(2009) 08 MP CK 0032

Madhya Pradesh High Court

Case No: None

Julious Prasad		APPELLANT
	Vs	
State of M.P. and Others Dr. S.L. Lall Vs The Registrar, Public Trust and Others		RESPONDENT

Date of Decision: Aug. 20, 2009

Acts Referred:

- Madhya Pradesh Public Trust Act, 1951 - Section 5, 6, 7

Citation: (2007) ILR (MP) 2886 : (2010) 1 MPHT 217 : (2010) 1 MPJR 40 : (2010) 1 MPLJ 659

Hon'ble Judges: A.K. Patnaik, C.J; P.K Jaiswal, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Jaiswal, J.

This order will dispose of two writ petitions, they being Writ Petition Nos. 3623 and 10326 of 2007. In both the writ petitions, the petitioner challenges the order dated 13-2-2007 passed by the Registrar, Public Trust, Damoh in Revenue Case No. 3-B/113 (1)/2002-2003, wherein the Registrar declared the Disciples of Christ Church Committee, Damoh as Public Trust.

Petitioner-Julious Prasad of W.P. No. 3623 of 2007 is the Secretary of Disciples of Christ Church Committee, Damoh (M.P.), which is affiliated to Indian Church Council Disciples of Christ, a society registered under the M.P. Societies Registrikaran Adhiniyam, 1959, having Registration No. 286. The entire affairs of the Society are being managed by the Council. It consists of nine members who are known as elders, who have been managing the affairs of the Church. Somewhere in the 1895

the Church was constructed on Nazul Sheet No. 41, Plot No. 86 situated at Damoh. As per revenue record, out of total area of 3.82 acres, an area of 2.48 acre was recorded in the name of Secretary, Christian Missionary Society vide Revenue Case No. 57-7/2 year 1940-41 and an area of 1.34 acre was recorded in the name of Secretary, Convention of Christ Church, Damoh. On 24-4-1973 an application for renewal of lease over the aforementioned area of 3.82 acre was filed by Indian Church Council Disciples of Christ Church (for short ''the ICCDC'') through Shri Henry Imanual, Chairman, Disciples of Christ Church, Damoh. The respondent No. 2, i.e., Collector, Damoh after considering all the objections and after hearing all of them decided the matter of renewal of lease vide order dated 10-7-2006 and granted renewal over an area of 1.32 acre of plot No. 86/2 in favour of Disciples of Christ Church, Damoh.

During the pendency of renewal application, there arose a serious dispute with regard to management of Disciples of Christ Church, Damoh.

On 31-3-2003 respondent Nos. 4 and 5 filed an application u/s 5 of M.P. Public Trust Act, 1951 (for short ''the Act'') before respondent No. 3 and prayed that they belong to Christian community and they since their ancestors are residents of District Damoh and their community has a Church situated at Motor Stand, Railway Station Road, Damoh known as Disciples of Christ Church and prayed that the properties situated at Nazool Sheet No. 41, plot No. 86 having total area 3.82 acres be declared as a Public Trust. The petitioner and respondent Nos. 6, 7 and 8 were impleaded as non-applicant No. 4, non-applicant No. 1, non-applicant No. 2 and non-applicant No. 3. The Registrar issued public notice which was published in the M.P. Gazette and invited objections in Form IV of Rule 5 (1) of M.P. Public Trust Rules, 1962 (for short ''the Rules'') on 9-1-2004. The petitioner and respondent Nos. 6 to 8 filed their objections and contended that ICCDC is a Society of Disciples of Christ Church constituted in the year 1960-61 and is registered under M.P. Societies Registrikaran Adhiniyam, 1959 on 13-12-1962, vide Registration No. 286/1962 and it is this Society which is managing the affairs of the Church and paying taxes to the local authorities and the provisions of M.P. Public Trust Act is not applicable to it. The petitioner also contended that the affairs and the properties of a registered Society are administered under the Registration Adhiniyam and, therefore, a registered Society will fall within the Exemption contained in Section 36(1) (b) of the M.P. Public Trust Act, 1951. With the above they prayed for dismissal of the application.

The Registrar after considering the oral and documentary evidence came to the conclusion that no evidence has been brought on record substantiating that the respondent Nos. 4 and 5 are having any title over the property whereas the petitioner and respondent Nos. 6 to 8 have brought on record the evidence to the effect that Damoh Church Society is part of ICCDC, which bears registration No. 286/1962. The Registrar also held that the Society works in a transparent manner as per the regulations of the Society and being a society registered under M.P.

Societies Registrikaran Adhiniyam, 1959, it need not be registered under Public Trust nor it need be registered under M.P. Public Trust Act, 1951. The Registrar further held that the application has not been presented as per Rule 4 of M.P. Public Trust Rules, 1962. With these findings the learned Registrar rejected the application by order 28-3-2005 (Annexure P-5).

After the Registrar had given findings in the case, he is required to enter the findings in the prescribed register and to publish copies to those findings upon the Notice Board in his office and those entries become final subject to the provisions of Section 7 of the Act. If respondent Nos. 4 and 5 were aggrieved by any finding of the Registrar recorded u/s 6 of the Act, they could challenge such finding by instituting a civil suit in a Civil Court within six months of publication of notice under Sub-section (1) of Section 7 of the Act to have such finding set aside or modified. The respondent Nos. 4 and 5 instead of challenging the findings of the Registrar filed an application before the respondent No. 2, Collector, challenging the order of the Registrar dated 28-3-2005. Respondent No. 2 rejected the application vide order dated 9-11-2006 (Annexure P-7) by holding that it was not open to the Collector to entertain the application and record his own finding and held that under the Act there is no provision to examine the order passed by the Registrar, Public Trust and rejected the same.

Respondent No. 2 while rejecting the application also held that under the Act, he has no power to review or modify his own order. Respondent Nos. 4 and 5 instead of filing a civil suit u/s 8 of the Act, filed a writ petition challenging the order dated 9-11 -2006 (Annexure P-7) and also prayed for issuance of writ of mandamus directing the Registrar to comply with the provisions of Sections 6 and 7 (1) of the Act and to supply desired documents to them. In the said writ petition, petitioner No. 1 and respondent Nos. 6 to 8 were not impleaded. Learned Single Judge vide order dated 14-12-2006 disposed of the writ petition at motion hearing stage and directed that Registrar, Public Trust shall make compliance of Sections 6 and 7 of the Act and shall further supply certified copies of the entries of the register in accordance with law within a reasonable time. The order dated 14-12-2006 passed by the learned Single Judge in W.P. No. 18499/2006 is relevant which reads as under:

14-12-2006

Shri Prashant Singh, Counsel for the petitioners. Shri Vinod Mehta, G.A. for Respondents/State. Grievance of the petitioner is that an enquiry was held u/s 5 of the M.P. Public Trusts Act, 1951 and the application u/s 5 was dismissed vide order dated 28-3-2005 contained in Annexure P-5. Section 6 of the said Act makes it compulsory for the Registrar to record his findings with reason at completion of the enquiry u/s 5. Thereafter, by virtue of Section 7 Registrar is obliged to cause entries in the register in accordance with the finding and to publish the same on the notice board of the office. Section 6 enables an aggrieved person to institute a suit in Civil Court for setting aside such findings.

Shri Prashant Singh, learned Counsel for the petitioners stated that the Registrar has not made entries of the findings in the register, as required u/s 7 and consequently, the petitioner has been unable to institute the civil suit.

In view of the aforesaid provisions of M.P. Public Trusts, 1951, this petition is disposed of with the direction that respondent No. 3 shall make compliance of Sections 6 and 7 of the said Act and shall further supply certified copies of the entries of the register against

Annexure P-6 or otherwise in accordance with law within a reasonable time.

The writ petition, accordingly, stands disposed of.

The respondent No. 3, Registrar instead of recording his findings with reasons and making entries in the Register in accordance with the findings recorded u/s 6, as per final order dated 28-3-2005 (Annexure P-5) directed the parties to submit their affidavits, thereafter, objections and reply prepared by the parties were considered by the Registrar and after considering the decision of the Apex Court in the case of Churches of North India v. Lavaji Bhai Ratan Ji Bhai and Ors. AIR 2005 SC 2544, has arrived at the conclusion that the Church can be registered as public trust under the M.P. Public Trust Act and in compliance with the order dated 14-12-2006 passed by the learned Writ Court directed that the "Disciples of Christ Church, Damon" be registered as Public Trust u/s 6 of the M.P. Public Trust Act, 1951 and the trust property situated at Civil Station Damoh Nazool Sheet Nos. 41, 42, Plot No. 86/2 area 1.30 acre be registered as immovable property of the Trust. It is this action which is impugned in this petition on the ground that under the Act, Registrar has no power to re-open or review the matter nor there was any direction by the Writ Court to decide the matter afresh.

It has been urged by Mr. Choudhary, learned Counsel appearing on behalf of the petitioner, that the Registrar had no power of review under the provisions of M.P. Public Trust Act, 1951 and, as such, the Registrar acted wholly without jurisdiction in entertaining an application filed by the respondent Nos. 4 and 5. Further it is submitted that the order passed by the Registrar is wholly without jurisdiction and there is no provision under the Act, whereby Registrar can reverse the finding given by his predecessor vide order dated 28-3-2005.

On the other hand, Mr. Shukla and Prashant Singh, learned Counsel appearing for the respondent Nos. 1 to 5, supported the impugned action of the Registrar, Public Trust and submitted that the order has been passed in compliance with order dated 14-12-2006 passed in W.P. No. 18499/2006 and the impugned order of the Registrar is legal and valid.

We have heard learned Counsel for the parties and perused the record of the case. Sections 4, 5, 6, 7 and 8 of the M.P. Public Trusts Act, 1951 are quoted herein below:

4. Registration of public trusts.- (1) Within three months from the date on which this section comes into force in any area or from the date on which a public trust is created, whichever is later, the working trustee of every public trust shall, apply to the Registrar having jurisdiction for the registration of the public trust.

(2) Such application shall be accompanied by such fees, if any, not exceeding five rupees as may be prescribed.

(3) The application shall be in such form as may be prescribed and shall among other things contain the following particulars, namely:

(i) the origin, nature and object of the public trust; * (ii) the place where the principal office or the principal place of business of the public trust is situate;

(iii) the names and addresses of the working trustee and the manager;

(iv) the mode of succession to the office of the trustees;

(v) the list of the movable and immovable trust property in the State and such description and particulars as may be sufficient for the identification thereof;

(vi) the approximate value of the movable and immovable property;

(vii) the income derived from movable and immovable property and from any other source, if any, based on the gross annual income during the three years immediately preceding the date on which the application is made or of the period of which has lapsed since the creation of trust whichever period is shorter and in the case of newly created public trust the estimated income from such sources;

(viii) Amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the period to which the particulars under (vi) relate;

(ix) the address to which any communication to the working trustee or manager in connection with the public trust may be sent; and

(x) such other particulars as may be prescribed:

Provided that the rules may provide that in the case of any or all public trusts it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein.

(4) No Registrar shall proceed with any application for the registration of a public trust in respect of which an application for registration has been filed previously before any other Registrar and the Registrar before whom the application was filed first shall decide which Registrar shall have jurisdiction register the public trust.

(5) An appeal against the order of the Registrar under Sub-section (4) may be filed within thirty days of the order before such officer as the State Government may, by notification, appoint and, subject to the decision in such appeal, the order of the

Registrar under Sub-section (4) shall be final.

(6) Every application made under Sub-section (1) shall be signed and verified in accordance with the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for signing and verifying plaints. It shall be accompanied by a copy of an instrument of trust if such instrument had been executed and in existence and where the trust property includes immovable properly, about which record is kept, a copy of the entries relating to such property in such record of rights.

Inquiry for registration.- (1) On receipt of an application u/s 4 or upon an application made by any person having interest in a public trust or on his own motion, the Registrar shall make an inquiry in the prescribed manner for the purpose of ascertaining,:

(i) Whether the trust is a public trust;

(ii) Whether any property is the property of such trust;

(iii) Whether the whole or any substantial portion of the subject-matter of the trust is situated within his jurisdiction;

(iv) The names and addresses of the trustee and the manager of such trust;

(v) The mode of succession to the office of the trustee of such trust;

(vi) The origin, nature and object of such trust;

(vii) The amount of gross average annual income and the expenditure of such trusts; and

(viii) The correctness or otherwise of any other particulars furnished under Sub-section (3) of Section 4.

(2) The Registrar shall give in the prescribed manner public notice of the enquiry proposed to be made under Sub-section (1) and invite all persons interested in the public trust under inquiry to prefer objections, if any, in respect of such trust.

Findings of the Registrar.- On completion of the inquiry provided for u/s 5, the Registrar shall record his findings with reasons therefore as to the matters mentioned in the said section.

Registrar or make entries in the Register.- (1) The Registrar shall cause entries to be made in the register in accordance with the findings recorded by him u/s 6 and shall publish on the notice board of his office the entries made in the register.

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

Civil Suit against the finding of the Registrar.- (1) Any working trustee or person having interest in a public trust or any properly found to be trust property, aggrieved by any finding of the Registrar u/s 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 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.

The provisions of Sections 4, 5 and 8 clearly show that the enquiry is to be made by the Registrar with a view to ascertain the existence of a public trust, on an application by the working trustee or any person interested in a public trust or on his own motion. The Scheme of the Act shows that after holding an enquiry, as provided u/s 5, the Registrar has to record his findings with reasons therefore and Section 7 enjoins making of entries in the register in accordance with the findings recorded u/s 6. Sub-section (2) of Section 7 lays down that the entries so made shall, subject to the provisions of the Act, be final and conclusive. Section 8 confers a right upon a person who is aggrieved by any finding of the Registrar u/s 6 to institute a suit in a Civil Court within six months to have such finding set aside or modified. In view of these provisions the order dated 28-3-2005 in which it was held that Damoh Church Society is part of ICCDC registered under the M.P. Societies Registrikaran Adhiniyam, and it was neither needed to be registered under Public Trust, nor needed to be registered under M.P. Public Trust Act, 1951 had become final and conclusive and the only remedy available to respondent Nos. 4 and 5 was to institute a civil suit u/s 8 of the Act for setting aside the said finding. As per order dated 14-12-2006 in W.P. No. 18499/2006 which is re-produced herein before, there was no direction by the learned Single Judge to re-consider the application u/s 5 of the Act afresh. The only direction of the learned Single Judge was that respondent No. 3 shall make compliance of Sections 6 and 7 of the Act and shall further supply certified copies of the entries of the register to respondent Nos. 4 and 5 in accordance with law within a reasonable time.
It is now well established that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. It is not disputed that the provisions of the M.P. Public Trust Act, 1951 and the Rules made thereunder do not confer any power of review on the Registrar. In these circumstances, it was not open to the Registrar to record a finding that the Church should be registered as a Public Trust and to declare the Church property as a Public Trust Property.

ICCDC is a society registered under the M.P. Society Registrikaran Adhiniyam, 1959. The Madhya Pradesh Societies Registration Act, 1959 was repealed by the Madhya Pradesh Societies Registrikaran Adhiniyam, 1973. This 1973 Act in Section 3 (e) defines a society to mean "a society registered or deemed to have been registered under this Act". The 1973 Act further contains a provision that the societies registered under the Act repealed would be deemed to be registered under the 1973 Act. The 1973 Act also contain many provisions which give extensive powers of control to the Registrar over the affairs of a Society. Section 11 empowers the Registrar to amend the memorandum, regulations and bye-laws of a, society if he considers that the amendment is necessary in the interest of the society. Section 21 provides that a society cannot acquire or transfer any immovable property without the prior permission of the Registrar. Section 25 enumerates the books of account which are to be kept by a society. Section 26 empowers the Registrar to seize records, registers or the books of account of a society. The Registrar can also take possession of funds and property of the society through a duly authorized person. Section 28 authorizes the Registrar to order a special audit. Section 32 empowers the Registrar to hold an enquiry into the constitution, working and financial position of a society and states that the decision of the Registrar is binding on the society. The 1973 Act also authorizes the State Government u/s 33 to supersede society in case of mis-management and to remove the Governing Body and appoint a person to manage the affairs of a society.

From the above narration it is clear that a registered society in Madhya Pradesh is governed by the Madhya Pradesh Society Registrikaran Adhiniyam, 1973, which is the Act currently in force. This Act contains many provisions which confer extensive powers upon the Registrar and the State Government over the affairs of the Society. If the provisions of the 1973 Act are compared with the provisions contained in the Public Trust Act, it will be seen that the Registrar and the State Government exercise more powers of control over a registered society than exercised by the Registrar under the Public Trust Act over a registrar public trusts. The object of the Public Trust Act was to provide for control over the affairs of a Public Trust. The same object is achieved in case of societies by elaborate provisions contained in the 1973 Act.

In the case of Shankersingh and Ors. v. Sanstha Sonabai Shravikashram, Khurai and Anr. 1976 JLJ 465, it was held that a registered society formed for religious and charitable purpose is no doubt a public trust, but as it is administered under the Madhya Pradesh Society Registrikaran Adhiniyam, 1973, it is a public trust administered under any enactment for the time being in force within the exemption contained in Section 36 (1) (b) of the Public Trust Act. The provisions of Madhya Pradesh Society Registrikaran Adhiniyam, 1973 are quite clear that the properties of a registered society are administered under that Act and, therefore, a registered society will fall within the exemption contained in Section 36 (1) (b) of the Public Trusts Act.

In the case of Shri Nabhi Nandan Digambar Jain Hitopdeshani Sabha v. Rameshchand 1983 JLJ 469, the learned Single Judge following the decision of the Division Bench in the case of Shankersingh v. S.S. Shravikashram (supra), has held that all societies registered under the M.P. Societies Registration Act and formed for charitable purposes and not Public Trusts and the provisions of Public Trust Act are not applicable. In the present case, the learned Registrar without any evidence to show that ICCDC is a Trust having trustees and beneficiaries had committed an error in directing that the Society of Disciples of Christ Church be registered as a Public Trust and that too by modifying its earlier order dated 28-3- 2005.

The Registrar while passing the impugned order dated 13-2-2007, relied on the decision of the Apex Court in the case of Church of North India v. Lavajibhai Ratanjibhai and Ors. AIR 2005 SC 2544, wherein the Church was registered both as Society and Religious Trust and the dispute was in relation to the management of the Church as Religious Trust and not as a Society. The facts of that case are quite different and, therefore, the said decision of the Hon''ble Apex Court will not be applicable in the present facts and circumstances of the case. In the facts of the present case, in the order dated 14-12-2006 passed in W.P. No. 18499/2006, the learned Single Judge has nowhere directed the Registrar to consider the application fresh. By the said order the learned Single Judge has only directed the Registrar, Public Trust to comply with Sections 6 and 7 of the Madhya Pradesh Public Trust Act, 1951 and to supply certified copies of the entries of the register but the Registrar instead of making entries in the register re-opened the entire matter and by passing the impugned order dated 13-2-2007 acted wholly without jurisdiction in reviewing the earlier order dated 28-3-2005 and proceeded to allow the application of respondent Nos. 4 and 5 for declaring the Church as a Public Trust and also committed a grave error in directing that the Disciples of Christ Church be registered as a Public Trust.

For the reasons stated above, both these writ petitions are allowed. The order dated 13-2-2007 passed by the Registrar, Public Trust, Damoh in Revenue Case No. 3-B/113 (1)/2002-2003 is hereby quashed. However, in the circumstances, there shall be no order as to costs.