6 and 7	Mr. Alok Bakshi, Addl. Adv. Gen. With Mr. D.C. Verma, Govt. Adv.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV ORDER**

1. The instant miscellaneous appeal has been preferred by appellant to set aside the impugned order dated 22-8-2019 passed by the Addl. District Judge, Bilaspur in CS No. 36-A/2019 whereby and whereunder he rejected the application I.A. No. 2/2019 filed by him under Order 39 Rule 1 and 2 read with Section 151 of the Civil Procedure Code, 1908 (in brevity 'CPC').

2. This is admitted by respondent No. 1 to 5 that Shewbhagwan, Rameshwar Lal Charitable Trust, Khaparganj, Bilaspur is a private trust, its registration no. is 13 which is registered in the office of respondent No. 6, disputed land bearing Khasra No. 107/3, 108/3, joint Khasra No. 109 area 0.040 hectare, 0.922 hectare respectively total area 0.962 hectare situated at Jarhabhata belong to respondent No. 1 and respondent No. 1 is in the possession of disputed land, appellant is the son of late Shankarlal Bajaj, the father of late Shankarlal Bajaj is late Bachhraj Bajaj who was the founder member of respondent No. 1-trust. This is also admitted by respondents No. 1 to 6 that respondent No. 1 to 5 had made an application before the respondent No. 6 who passed an order on 13-6-2019.

3. In brief, appellant's case is that two other founder members of said trust are late Rameshwarlal Bajaj and late Amolak Chand Bajaj. He has no knowledge about the appointment of respondents No. 2 to 5 as Trustee. By said order dated 13-6-2019, respondent No. 2 was appointed as Chairman of said Trust. nobody was appointed as trustee from the legal heirs of founder member of late Amolak Chand Bajaj. Clause 4 to 7 of declaration of said Trust have not been complied with. Thus, appointment of respondents No. 2 to 5 is illegal. Respondents No. 1 to 5 are indulged in misappropriation of disputed land against the object of the said Trust.

4. In brief, case of respondents No. 1 to 5 is that after the death of father of appellant it was asked from him orally whether he wants to be a trustee, but he had refused. Appellant had made false allegation upon them.

5. In brief, case of respondents No. 6 and 7 is that after the inquiry respondent No. 6 passed order dated 13-6-2019, appellant had not made any objection before him.

6. In brief, appellant's case regarding instant misc. appeal is that as per the Trust's deed it is imperative that Trustee of said trust would be appointed from amongst the family of the deceased founder Trustee. Disposal of property by unlawfully appointed Trustees is itself illegal. Trial Court committed gross error in not appreciating the pleadings and depositions made by him.

7. POINT FOR DETERMINATION :-

There are following points for determination in the case in hand :-

- i. Whether there is a prima facie case in favour of the appellant ?
- ii. Whether balance of convenience is in favour of the appellant ?
- iii. Whether irreparable loss would be caused to the appellant ?

POINTS FOR DETERMINATION NO. 1 TO 3 : FINDING WITH REASONS :-

8. Looking to the convenience, points for determination No. 1 to 3 are disposed of simultaneously.

9. Counsel for the appellant drew my attention on Clause 4, 5, 6 and 7 of the Declaration of said trust which reads as under :-

“4. There shall be a Board of Trustees consisting not more than seven and not less than five members including co-opted members who will direct and manage the said Trust in the manner hereinafter provided,

5. The first Board of Trustees shall consist of following person's -

(1) RAMESHWAR LAL BAJAJ s/o. KALURAM BAJAJ

BilaspurCHAIRMAN

(2) BACHHRAJ BAJAJ S/O. SHEWBHAGWAN BAJAJ

BILASPUR.....MEMBER

(3) AMOLAKCHAND BAJAJ S/O. SHEWBHAGWAN BAJAJ

BILASPUR.....SECRETARY

6. The Founder Trustees will be at liberty to nominate or co-opt other Trustees not exceeding four. Such C-opted Trustees will hold Office till their removal by the majority of the founder Trustees.

7. Any vacancy caused by the death, resignation or in capacity of any one or more of the above Trustees shall be filled in the following manner-

(a) In the event of any vacancy occurring in the list of the Founder Trustees for one or more of the above reasons the survivors of them shall appoint a new Trustee from and among the male

members of the deceased family.

(b) In respect of any vacancy occurring in the panel of other Trustees on account of one or more of the above causes it shall be filled by the Founder Trustees or his successor by nomination.

Provided that such Trustees i.e. other than Founder Trustees may be removed from Office by a majority of the Founder Trustees.

Provided also that any Trustees at his own opinion may retire from his Office by giving one Calendar month notice in writing to the Chairman of the Board of his intention of doing so.

(c) Notwithstanding anything contained in above all acts, matters, and deeds done and performed by the remaining Trustees during the period of such a vacancy or vacancies shall be deemed to be valid and binding on the Trust.”

10. Counsel for the appellant drew my attention on Section 8 and 9 of the CG Public Trust Act, 1951 (in brevity 'Act of 1951') which reads as under :-

“8. Civil suit against the finding of the Registrar. - (1) Any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar under Section 6 may, within six months from the date of the publication of the notice under sub-section (1) of Section 7, institute a suit in a Civil Court to have such finding set aside or modified.

(2) In every such suit, the Civil Court shall give notice to the State Government through the Registrar, and the State Government, if it so desires, shall be made a party to the suit.

(3) On the final decision of the suit, the Registrar shall, if necessary, correct the entries made in the register in accordance with such decision.

9. Change. - (1) Where any change occurs in any of the entries recorded in the register, the working trustee shall, within ninety days from the date of the occurrence of such change or where any change is desired in such entries in the interest of the

administration of the such public trust, report in the prescribed manner such change or proposed change to the Registrar.

(2) If, on receipt of such report and after making such enquiry' as the Registrar may consider necessary, the Registrar is satisfied that a change has occurred or is necessary in any of the entries recorded in the register in regard to a particular public trust, he shall record a finding with the reason therefor and subject to the provisions contained in sub-section (3) amend the entries in the said register in accordance with such finding.

(3) The provisions of Section 8 shall apply to any finding under this section as they apply to a finding under Section 6.”

11. Counsel for the appellant placed reliance on the decision of Division Bench of this Court in the matter of **Shri Dattatraya Mandir Trust -v- State of CG and others** passed in WP No. 259/2009 dated 30-8-2012, para 9 and 10 are important and quoted below :-

“9. Once an order was passed by the Registrar under Section 9(1) of the Act, 1951, then such order could be challenged by the aggrieved party only by filing a civil suit as provided under Section 8 read with Section 9(3) of the Act, 1951, quoted supra.

10. In the light of such clear legal position emerging from the reading of Sections 8 and 9 of the Act, we have no hesitation in holding that the Registrar did not have jurisdiction to even entertain the application made by the respondent No. 5 for recalling of the order dated 12-1-2009 nor had any jurisdiction to pass an order dated 25-7-2009.”

12. Counsel for the appellant placed reliance on the decision of Division Bench of this Court in the matter of **Shiv Balak Ram Yadav -v- Rajesh Kumar Tiwari and others** passed in WA No. 315/2017 dated 12-3-2018 para 17 of which reads as under :-

“17. Looking to the decisions in **Sarla Tripathi (Smt) -v- Smt. Kaushalya Devi and others** [2004 (2) JLJ 263], **Aeltemesh Rein Vs. Chandulal**, (AIR 1981 SC 1199), **M. Karunanidhi -v- Dr. H.V. Hande and others** [(1983) 2 SCC 473], **M.Y. Ghorpade -v- Shivaji Rao M. Poal and others** [2002(7) SCC 289], this Court finds that the provisions of Rules 7 and 8 of CG

Panchayats (Election Petitions, Corrupt Practices, and Disqualification from Membership) Rules, 1995 are mandatory in nature.”

13. Counsel for the appellant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Maharwal Khewaji Trust (Regd.), Faridkot -v- Baldev Das [(2004) 8 SCC 488]** in which it has been observed in para 10 that :-

“10. Be that as it may, Mr Sachar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time, therefore, the respondent should be permitted to put the scheduled property to better use. We do not think in the facts and circumstances of this case, the lower appellate court and the High Court were justified in permitting the respondent to change the nature of the property by putting up construction as also by permitting the alienation of the property, whatever may be the conditions on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the court may itself award damages for the loss suffered, if any, in this regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, we think both the courts below, namely, the lower appellate court and the High Court erred in making the impugned orders. The said orders are set aside and the order of the trial court is restored.”

14. Counsel for the appellant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Julien Educational Trust -v- Sourendra Kumar Rai and others [2010(1)SCC 379]** in which it has been observed that :

“From the materials on record it is clear that a prima facie case has been made out by the appellant Trust as to the agreement for sale, which has to go to trial. The all important question is as to whether the balance of convenience and inconvenience lay in favour of the grant of an interim order of injunction in favour of the appellant Trust and as to whether the appellant Trust would suffer irreparable loss and injury, if no such interim order was passed. Although, loss, if any, to the appellant Trust could be compensated in terms of money, it does not appear to hold good in the instant case. Equally important is the question of balance of convenience and inconvenience since the principal object of the appellant Trust in wanting to acquire the suit property was to extend its school unit. If the suit property is allowed to be commercially exploited by raising multi-storeyed structures thereupon, the entire object of the suit filed by the appellant Trust will be rendered meaningless and the purpose for which the suit had been filed would be completely defeated.”

15. Counsel for the appellant placed reliance on the decision of Hon'ble Supreme Court in the matter of **Devprakash and others -v- Indra and others [2017 SCC OnLine SC 883]** relevant portion of para 13 is extracted below :-

“**13.**As it is, the very essence of the concept of temporary injunction and receivership during the pendency of a civil litigation involving any property is to prevent its threatened wastage, damage and alienation by any party thereto, to the immeasurable prejudice to the other side or to render the situation irreversible not only to impact upon the ultimate decision but also to render the relief granted, illusory. We do not wish to burden this order by the decisions of this Court on the issue except referring to the one in *Maharwal Khewaji Trust v. Baldev Dass* [*Maharwal Khewaji Trust v. Baldev Dass*, (2004) 8 SCC 488 : AIR 2005 SC 104] , wherein it has been underlined that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property to be changed, which may include alienation or transfer thereof leading to loss or damage been caused to the party who may ultimately

succeed and which would as well lead to multiplicity of proceedings. Judicial discretion has to be disciplined by jurisprudential ethics and can by no means conduct itself as an unruly horse.”

16. Counsel for the respondents No. 1 to 5 drew my attention in Section 14 and 28 and 29 of the Act of 1951 which reads thus :-

“14. Previous sanction of Registrar, in cases of sale, etc., of property belonging to a public trust. - (1) Subject to the directions in the instrument of trust or any direction given under this or any other law by any Court,-

(a) no sale, mortgage, exchange of gift of any immovable property; and

(b) no lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or building;

belonging to a public trust, shall be valid without the previous sanction of the Registrar.

(2) The Registrar shall not refuse his sanction in respect of any transaction specified in sub-section (1) unless such transaction will, in his opinion, be prejudicial to the interests of the public trust.

28. Officers holding inquiries to have the powers of Civil Court. - In holding inquiries under this Act, the Registrar shall have the same powers as are vested in Courts in respect of the following matters, under the Code of Civil Procedure, 1908 (V of 1908), in trying a suit,-

(a) proof of facts by affidavits;

(b) summoning and enforcing attendance of any person and examining him on oath;

(c) compelling the production of documents;

(d) issuing of commissions.

29. Inquiry to be judicial inquiries. - All inquiries under this Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code.”

17. Counsel for the respondents No. 1 to 5 also drew my attention in Section 41 of the Specific Reliefs Act, 1963 which reads as under :-

"41. Injunction when refused.—An injunction cannot be granted-

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

xxxx xxxx xxxx”

18. Whether in the case in hand provisions enumerated in Clause 4, 6 and 7 had been complied with or not, instant civil suit is within prescribed period of limitation or not, may be decided at the time of disposal of case by the trial Court. Hence, at this stage appellant does not get any help from the aforesaid decision of division bench of this Court in the matter of **Shiv Balak Ram Yadav** (supra).

19. In the case in hand, there is no question regarding recalling the order dated 13-6-2019 by respondent No. 6 hence appellant does not get any help from the aforesaid decision of Division bench of this Court in the matter of **Shri Dattatreya Mandir Trust** (supra).

20. As per the provisions of Section 28 and 29 of Act of 1951, during the inquiry, Registrar shall have same power as are vested in court regarding some matters and inquiry shall be deemed to be a judicial proceedings within the meaning of Section 193, 219 and 228 of the Indian Penal Code.

21. As per the provisions of Section 14 of the Act of 1951, the property of public trust shall not be disposed of without the previous sanction of the Registrar. It means that Registrar can exercise his discretion before granting such sanction as to whether the disposal of the property is in accordance with the object of the trust or it is not for the benefit of any trustee or it is the result of mismanagement or mis-administration of trust.

22. As per the order dated 13-6-2019, claim / objections were invited by respondent No. 6 through publishing news in daily newspaper Deshbandhu dated 29-5-2019 but neither any claim nor any objection was raised.

23. Moreover, appellant has failed to demonstrate that before passing the order dated 13-6-2019 by respondent No. 6, he had filed an application under Section 26 of the Act of 1951.

24. Moreover, if temporary injunction is granted in favour of the appellant, it means that respondent No. 6 may not exercise his discretion vested under Section 14 of the Act of 1951.

25. Looking to the above mentioned facts and circumstances of the case, this Court finds that regarding temporary injunction, no prima facie case is made out in favour of the appellant, no balance of convenience is in his favour, no irreparable loss would be caused to him. Hence, this Court finds that appellant does not get any help from the aforesaid decisions of Hon'ble Supreme Court in the matter of **Maharwal Khewaji Trust (Regd.)**, **Faridkot** (supra) and **Julien Educational Trust** (supra). Hence this Court finds that trial Court has not committed any illegality while rejecting the said application. Consequently, this Court finds that instant misc. appeal deserves to be and is hereby dismissed.

26. Both the parties shall bear their own costs.

Sd/-
(Sharad Kumar Gupta)
Judge