NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 06.12.2019

Order Passed on : 04/03/2020

W.P.(227) No. 805 of 2019

1. B.K. Singh, S/o. Shri Yuddhvir Singh, Aged About 72 Years, R/o. Om Vihar, VIP Road, Raipur, Tahsil and District Raipur, Chhattisgarh.
2. Ramesh Modi, S/o. Shri Chhagan Lal Modi, Aged About 77 Years, R/o. Modi Chhaya, Sector 6, Devendra Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh.
3. Rajendra Prasad, S/o. Shri Dhanushdhari, Aged About 67 Years, R/o. Shri Ram Mandir, VIP Road Raipur, Tahsil and District Raipur, Chhattisgarh.
4. Sushil Malini, S/o. Shri Vikas Malini, R/o. Dunga Ji Colony, Ayurvedic College Road, Raipur, Tahsil and District Raipur, Chhattisgarh.
5. Surendra Jain, S/o. Shri Satyanarayan Jain, R/o. B-34, Anupam Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh.
6. Leeladhar Chandrakar, S/o. Shri Suraj Prasad Chandrakar, R/o. B-1, Pawan Vihar, New Rajendra Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh.
7. Krishna Kumar Tomar, S/o. Shri Jaichand Tomar, R/o. Khanij Nagar, VIP Road, Raipur, Tahsil and District Raipur, Chhattisgarh.
8. Amarchand Agrawal, S/o. Badri Prasad Agrawal, R/o. Samta Colony Raipur, Tahsil and District Raipur, Chhattisgarh.
9. Harshad Seth, S/o. Shri Harilal Seth, R/o. Gurukripa 34/127, Fire Brigade Chowk, Chhotapara, Raipur, Tahsil and District Raipur, Chhattisgarh.

10. Anup Agrawal, S/o. Shri Ghanshyam Agrawal, R/o. E-3, Ravi Nagar Raipur, Tahsil and District Raipur, Chhattisgarh.

11. Atmabodh Agrawal, S/o. Shri Lalchand Agrawal, R/o. Yugbodh Prakashan, Samta Colony, Raipur, Tahsil and District Raipur, Chhattisgarh.

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Versus

1. Thakur Ramchandra Swami Mandir, Shri Dudhadhari Math, Mathpara, Raipur (Abode of Deities of Lord Shri Ram Chandra Ji, Shri Sita Ji, Shri Laxman Ji, Shri Bharat Ji, Shri Shatrughan Ji) Through Raje Shri Dr. Mahant Ram Sundar Das, Aged About 46 Years, Guru Late Raje Shri Mahant Vaishnav Das, Managing Trustee Shri Dudhadhari Math Balaji Swami Trust, Raipur, District Raipur, Chhattisgarh.

2. Raje Shri Dr. Mahant Ram Sundar Das, Aged About 46 Years, Guru Late Raje Shri Mahant Vaishnav Das, Managing Trustee Shri Dudhadhari Math Balaji Swami Trust, Raipur, District Raipur, Chhattisgarh.

3. The Registrar Public Trust (Sub Divisional Officer), Raipur, Tahsil and District Raipur, Chhattisgarh.

-----Respondents

For Petitioners	: Mr. J.K. Gilda, Sr. Advocate with Mr. Keshav Prasad Gupta, Advocate
For Respondent No.1	: Mr. Goutam Khetrapal, Advocate
For Respondent No.2	: Mr. A.K. Prasad, Advocate
For Respondent No.3	: Mr. Adil Minhaj, Govt. Advocate.
For Intervenor	: Mr. Raghavendra Pradhan, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

04/03/2020

1. This petition has been brought under Article 227 of the Constitution of India challenging the judgment and decree dated 16.05.2019, passed by the Second Additional District Judge, Raipur in Civil Suit No.3-A/2013 by setting aside the order dated 30.10.2012, passed by the respondent No.3.

2. Mr. J.K. Gilda, Sr. Advocate on behalf of the petitioners would submit that by virtue of the order dated 30.10.2012, passed by the respondent No.3, the petitioners were appointed as permanent trustee of Shri Thakur Ram Chandra Swami Public Trust, Dudhadhari Math, Raipur (Telibandha), which was challenged by the respondent No.1 and 2 in Civil Suit No.3-A/2013, in which, the public trust was not arrayed as a defendant. No notice was served upon public trust with regard to filing of suit under Section 80 C.P.C. read with Section 12 of Chhattisgarh Public Trust Act, 1951 (hereinafter referred to as "the Act, 1959"). It is also submitted that application challenging the order dated 30.10.2012 was moved beyond the period of 30 days prescribed under the Act, 1951, which was erroneously moved under Section 25 (3) of the Act, 1951, which has not been appreciated by the learned Additional District Judge. Thakur Ramchandra Swami Public Trust, Dudhadhari Math is a separate trust, which has been registered as Trust No.130.

3. It is submitted that as the Thakur Ramchandra Swami Public Trust, Dudhadhari Math Trust No.130 was not a party in the Civil Suit No.3-A/2013, therefore, the judgment and decree passed in that case by the trial Court has no legal affect upon the petitioners, who are trustees of the trust No.130. The issuance of previous notice is mandatory under Section 12 of the Act, 1951. As the Registrar of the Public Trust is Public Servant, therefore, the notice under Section 80 (2) of C.P.C. is also compulsory in such matter. No application was filed under Section 80 Sub-Section (2) of C.P.C. praying to dispense with service of notice as required under Section 12 of the Act, 1951 along with the notice under Section 80 C.P.C. It is also submitted that civil suit filed by the respondents was hopelessly barred by limitation. Clearly the suit has been filed under Section 25 (3) the Act, 1951 according to which 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 30 days from the date of such order and in Civil Suit No.3-A/2013, no application was filed for condonation of delay, neither any pleading has been made as it is required under Order 7 Rule 6 of C.P.C. showing ground of exemption from the operation of Limitation Act. Relying on the judgment of Madras High Court in case of ***M. Thirumalachariar Vs. S.P. Varadappa Chettiar***, reported in ***AIR 1962 Madras 210 (V 49 C 44),*** It is submitted that limitation commences the moment there is a default made, if any, waiver is sought that must be expressly pleaded in plaint.

Referring to Section 29 (2) of the Limitation Act, 1963, it is submitted that special law enacted for the public trust provides for specific limitation, which is different from the limitation provided in the schedule of the Limitation Act, therefore, the provision under Section 25 (3) of the Act, 1951 has to be strictly followed in this case.

4. Reliance has been placed on the judgment of Bombay High Court in ***The Maharashtra State Road Transport Corporation Vs. Raoji Hari Lad***, reported in ***AIR 1977 Bom-1,*** in ***Bismillasaheb Vs. Habib Miyan***, reported in ***1962 MPLJ Note (84)***, in case of ***Church of North India Vs. Lavajibhai Ratanjibhai & Ors.***, reported in ***(2005) 10 SCC 760.*** It is submitted that notice under Section 80 of C.P.C. is mandatory in such cases and regarding that reliance has been placed on the judgment of Supreme Court in ***State of Maharashtra & Another Vs. Shri Chander Kant***, reported in ***(1977) 1 SCC 257***, in case of ***Ebrahimbhai (Original plaintiff) Vs. State of Maharashtra & Ors. (original defendant)***, reported in ***1974 Mh.L.J. 562***, in case of ***the Central Provinces Transport Services Vs. The State Transport Authority***, reported in ***1960 SCC OnLine Bom. 83.*** Reliance has also been placed on the judgment of Supreme Court in case of ***N.M. Engineer & Ors. Vs. Narendra Singh Virdi & Another***, reported in ***(1994) 5 SCC 261,*** in case of ***Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School & Ors.***, reported in

(1993) 4 SCC 10.

5. On the point that Shri Thakur Ram Chandra Swami Public Trust is a separate trust, it is submitted that it has been very clearly held by the High Court of Madhya Pradesh in F.A. No.112 of 1952 decided on 18.07.1963 that Thakur Ramchandra Swami temple is a public temple and direction were issued to the appellant Kamal Narain for taking steps for registration of that temple under the provisions of M.P. Public Trust Act. This temple included the scheduled property. The order was passed in favour of the petitioners in case No.2-B 113(2)/2005-06, by the Registrar Public Trust, Raipur (C.G.) on 25.02.2006, in which it is clearly held that Thakur Ramchandra Swami Mandir is a separate registered public trust No.130. Subsequently one MJC No.10A/2006 was preferred before the Civil Court challenging the appointment of the petitioners as trustee, which was dismissed by the Civil Court allowing the application of the petitioners, who were respondents therein, who had filed an application under Order 7 Rule 11 C.P.C.. This dismissal was challenged in W.P.(C) No.1298 of 2007, before this Court, which was decided on 05.08.2010 and the matter was reverted back to the trial Court. The case was contested by the parties from both the sides. Another MJC No.6/2017 was filed by the respondent No.1 before the Court of District Judge, Raipur under Section 92 of C.P.C., which was dismissed and has not been challenged, therefore, that order has attained finality. The petitioners then filed an

application under Section 25 of the Act, 1951 praying for reference order, which was registered as MJC No.63/2011, in which respondent No.1 was proposed to be made a party. Thereafter, the petition was disposed of.

6. It is submitted that although there is appeal provided for the order i.e. passed under Section 25 (3) of the Act, 1951 but the point raised can not be decided in appellate jurisdiction. Therefore, this petition has been preferred under Article 227 of the Constitution of India. Hence, this petition be admitted for hearing and relief be granted to the petitioners.

7. Mr. A.K. Prasad, Advocate appearing on behalf of the respondent No.2, opposed the submissions made by the learned senior counsel and it is submitted that proposition made by the petitioners side that Thakur Ramchandra Swami Mandir is a separate trust, is totally misconceived. Referring to the copy of the order of Registrar of Public Trust filed by the petitioners' side at Page No.111, it is submitted that it clearly mentions in the second column, that village Telebandha is dedicated to Shri Ram Chandra Swami Dudhadhari Math situated at Raipur, therefore, the respondent No.1 and Thakur Ramchandra Swami Mandir are not separate entities. Further in the column No.4 entry in the same form/register it is specifically entered that no mode of succession has has been provided, but it appears that succession to trusteeship is confined to the member of founder's family. It is further submitted that High Court of Madhya Pradesh in F.A. No.112/1952 has also held that village Telibandha was

dedicated to Thakur Ramchandra Swami Mandir and the Ramchandra Swami Mandir is the temple of Dudhadharimath.

8. It is further submitted that in the matter before the Collector, Raipur in Revenue Case No.8-B/113 (1) of 1965-66, decided on 12.09.1966, it was observed that succession to trusteeship appears to be confined to the members of founder family. This observation was not given any consideration by the Registrar, Public Trust, Raipur while passing the order dated 25.02.2006. By order dated 05.08.2010 in W.P.(C) No.1298 of 2007, this High Court had clearly held that SDO has no jurisdiction to fill the vacancy by appointing temporary trustees in exercise of powers under Section (9) (2) of the Act, 1951 and the civil suit was reverted back to the District Judge for consideration.

9. It is submitted, that the order dated 25.02.2006 is totally erroneous and without jurisdiction as the respondent No.3 had no authority to pass any such order for appointing any trustee. The order dated 30.10.20012, by which the the SDO (Revenue) has made petitioners permanent trustee is also against the provisions of law and in violation of the order passed by this Court in W.P.(C) No.1298 of 2007 on 05.08.2010, therefore, this order is void *ab-initio*. The respondents have very clearly pleaded in their plaint in the civil suit that Thakur Ramchandra Swami Mandir is a temple within the premises of Dudhadhari Math. The petitioners in this case have deliberately constructed an illegal trust to usurp the property of the respondent trust. Respondent No.1 and 2

were necessary party in the proceeding before the respondent No.3, in which the order dated 25.02.2006 was passed, as that order was passed against the interest of the respondent No.1 and 2 that is not an order under the eyes of law.

10. It is further submitted that the question of limitation was raised before the trial Court and the finding has been given on the basis of the evidence brought on record, that the suit filed by the respondents is within the limitation. The argument that the trust No.130 has not been arrayed as a party is totally erroneous as there is nothing present on record to show that Thakur Ramchandra Swami Temple is public trust separate from the Dudhadhari Math and therefore, arraying Thakur Ramchandra Swami Public Trust as a party was not at all necessary in the civil suit.

11. It is further submitted that the petition has been erroneously brought under Article 227 of the Constitution of India. It is a matter, in which, only an appeal shall lie as it is clearly provided under Section 27 (3) of the Act, 1951. Hence this petition is not maintainable. It was a suit assailing the legality and correctness of the order passed by the respondent No.3 and no other relief has been sought against respondent No.1, therefore, the service of notice under Section 80 of C.P.C. was not at all necessary. Hence, the grounds on which the impugned judgment has been assailed in this petition are totally erroneous and without the support of any law.

12. Reliance has been placed on the judgment of Supreme Court in ***State of A.P. & Ors. Vs. Pioneer Builders, A.P., (2006) 12 SCC 119*** and on the judgment of Patna High Court in ***Chairman Electricity Board, Bihar, Patna and Anr. Vs. Binay Kumar Jha***, reported in ***AIR 2011 Patna 187,*** wherein it has been held that issue of non-serivces of notice under Section 80 of C.P.C. are not raised in the trial would be deemed as waived. Referring to the judgment of M.P. High Court in ***Ghanshyam Prasad Kurmi Patel Vs. Shri Yashwant Singh & Ors***., reported in ***2001 (5) M.P.H.T. 63***, it is submitted that it has been clearly held by the Madhya Pradesh High Court, that any order passed under Section 27 of the Public Trust Act for removing or appointing any trustee is deemed to be decree of such Court and an appeal shall lie therefrom to the High Court. Also relying on the judgment of Supreme Court in case of ***Sadhana Lodh Vs. National Insurance Company Limited & Anr.***, reported in ***AIR 2003 SC 1561***, it is submitted that supervisory jurisdiction under Article 227 of the Constitution of India is confined only to see whether any inferior Court or Tribunal has proceeded within its parameter and not to correct an error apparent on the face of the record much less of an error of law as the High Court, while exercising supervisory power under Article 227 of the Constitution of India, does not act as an appellate Court or the Tribunal. Therefore, High Court can not review or appreciate the evidence upon which the inferior Court or Tribunal purports to have passed the order or to correct errors of law in the decision. Therefore, the learned

Court below has passed the correct order and the grounds on which the impugned order is assailed are totally baseless and not supported by any law. Hence, this petition be dismissed.

13. Mr. Goutam Khetrapal, Advocate appearing on behalf of the respondent No.1 submits, that temple in question was constructed in the year 1857. In the year 1896, a Panch Faisala was taken with respect to the control and management of the temple and its property and Panch Faisala award was passed by which the property of village – Telibadha was dedicated in favour of Shri Ramchandra Swami Temple Dudhadhari Math, which was challenged in civil litigations and the dispute is set to rest by Supreme Court in appeal before it between ***Ramkishore Lal vs Kamal Narain***, reported in ***AIR 1963 SC 890*** holding that village Telibandha has been absolutely dedicated to Shri Ramchandra Swami Temple. Subsequent to which the Madhya Pradesh High Court decided the First Appeal No.112/1952 on 18.07.1963, in which directions were given to register the Ramchandra Swami Temple as public trust. Adopting the other arguments advanced on behalf of the respondent No.2, it is submitted that subsequent to that, an application was filed by the Ramkishore Lal, before the Registrar, Public Trust, Raipur on which order dated 12.09.1966 was passed. Ramkishore Lal had himself mentioned in the application praying for registration of public trust comprising of Mouza Telibandha dedicated to Thakur Ramchandra Swami of Dudhadhari Math situated at Raipur Tahsil. Prayer was allowed

and thereafter the property of village – Telibandha was ordered to be registered as public trust by the Registrar in the same order.

14. It is further argued that the order passed by the respondent No.3 making appointment of temporary trustees was totally without any authority of law. Similarly the order confirming the trusteeship of the petitioner in order dated 30.10.2012 is again an illegal exercise of jurisdiction. It is also submitted that entry in the register of public trust, which is filed as Exhibit P-13 in the record of the trial Court itself shows that trust No.130 shown in column No.2 mentions village Telibandha dedicated to Shri Thakur Ram Chandra Swami Dudhadhari Math situated at Raipur, therefore, the averments on the part of the petitioners that Thakur Ramchandra Swami Temple is a separate trust is totally erroneous and baseless. Further the petitioners themselves have made a statement in their application, which was filed before the Registrar Public Trust, which is present as Ex.P-4 in the record of the trial Court in Paragraph-1 that they were appointed as trustee for Shri Thakur Ramchandra Swami Dudhadhari Math, the public trust. In passing further orders, the word Dudhadhari Math has been omitted by the respondent No.3, therefore, from the very beginning the Sarvarakar of the Dudhadhari Math i.e. respondent No.2 was a necessary party before the Registrar i.e. respondent No.3. Hence, the learned trial Court has not committed any error in passing the impugned order. The appointments of the petitioners as temporary trustees as well as permanent trustees

is totally illegal and arbitrary because the entitlement of the family members of the founder of the trust was never taken into consideration.

15. Mr. Khetrapal placed reliance on the judgment of M.P. High Court in case of ***Surya Kumar Vs. Registrar, Public Trust, Raipur***, reported in ***1978 (1) Short Note 219*** and submitted that power of Court in passing an order after the inquiry is not necessarily confined to or limited by the prayers made in the application, but it may pass such orders which the Court may consider proper in the facts and circumstances of the case. The Court has jurisdiction to consider from the facts and circumstances of the case and also to consider on the rights of the member or members for the family of the founder of the trust. Further it is submitted that petition under Article 227 of the Constitution of India is not maintainable. Reliance has been placed on the judgment of Supreme Court in case of ***Mrs. Reena Drego Vs. Lalchand Soni***, reported in ***AIR 1998 SC 1990*** in which it was held that High Court can not disturb the finding of facts recorded by the lower Court by relying upon the fresh materials. Similarly in *Sadhana Lodh Vs. National Insurance Company (Supra),* the Supreme Court has held that the High Court has limited jurisdiction under Article 227 of the Constitution of India only to see that whether any inferior Court or Tribunal has proceeded within its parameter and not to correct an error apparent on the face of the record much less of an error of law. Reliance has also

been placed on the judgment of Supreme Court in case of ***Essen Deinki Vs. Rajeev Kumar***, reported in ***(2002) 8 SCC 400***, ***Mohan Amba Prasad Agnihotri & Ors. Vs. Bhaskar Balwant & Ors. (dead) Through L.Rs.***, reported in ***AIR 2000 SC 931***, therefore, it is submitted that question of limitation has already been decided by the learned Court below, which can not be interfered with.

16. On the point of maintainability, it is submitted that present petition is not maintainable for the simple reason, that the judgment of the Court below has an effect of decree and the same is appellable under Section 27(3) of the Act, of 1951. Procedure regarding which has been clearly explained in case of *Ghanshyam Prasad Kurmi Patel Vs. Yashwant Singh (Supra),* suit filed by the respondents was maintainable, that has been entertained and the judgment and decree has been passed, therefore, filing of this petition under Article 227 of the Constitution of India is without any jurisdiction.

17. Replying to the objection regarding non-service of notice under Section 80 of C.P.C., relying on the judgment of this Court in case of ***Harish Sinha @ Hari Prasad Singh Vs. Gurupd Sambhav Ram and others*** in ***F.A. No.104/2010***, ***decided on 08.11.2017***, it is submitted, that this Court has held in deciding the question of maintainability of suit, in which the suit filed under Section 92 of C.P.C., wherein the notice under Section 80 of C.P.C. was not served upon the Registrar, Public Trust was held

unnecessary by placing reliance in the judgment of *Istiyaq Husain Abbas Hussain Vs. Zafrul Islam Afzal Hussain & Ors*., reported in *AIR 1969 ALL 161,* that benefit of Section 80 is available only to the Government and its officer and not to the private parties, therefore, this benefit can not be availed by any private party, who has been made defendants in the case. It is submitted that in this particular case, no objection was raised before the learned Court below regarding non-service of notice under Section 80 of C.P.C. to the Registrar or State Govt., therefore, this ground can not be raised by the petitioners at this stage.

18. State counsel appearing on behalf of the Registrar, Public Trust respondent No.3 submits that no error has been committed by the Registrar in passing the order dated 25.02.2006 and 10.12.2012, which is well within the scope and purview of Section 25 of the Act, 1951. It is further submitted that Thakur Ramchandra Swami Temple, Dudhadhari Math has been duly registered in the year 1966. It is further submitted that the learned Court below has erroneously held against the petitioners and in favour of the respondents, therefore, the impugned judgment is not sustainable, which is liable to be set-aside on account of technical defects and irregularities committed as pointed out by the counsel for the petitioners.

19. On behalf of the intervener, the arguments advanced on behalf of the respondent No.1 and 2 is adopted and petition is opposed. It

has been prayed to to confirm the judgment of the trial Court against the petitioners.

20. In reply, Mr. Gilda, Sr. Advocate would submit that notice under Section 80 (2) OF C.P.C. to Registrar, Public Trust and the State Govt. was necessary in this case. Relying on the judgment of Supreme Court in case of ***Bihari Chowdhary & Anr. Vs. State of Bihar & Ors.***, reported ***(1984) 2 SCC 627, Sawai Singhai Nirmal Chand Vs. Union of India***, reported in ***AIR 1966 SC 1068*** and on the judgment of Bombay High Court, Nagpur Bench in the case of ***The Registrar Public Trust Amravati Vs. Ballabhdas Thakurdas Rathi***, decided ***on 15.01.1965***, it is submitted that service of notice upon the respondent i.e. the Registrar, Public Trust and the State Government is mandatory for maintainability of the suit. Also relying on the judgment of ***Hari Sinha @ Hari Prasad Singh (Supra)*** judgment of this Court, it is submitted that learned counsel for the respondents has not made correct reference of the judgment in the particular case. The Court has clearly held that notice under Section 80 of C.P.C. is mandatory as it has been held in the Paragraph 17 of that judgment that the requirement of service of notice under Section 80 C.P.C. to the Registrar Public Trust in a suit filed under Section 8 of the Act, 1951 is no longer *res integra* as the same has been settled by the Supreme Court in the case of *State of Maharashtra and Ors. Vs. Shri Chander Kant.*, reported in *AIR 1977 SC 148.* It was also held in the same judgment placing

reliance on the judgment of Supreme Court in *Bishandayal & Sons Vs. State of Orissa & Ors.*, reported in *(2001) 1 SCC 555* and the judgment of *Rajasthan High Court in Dayanand & Ors. Vs. State & Ors.*, reported in *AIR 2001 Raj 257* that right to notice under Section 80 can be waived for whose benefit it has been provided. There is no waiver made by the Registrar or State Government, therefore, defect remains. Therefore, it is submitted that non-issuance of notice upon the Registrar Public Trust have been fatal to the suit.

21. It is submitted that if special statute provides remedy and prescribed limitation for seeking such remedy in that case such provision has to be strictly construed and to that extent provision of Limitation Act would stand excluded. Reliance has been placed on the judgment of Bombay High Court in case of ***Atharoddin S/o. Mujroddin Kazi Vs. Rajendra S/o. Ramchandra Indrale & Ors.***, reported in ***2008 (6) Mh.L.J., 322*** the judgment in ***Umesh Tukaram Kamble & Ors. Vs. Shamrao Sakharam Patil & Ors.***, reported in ***2007 SCC OnLine Bom. 971,*** judgment of M.P. High Court in ***Prahlad Kushwaha & Anr. Vs. Rani Devmati & Ors***., reported in ***2012 SCC OnLine M.P. 3652*** have also been cited on the same point.

22. It is also submitted that there is a requirement under Order 7 Rule 6 of C.P.C., where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is

claimed. In the whole reading of the plaint filed by the respondents, before the trial Court, no such pleading is found. Relying on the judgment of Madras High Court in ***Sha Manmall Misrimall Vs. Radhakrishnan***, reported in ***AIR 1972 Madras 108***, judgment of High Court of Himanchal Pradesh in ***M/s. Roshan Lal Kuthiala & Anr. Vs. Raja Rana***, reported in ***AIR 1996 HP-14,*** judgment of Allahabad High Court in ***Shiv Shiv Tiwari Vs. Ganesh Prasad Mishra***, reported in ***AIR 1978 Allahabad 117***, judgment of High Court of Nagpur in ***Ghansiam Bholaram Tamoli Vs. Girijashankar, S/o. Pandya Shankarnath & Ors.***, reported in ***AIR (31) 1944 Nagpur 247*** and another judgment of Nagpur High Court in ***Fatechand Ganeshram Agrawal Vs. Wasudeo Shrawan Dalsl & Anr***. Reported in ***AIR (35) 1948 Nagpur 334***, it is submitted that it was obligatory on the respondents to plead in their plaint regarding the delay and the ground of exemption they wanted to claim under the law of Limitation. Provision under Order 7 Rule 6 is mandatory and this defect is fatal for the maintainability of the suit, which needs consideration.

23. Mr. Gilda replying to the arguments on maintainability of this petition placed reliance on the judgment in case of ***Jiwajirao Sugar Company Ltd., Daloda Vs. J.M. Banerji***, reported in ***AIR 1962 MP 310***, it is submitted that when any civil suit has been entertained without jurisdiction, no amount of acquiescence can make it maintainable suit and the judgment passed a lawful

judgment. It is submitted that for the simple reason that an appeal is maintainable, it can not be said that the High Court has no authority to exercise the supervisory jurisdiction under Article 227 of the Constitution of India. Relying on the judgment of Bombay High Court in ***Prabhudas Narayan Gedam & Ors. Vs. Municipal Council, Bhadrawati***, reported in ***2003 (1) Mh.L.J 275***, it is submitted that the Hon'ble Court has held that in appropriate cases, the supervisory jurisdiction can be exercised. It is submitted that in ***State of Maharashtra & Ors. Vs. Presiding Officer Industrial Court, Civil Lines, Nagpur & Ors.***, reported in ***2006 (5) Mh.L.J. 838***, the Bombay High Court has held that issue of jurisdiction goes to the root of the matter and it can be raised for the first time in the petition under Article 227 of the Constitution of India. Therefore, this petition is maintainable. The issue of maintainability of the suit, illegality committed in the proceeding question of limitation have been raised for the first time, which can be entertained only under Article 227 of the Constitution of India. Reliance has also been placed on the judgment of Cochine High Court in case of ***Janki Amma Rajamma Vs. Krishna Pillai Narayana Pilla***, reported in ***AIR 1953 Travancore – Cochin 37.*** It is further submitted by the learned Senior counsel for the petitioners that in case the High Court finds something is grossly wrong and unjust or shocking the Court's conscience, then it becomes necessary in the interest of justice to step in under Article 227 of the Constitution of India, as it has been held in N.M. Engineering & Ors. Vs. Narendra

Singh Virdi & ors., reported in (1994) 5 SCC 261. Therefore, it is prayed that petition under Article 227 of the Constitution of India is maintainable.

24. I have heard the learned counsel for the parties and perused the documents placed on record.

25. The first question is taken into consideration, whether the Thakur Ramchandra Swami Dudhadhari Math, Public Trust is separate trust registered as Trust No.130 and therefore, it was a necessary party in the civil suit?

26. This averments made on behalf of the petitioners finds no force because copy of the register of trust, which is produced along with the petition also present as exhibit in the civil suit shows the entry in column No.2 in Sr. No.130 – village- Telibandha dedicated to Shri Thakur Ramchandra Swami Dudhadhari Math. Pleading was raised by the petitioners in the written statement before the trial Court, however, no issue was framed on this point. Therefore, the question is alive for consideration before this Court. Now it was burden of the petitioners to demonstrate through evidence that Swami Ramchandra Swami Temple was a public trust separate from the other public trust Dudhadhari Math. The series of events that are present are sufficient to draw conclusion on this point. The core issue in this case is village Telibandha, which was dedicated to Thakur Ramchandra Swami Mandir. The litigation between Ramkishore Agrawal Vs. Kamal Narayan, who were trustees of the property situated in village-

Telibandha went up to Supreme Court. The Supreme Court has decided the civil appeal between *Ramkishore Lal and Kamal Narain*, reported in *AIR 1963 SC 890* as mentioned in the the first paragraph "that there exist at Raipur at M.P. an old Math by the name of Dudhadhari Math, within which is a temple where the idols of Shri Ramchandra, Sita, Laxman, Bharat, Satrughan and Hanumanji have been worshiped for very many years." This specific mention makes it very clear that Thakur Ramchandra Swami Temple is just a temple within the premises of Dudhadhari Math, therefore, a part of Dudhadhari Math. The Supreme Court dedicated the property of village Telibandha to Ramchandra Swami Temple. The Supreme Court has held that property of village Telibandha has been dedicated to the Ramcandra Swami Temple by the founder of the trust Deenanath Sao. Therefore, there no longer remains a question to be determined as to whether Thakur Ramchandra Swami Temple is a separate trust.

27. It is further found mentioned in the judgment of M.P. High Court in F.A. No.112/1952 delivered on 18.07.1963, in the first paragraph that a temple was constructed by Deenanath Sao within the compound of Dudhadhari Math and to the same temple, the entire income of the village Telibandha was dedicated in the year 1857. The Madhya Pradesh High Court has held in the judgment that Shri Thakur Ramchandra Swami Temple is a public temple and direction were issued for immediate registration under the provisions of the Act, of 1951. Application for registration as

public trust was filed by Ramkishore Lal, before the Registrar, Public Trust, Raipur and this application was decided on 12.09.1996. Paragraph No.1 of this order very clearly mentions that Thakur Ramchandra Swami Temple of Dudhadhari Math has been dedicated, the property of village- Telibandha and subsequent to that orders of Registrar were passed. These orders have final effect, therefore, no question can be raised on this point by the petitioners for the purpose of taking benefit of any confusion, as there is no confusion present, hence, it is held that Thakur Ramchandra Swami Temple is not a separate trust. On the contrary, it is a temple situated within the public trust of Dudhadhari Math, which is represented by the respondent No.1, who had been the plaintiff in the Civil Suit No.3-A/2012. Therefore, this ground raised that the suit filed by the respondents had defect of non-inclusion of necessary party is baseless, which is dismissed.

28. The second question raised by the petitioners is the absence of notice under Section 80 of C.P.C.. Various acts are performed by the Registrar of Public Trust under M.P./C.G. Public Trust Act, 1951. The works and the order passed by the Registrar, Public Trust can be questioned in civil suit firstly under Section 8 of the Act, of 1951, which reads as under :-

> "***Section-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."

29. This provision itself speaks that when any such suit is filed invoking the provisions of this Section, then Civil Court has obligation to give notice to the State Government, through Registrar and if State Government so desires, it shall be made a party to the suit.

30. The other activity performed by the Registrar is of filling vacancies, which is provided under Section 25 of the Act. Section 25 of the Act, 1951 is as under :-

"***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.

31. According to the aforesaid provision, the Registrar has power to appoint a trustee under Sub-section 3 of Section 25 and any person connected with public trust, who feels aggrieved may apply to the Court for setting aside the order of the Registrar. If any application is filed for setting aside the order of the Registrar making any trustee before the Court, the Court shall following the procedure under Section 27 of the Act, of 1951 pass appropriate order. The procedure as laid down under Section 27 of the Act, no where provides for issuance of any notice to the Registrar or to the State Government. Reliance of the petitioners in case of *The Registrar Public Trust Amravati Vs. Ballabhdas Thakurdas Rathi (supra)* speaks of necessity of notice under Section 80 of C.P.C. and the matter of challenge is to the order passed by the Registrar under Section 7 (1) of the M.P. Public Trusts Act and therefore, the suit before the Court should be regarded as under Section 8 of the Act, 1951, under which, the issuance of notice to

the Registrar and the State Government is necessary. In case of *Hari Sinha @ Hari Prasad Singh Vs. Gurupad Sambhav Ram (supra)* the dispute was regarding the entries in revenue records and there was no dispute regarding appointment of any trustee.

32. Section 5 of the Act, 1951 gives power to Registrar to make an enquiry whether any property is the property of such trust and this was the case present in the case of *Hari Sinha @ Hari Prasad Singh Vs. Gurupad Sambhav Ram (supra)*, which was decided by the Registrar under Section 6 of the Act, 1951 and entries were to be made as per order under Section 7 of the same Act, therefore, the civil suit that was filed in the Court was under Section 8 of the Act, 1951 and it was not a civil suit filed under Section 25 (3) of the Act, 1951, therefore, the ratio laid down by the Court in this case is not at all applicable in this case. The other reliance of the petitioners in *Sawai Singhai Nirmal Chand Vs. Union of India (supra), Bihari Chowdhari and another Vs. State of Bihar & Ors. (supra), J.C. Chatterjee and Ors. Vs. Shri Sri Kishan Tandon (supra)* do not give any guidance in this case as the ratio laid down in those cases are under different context and under different law.

33. Therefore, for the simple reason, that Section 27 of the Act, 1951 provides for procedure to be followed in the case to filed under Section 25(3) of the Act, 1951 and there is no requirement of service of notice upon the Registrar or the State Government. Hence it is clear that there is no such requirements for issuance

of any mandatory notice. Reference of Section 30 of the Act, 1951 is also necessary to be made to complete the conclusion on this issue, which reads as under :-

> ***"30. Civil Procedure Code to apply to proceedings under this Act***. - Save in so far as they may be inconsistent with any thing contained in this Act, the provisions of the Code of Civil Procedure, 1908 (V of 1908), shall apply to all proceedings before the Court in this Act."

34. That word in Section 30 of the Act, 1951 are very much clear and there is saving, which says in so far as they may be inconsistent with anything contained in this Act. Therefore, the provisions of Code of C.P.C. can not be directly made applicable to any procedure as it has been specifically provided under Section 27 of the Act, 1951, the procedure which shall be followed.

35. The provision for challenging an order under Section 25(3) of the Act, 1951 is restricted to the procedure which is provided under Section 27 of the Act, 1951. Had it been the intention of the legislature, the saving clause would not have been added in the of Act, 1951. Therefore, I am of this view and draw this conclusion that there had been no mandate under the provisions of M.P./C.G. Public Trust Act, 1951 to issue any notice under Section 80 of the C.P.C. to the Registrar or State Government. Hence on this point it is held that there is no such legal defect present in this particular case.

36. The another question raised by the petitioners side is that the civil suit was clearly barred by limitation this has to be considered along with the question of maintainability of this petition. There is a specific limitation of 30 days is provided under Section 25 (3) of the Act, 1951. Sub Section 2 of Section 29 of the Limitation Act, 1963 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. Therefore, the Limitation Act makes it clear that if any limitation is provided under any special act, then the provision of the special act shall prevail.

37. The facts and circumstances of the case are these that the order dated 30.10.2012, which has been passed in the proceeding No.31/B-113(4)/2009-10, the respondent No.1 and 2, were not made a party. The respondents No.1 and 2 have pleaded in their plaint, that as there was a dispute between the trustees Ramkishore Lal and Kamal Narain regarding the property of the trust i.e. of village Telibandha, therefore, the respondent No.1 and 2 remained indifferent for the same. Subsequent to the

culmination of the dispute, the property of the village Telibandha was registered as property of Public Trust thereafter, the dispute arose regarding appointment of the trustee. It is stated in the plaint that taking benefit of the dispute, the petitioners illegally procured the order dated 25.02.2006 in their favour from the respondent No.3, by which they were appointed as temporary trustees. Kanhaiya Lal Agrawal and Ramnarayan Agrawal filed civil suit challenging the appointment of the petitioners as temporary trustees, in which the petitioners moved application under Order 7 Rule 11 of C.P.C., which was allowed and the suit/application was dismissed. The order of dismissal of suit was challenged, before the High Court in W.P.(C) 1298/2007 by Ramnarayan Agrawal, in which again respondent No.1 and 2 were not made a party. The petition was decided on 05.08.2010, in which, it was observed, that from bare perusal of the Act, 1951 there is no provision for appointment of trustee by the Registrar Public Trust on temporary basis as an interim measure under Section 9 of the Act and the civil suit was restored. The other proceeding in the matter continued before the respondent No.3, in which ultimately order dated 30.10.2012 was passed appointing the petitioners as permanent trustees.

38. This situation needs examination. The respondents No.1 and 2 have pleaded in the suit about the various circumstances that were present before filing of the suit by them and also pleaded that the suit filed by them was well within limitation. The

petitioners/defendants have filed their written statement, there is no specific denial made by the respondent No.3 who were defendant No.1 in the civil suit. However, the same was denied by the other defendants, who are petitioners before this Court. The learned trial Court framed issues and one issue was framed as issue No.4 whether the suit is maintainable under Section 25 (3) of C.G. Public Trust Act and the decision on that issue has been given in positive after elaborate discussion and reasoning.

39. Now the question arises whether this Court can enter into the matter and give a decision whether the issue on the maintainability and the limitation of the suit was correctly decided by the Court below or not? Principle has been laid down and very clearly upheld by the Supreme Court in various judgments that supervisory jurisdiction of the Court under Article 227 of the Constitution of India is confined only to see whether inferior Court or Tribunal has proceeded within its parameters and there is no scope to correct an error on the face on record much less of an error of law, regarding which reference has been made in case of Sadhana Lodha Vs. National Insurance Co. Ltd. & Anr. (supra).

40. In the case of ***Essen Deinki Vs. Rajiv Kumar, reported in (2002) 8 SCC 400***, the Supreme Court has held that interference with the finding of fact is not permissible under the jurisdiction of Article 227 of the Constitution of India unless such finding is perverse or not based on any material whatsoever and causes manifest injustice. The relevant para of this judgment is as

under:-

> "5. In this context reference may also be made to a still later decision of this Court in the case of *Savita Chemicals (P) Ltd. V. Dyes & Chemical Workers' Union* wherein this Court in para-19 of the Report observed : (SCC p.166)
>
> > "Under Article 227 of the Constitution of India, the High Court could not have set aside any finding reached by the lower authorities where two views were possible and unless those findings were found to be patently bad and suffering from clear errors of law."

41. It has been similarly held in *Ms. Reena Drego Vs. Lalchand Soni (Supra),* and it was observed in paragraph-4 which reads as under :-

> "4. According to us, the High Court has traversed far beyond the limit of its supervisory jurisdiction under Article 227 of the Constitution when the learned single Judge reversed the decree of eviction which was based on findings of facts arrived at by the fact finding authority upon the evidence on record. It would have been well for the High Court to remind itself that it was not exercising certiorari jurisdiction under Article 226 of the Constitution but a supervisory jurisdiction under Article 227 which obliges the High Court to confine to the scrutiny of records and proceedings of the lower tribunal. By relying on fresh material which were not before the tribunal, the High Court should not have disturbed findings of facts in exercise of such supervisory jurisdiction. It is now well nigh settled that power under Article 227 is one of

> judicial superintendence which cannot be used to upset conclusions of facts, however erroneous those may be, unless such conclusions are so perverse so unreasonable that no Court could ever have reached them. Way back in 1954, a Constitution Bench of this Court, in Waryam Singh v. Amarnath, AIR 1954 SC 215, has pointed out that the power of superintendence conferred by Article 227 should be exercised "most sparingly and only in appropriate cases in order to keep the subordinate Courts within the bounds of their authority and not for correcting mere errors"
>
> (Emphasis supplied).

42. Therefore, now it is left to be examined, whether it is a case in which the finding given by the Court is so perverse and unreasonable that needs express interference by this Court. Before adverting to the limitation in this case, this also needs examination as to whether the order of the Registrar, respondent No.3, which has been set-aside by the impugned judgment was a sustainable order.

43. The point has been elaborately examined by the trial Court and the conclusion and decision has been given on that point the reason for the conclusion can not be referred to in this order all the same, but it can be said that there is a speaking order on the point. As the facts represented are these that this impugned order was at first challenged in First Appeal (M) No.189/2019, however, the same was withdrawn on 23.10.2019 by the petitioners/appellants with liberty to initiate appropriate

proceeding before the appropriate forum.

44. The petitioners have contended that they have filed appropriate petition under Article 227 of the Constitution of India. In *Ghanshyam Prasad Kurmi Patel Vs. Yashwant Singh (supra)*, the Madhya Pradesh High Court has held that in order passed under Section 27 (2) removing or appointment of trustee is deemed to be a decree of Court and an appeal shall lie therefrom to the High Court such an order is passed by the Court itself and i.e. the order, which has been passed by the impugned order. Therefore the Court exercising supervisory jurisdiction not having the power to set-aside the finding recorded by the trial Court has its limitation.

45. On the contrary it would have been appropriate for this Court to decide the petition as an appellate Court and then the powers of the appellate Court can not be exercised in supervisory jurisdiction. It is to be specifically noticed that the question of limitation is not a new ground raised in this petition The scope of supervisory jurisdiction is only to this extent whether the Court below has proceeded within the parameters laid down by the law and in that I do not find any error committed. Hence, this question which has been jointly considered on the point of limitation and on the point of maintainability of this petition under Article 227 is answered accordingly. The decision on the issue framed on the point of maintainability in connection with the limitation of the suit in the impugned judgment can not be set-aside by this petition.

Other than that, the objection raised and the arguments submitted by the petitioners side have been found to be without any substance, therefore, I am of this opinion that this petition is without any substance, which is dismissed accordingly.

The interim relief granted to the petitioners shall expire after six weeks from the date of pronouncement of this order.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram