

**(2010) 05 MP CK 0031**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Miscellaneous Appeal No. 1119/09

Reg. Vidhichand Dharamshala  
Trust

APPELLANT

Vs

Shyam Singh and Others

RESPONDENT

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**Date of Decision:** May 14, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27, Order 6 Rule 17, Order 7 Rule 11
- Madhya Pradesh Public Trust Act, 1951 - Section 26
- Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 - Section 12(1), 3(2)

**Citation:** (2010) ILR (MP) 49 : (2010) 3 MPJR 142 : (2010) 3 MPLJ 428

**Hon'ble Judges:** Abhay M. Naik, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

Abhay M. Naik, J.

This appeal has been preferred by the plaintiff/landlord against a remand order dated 15/7/09 passed by the Court of Second Additional District Judge, Gwalior.

Short facts, relevant for the purposes of this appeal are that the plaintiff/appellant is a registered Public Trust. It instituted a suit for eviction and recovery of arrears of rent on grounds under Sections 12(1) (a),(b) & (c) of the M.P. Accommodation Control Act, 1961. It is pleaded in the plaint that the plaintiff is the registered Public Trust whose entire income is utilised for public benefits like education, medicine and financial aid to old and helpless persons. It is exempted from the provisions of the M.P. Accommodation Control Act, therefore it is not required to prove any of the grounds under the Act. The tenancy of the defendants has been duly terminated by issuing notice dated 8/5/01. Despite such termination, the defendants did not vacate the suit premises, hence, the suit.

Suit of the plaintiff was opposed on various grounds. It was denied that the entire income of the plaintiff/trust was being utilised for the purposes stated in the plaint.

Learned trial judge recorded the evidence. Thereafter, at the time of final arguments, it was specifically and expressly stated on behalf of the plaintiff/appellant that grounds u/s 12(1) (a)(b) &(c) were not pressed (thus, Issues Nos. 2,3,4 and 5 pertaining to those grounds were not pressed). Learned trial judge vide his impugned judgment and decree dated 30/9/08, found that the tenancy was duly terminated. It was further found that the plaintiff was a registered Public Trust and was exempted from the provisions of the M.P. Accommodation Control Act, 1961 in view of the Notification dated 7/9/89. Accordingly, the decree for eviction was granted in favour of the plaintiff.

Aggrieved by the aforesaid, defendants preferred Civil Appeal No. 1-A/08. During pendency of this appeal, defendants/appellants submitted an application under Order 6 Rule 17 CPC for incorporating paragraph 9 (a) in the written statement. Proposed amendment was that the SDO vide his order dated 12/3/07 has found that the trustees of the plaintiff/trust have misutilised the income of the trust for their personal interest. This apart, the President of the trust, namely, Shri Raghav Garg has admitted in paragraph 12 of his statement that the suit property is not included in the trust deed. Accordingly, the plaintiff is not entitled to benefit under Sub-section (2) of Section 3 of the M.P. Accommodation Control Act, 1961.

An application under Order 41 Rule 27 CPC was also submitted by the tenants/defendants before the lower appellate court, which was accompanied by certified copy of order dated 19/12/06 passed by the Registrar Public Trust (SDO) and photocopy of the certified copy of the order dated 12/3/07 passed by the Registrar Public Trust (SDO). Learned lower appellate court vide impugned judgment set aside the judgment and decree of the trial court. It allowed the application under Order 6 Rule 17 CPC and granted permission to take documents on record submitted by the defendants/tenants. Plaintiff was also directed to make consequential amendments and to submit documents in rebuttal. Learned trial judge was thereafter directed to record necessary evidence and decide the suit afresh. It also directed the learned trial judge to decide Issue Nos. 2 to 5 on merits despite the fact that they were not pressed, in specific, by the plaintiff, as clearly mentioned in the judgment of the trial court. Aggrieved by the aforesaid, present appeal has been preferred.

Shri M.B. Mangal, learned Counsel for the appellant and Shri V.K. Bhardwaj, learned Senior Advocate assisted by Shri Raja Sharma, Advocate for the respondents made their respective submissions which have been considered in the light of the material on record.

It has been contended by Shri Mangal, learned Counsel for the appellant that the learned lower appellate judge has made remand which is not at all warranted in the

facts and circumstances of the case. Learned Additional District Judge has committed an illegality in taking the documents on record without allowing application under Order 41 Rule 27 CPC. Otherwise also, the documents proposed as additional evidence could not have been legally taken on record. Similarly, the application for amendment has also been allowed ignoring the proviso to Order 6 Rule 17 CPC. This apart, learned Additional District Judge, has committed grave illegality in directing the trial court to decide certain Issues which were not pressed by the plaintiff.

Shri Bhardwaj, learned Sr. Advocate appearing for the respondents supported the impugned remand order.

First of all, I will take up the grievance of the appellant with regard to direction by the learned Additional District Judge to the trial court to decide un-decided Issues (i.e. Issue Nos. 2 to 5).

On perusal, it is found that the plaintiff in the plaint pleaded that the defendants were in arrears of rent w.e.f., 1/12/2000 @ 200 p.m., which was not paid or tendered within the statutory period of two months despite service of notice of demand. This constitutes a ground u/s 12(1)(a) of the M.P. Accommodation Control Act, 1961. Likewise, the plaintiff pleaded that the defendants have parted with possession of the suit property or part thereof to a third person for consideration or otherwise and have, thus, made themselves liable to be evicted u/s 12(1)(b) of the Act. Similarly, it has been further pleaded that the defendants have committed an act which is inconsistent with the purpose of tenancy and have, thus, made themselves liable to be evicted u/s 12(1)(c) of the Act. Factual averments relating to aforesaid three grounds were denied by the defendants in their written statement. Therefore, learned trial judge had raised Issue Nos. 2 to 5 in respect of aforesaid three grounds. However, it is observed that the plaintiff in paragraph 8 of the plaint has clearly pleaded that the plaintiff is a registered Public Trust and its entire income is being utilised for the benefits like education, medicine and financial aid to old and helpless persons. It has been clearly averred in this paragraph that the plaintiff is exempted from the provisions of M.P. Accommodation Control Act and therefore, it is not required to prove any of the grounds mentioned in Section 12(1) of the Act. In view of this background, the plaintiff did not press Issue Nos. 2 to 5 which has been so recorded by the trial court in its judgment itself. Learned Additional District Judge has observed in paragraph 19 that none of the parties to the suit has a right to forgo any ground at the time of final arguments. This approach of the learned Additional District Judge is virtually shocking. If the plaintiff does not wish to press any specific ground for eviction there is no law which prevents him from such withdrawal. There is no law in our system which compels a plaintiff to press a ground for eviction against his own wishes. Learned Additional District Judge has observed that since the pleadings were contained in the plaint and were not withdrawn, the learned trial court was under an obligation to decide them on merits

despite having been not pressed. Learned Additional District Judge has further observed that the trial court could not have endorsed any remark in the judgment in the absence of deletion of pleadings from the plaint that the plaintiff did not press Issue Nos. 2 to 5. This reasoning assigned by the learned Additional District Judge is obviously ridiculous. Learned Additional District Judge has, nowhere, mentioned the provisions of law wherefrom he may be said to have derived the strength. It is a matter of sheer common sense that if the plaintiff in a suit for eviction does not want to press any ground, he despite pleadings and proofs, may forgo his claim for eviction on that particular ground. His this right is unfettered and cannot be controlled by the court contrary to his wishes. Plaintiff has clearly a right to relinquish any ground for eviction at any stage. Learned Additional District Judge has not mentioned any provision of law in the impugned order which debars the plaintiff from relinquishing any ground for eviction even at the stage of final arguments or before. It is not a case where the plaintiff has sought liberty to file a fresh suit on the said ground. In such situation, the position could have been different, but in the instant case, where the plaintiff expressly and specifically pleaded in the plaint that the plaintiff being registered Public Trust, is exempted from the provisions of M.P. Accommodation Control Act, 1961 and in the background of the same, if the plaintiff declared his intention not to press the grounds, learned trial judge was fully justified in not deciding those issues after putting a clear remark that the same were not pressed by the plaintiff.

Moreover, it may be seen that the defendants/appellants before the lower appellate judge were not aggrieved at all by the trial court's action of not deciding Issue Nos. 2 to 5 on account of having been not pressed by the plaintiff. It would have been a different thing had the trial court granted a decree for eviction on the basis of findings on any of the issues out of Issue Nos. 2 to 5. Had it been so, the defendants could have brought their grievance before the lower appellate judge. Since, no decree was granted on Issue Nos. 2 to 5 on account of having been not pressed, there was no occasion for the learned Additional District Judge to entertain an objection on behalf of the defendants regarding absence of findings on Issue Nos. 2 to 5. These Issues having been not pressed by the plaintiff, were rightly left over by the learned trial judge as un-decided.

It is again not a case where the plaintiff has expressed his grievance that the issues were pressed and yet not decided. In the instant case, there is no dispute that the Issue Nos. 2 to 5 were not pressed and rather relinquished expressly during final arguments. This being so, learned trial judge had rightly chosen not to decide Issue Nos. 2 to 5 on account of having been not pressed by the plaintiff. Accordingly, it is held that the learned Additional District Judge has illegally acted in directing the trial court to decide on merits Issue Nos. 2 to 5 despite oral relinquishment expressed during final arguments by the plaintiff.

It has been further contended that applications under Order 6 Rule 17 CPC as well as under Order 41 Rule 27 CPC have been allowed illegally.

Application under Order 41 Rule 27 CPC has been allowed partly only in respect of certified copy of the Reference Petition dated 3/4/07, made by the Registrar Public Trust, Gwalior to the Court of District Judge, Gwalior.

On perusal of this document it appears that this is an application u/s 26 of the M.P. Public Trust Act, 1951, which provides that the Registrar of the public trust being satisfied that

(a) the original object of the public trust has failed;

(b) the trust property is not being properly managed or administered; or (c) the direction of the court is necessary for the administration of the public trust;

shall submit an application to the court to seek directions.

Although, Section 26 of the Public Trust Act, 1951 postulates the satisfaction of the Registrar of Public Trust in respect of failure of original object of the public trust, mismanagement and/or maladministration of trust property and necessity of direction for administration of the trust, it does not contemplate any inquiry in strict sense, about utilisation of the entire income of the trust for itself or misutilisation of the income of the trust for the purpose other than that of the trust. On receipt of an application u/s 26 of the said Act, the court is required to make an inquiry u/s 27 of the Act and to pass such orders as it may consider appropriate. The inquiry contemplated in Section 27 of the Act is to be obviously biparte inquiry. It is not a case of the defendants that an inquiry on the basis of the application has been concluded and any kind of utilisation of the income of the trust for the purpose other than of the trust has been found by the District Court. Proposed document dated 3/4/07 is merely an application submitted by the Registrar Public Trust with a prayer to dissolve the Board of trustees and to appoint a new one. This being so, the proposed document itself does not amount to any kind of evidence that there is non-utilisation of the income of the trust for the trust itself. Thus, it does not advance the defence of the defendants with regard to non-utilisation of the income of the trust. This apart, it may be seen that the defendants themselves have mentioned in paragraph 5 of the application under Order 41 Rule 27 CPC that the proposed documents were produced in the trial court with application under Order 7 Rule 11 CPC which were not taken on record. Thus, the defendants were well aware of the documents since long and no reason has been assigned for not producing the certified copy at earlier stage. Proposed document was within the knowledge of the defendants and no explanation has been given that why certified copy of the same was not procured at trial stage. It is not a choice of a litigant to obtain certified copy at any stage despite having its knowledge from the beginning and to seek leave for being taken on record at appellate stage. Learned Additional District Judge has, nowhere, mentioned that how merely the application submitted

to the court would help the court to resolve the controversy with regard to utilisation or non-utilisation of the income of the trust in the activities of the trust itself. Proposed document dated 3/4/07 is merely an application submitted to the court which is required to give finding only after an inquiry. Such an application would merely establish that it has been submitted before the court and nothing more. Findings of the court on application u/s 26 of the M.P. Public Trust Act, 1951 are not found to have been placed on record which, at the most, could have served the purpose.

In view of the aforesaid discussion, it is held that the certified copy of mere application dated 3/4/07 submitted by Registrar, Public Trust, before the court will not serve any purpose and will not facilitate the court in deciding the controversy involved. Additionally, it may be seen that the plaintiff in paragraph 8 of the plaint has already averred that the entire income of the trust is being utilised for achieving benefits of the trust. This was refuted, in specific, in paragraph 8 of the written statement. Evidence by the parties has already been adduced in the trial court in the light of the existing pleadings, which is on record. Contents of the application u/s 26 of the M.P. Public Trust Act, 1951 submitted before the court of District Judge, Gwalior did not amount to evidence by itself and therefore there is no propriety in admitting it as additional evidence. Learned Additional District Judge has acted illegally even in allowing partly the application under Order 41 Rule 27 CPC in respect of certified copy of the application u/s 26 of the M.P. Public Trust Act, which was submitted by the Registrar Public Trust to the Court of District Judge, Gwalior for seeking direction. The same is hereby rejected.

As regards application under Order 6 Rule 17 CPC allowed by the learned Additional District Judge, it may be seen that the defendants sought leave to incorporate averments to the effect that according to the order dated 12/3/07 passed by the SDO( Registrar Public Trust), the income of the trust has been utilised by the trustees for their personal use and has been, thus, misappropriated. Apart from this, it is also sought to be added that the plaintiff in paragraph 12 of the statement has admitted that the suit property is not mentioned in the trust deed (Ex.P/3). Therefore, the plaintiff is not entitled to the benefit of Section 3(2) of the M.P. Accommodation Control Act, 1961.

It may be seen that the order dated 12/3/07 is passed by the Registrar Public Trust while ensuring his satisfaction about the allegations levelled before him. Pursuant thereto he has already submitted an application before the District Judge, Gwalior u/s 26 of the M.P. Public Trust Act, 1951. Thereafter, the court is required to hold an inquiry as prescribed under Sub-section (1) of Section 27 of the Act. Thus, the order dated 12/3/07 cannot be said to have contained the findings about utilisation or mis-utilisation of the income of the trust. Such findings are required to be given by the court entertaining an application and exercising powers u/s 27 of the Public Trust Act. This being so, the averments pertaining to the order dated 12/3/07 are

not necessary for the adjudication of the controversy involved in the suit. Similarly, what the President of the Trust on behalf of the plaintiff has stated in paragraph 12 of his statement, may be referred to at the time of arguments because it is a part and parcel of the record. It is not required to be pleaded at all. Thus, the learned Additional District Judge has obviously committed an illegality in allowing the amendment application without taking into consideration the substance of the proposed amendment. Application for amendment also stands rejected.

Now, this Court considers the most crucial question involved in the matter.

Learned Additional District Judge has remanded the matter to the learned trial court after setting aside the judgment and decree of the trial court for deciding Issue Nos. 2 to 5 on merits and for redeciding Issue No. 6 after granting opportunity to both the parties.

Shri Mangal, learned Counsel for the appellant, submitted that since the plaintiff is a registered trust, it is exempted from the provisions of the M.P. Accommodation Control Act, 1961 by virtue of Notification dated 7/9/1989.

Per contra, Shri V.K. Bhardwaj, learned Sr. Advocate, the plaintiff will not be entitled to benefit u/s 3(2) of the Act merely on account of registration as Public Trust, unless it is established that whole of the income from the trust is utilised for the trust itself. In view of the rival contentions made in paragraph 8 of the plaint as well as written statement, it is obvious that the defendants have not admitted that the income of the plaintiff/trust is utilised for the trust itself. This has been specifically denied in paragraph 8 of the written statement. At this stage, I feel it appropriate to reproduce Section 3 of the Act as well as the Notification dated 7/9/1989, which runs as under:

Section 3. Act not to apply to certain accommodation.-

(1)

(a)

(b)

(2) The Government may, by notification, exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilised for that institution or nursing home or maternity home.

Notification No. F-24-(4)-83-XXXII-I, dated 7th September, 1989-In exercise of the powers conferred by Sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961), the State Government hereby exempts all the accommodation owned by

(i) the Wakf, registered under the Wakf Act, 1954 (No. 29 of 1954), or

(ii) the public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (No. XXX of 1951), for an educational religious or charitable purpose,

from all the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961).

A perusal of the aforesaid makes it clear that blanket exemption has not been granted to registered Public Trust as per the language of the Statute. By virtue of Sub-section (2) of Section 3 of the Act, the Government is empowered to exempt from all or any of the provisions of the Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home. The power of the Govt. to issue notification for exemption may be exercised for the purposes of Section 3 only when whole of the income derived from the institution is utilised for the institution itself. Provisions of registration of Public Trust are contained in Chapter II of the M.P. Public Trust Act, 1951. On receipt of an application for registration, the Registrar Public Trust as per Section 5 of the said Act is empowered to make an inquiry in the prescribed manner for the purpose of ascertaining the following

(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.

At the stage of registration, the Registrar is not required to make a substantial inquiry about utilisation of entire income of the trust with a view to determine that entire income is utilised for the trust itself. Moreover, Sub-section (2) of Section 3 is couched in the specific manner so that the trust may not be able to avail the facility of exemption if entire income of the trust is not utilised for the trust itself. If the trustees or any one of them is found to be involved in utilisation of the income of the trust for the purposes of other than that of trust, without there being any objection on the part of the trust or its management, such a trust will stand precluded from obtaining the benefit of exemption u/s 3 of the M.P.

Accommodation Control Act. It is true that the plaintiff is a registered trust but the defendants/tenants have, obviously, a right to dispute the entitlement of the plaintiff to the said exemption by refuting the utilisation of the plaintiff's entire income for the plaintiff itself.

I may profitably refer to this Court's decision in the case of *Laxminarayan v. Nagar Palika, Mandsaur 1982 MPW 172* wherein while dealing with the scope of exemption it has been observed that:

In order to get benefit of the exemption, all facts essential to entitle him to claim the benefit of the exemption have to be pleaded and proved.

Validity of Section 3(2) of M.P. Accommodation Control Act, 1961 and the Notification dated 1989 exempting the application of the said Act has been upheld by Hon. Supreme Court of India in the case of *Betibai and Ors. v. Nathooram and Ors. 1999(2) J LJ 380*. In the case of *Betibai (supra)* it is observed that a landlord entitled to the benefit of the said exemption can straightway file a suit for eviction after serving a quit notice. Thus, it is clear that a registered Public Trust would be able to avail the benefit of exemption so long as its income is utilised for the trust itself. In a suit for eviction, if it is established that the entire income of the trust is not utilised for the trust itself, the plaintiff would no more be entitled to seek benefit of exemption. This may be proved by the defendants by producing reliable evidence in due manner. It is a trite law that a case is to be decided on the basis of the evidence recorded in it, as held by the Apex court in the case of *Mitthulal and Anr. v. State of M.P. 1975 J LJ 432*.

It is equally clear that utilisation of income of the trust for any purpose other than that of Trust must be with the express or implied consent of the trust or atleast within the knowledge of the trust with no objection. In such a situation, the benefit of exemption may be denied to the trust. Thus, it is clearly observed that if the defendant succeeds in establishing by cogent evidence that the utilisation of the entire income of the trust has not been made for the trust itself or that the utilisation of the income of the trust has been made for the purpose other than that of the trust, a suit for eviction by trust under the shelter of exemption of Section 3 of M.P. Accommodation Control Act, 1961 read with the aforesaid notification is liable to be dismissed in the absence of existence of any of the grounds enumerated under Sub-section (1) of Section 12 of the said Act.

In the instant case, both the parties have already led evidence in support of their respective pleadings which include the objection about non-utilisation of the entire income of the trust for the trust itself. Learned lower appellate judge after considering the entire evidence on record shall have to give a specific finding about utilisation of the entire income of the plaintiff's trust for the trust itself. If the plaintiff fails to prove such utilisation, he, in the absence of proof about any of the grounds contained in Sub-section (1) of Section 12 of the M.P. Accommodation

Control Act, 1961, will be liable to be non-suited. Since other grounds, i.e., u/s 12(1)(a),(b), & (c) have already been relinquished, on account of not pressing them, learned lower Appellate Judge is now not required to consider evidence pertaining to them. He has to consider and make scrutiny only of the evidence on record relating to utilisation/non-utilisation of the entire income of the trust with reference to purposes. This could have been made by the learned lower appellate judge himself. In the facts and circumstances of the case, the remand was not required at all and the same being unwarranted, appeal is hereby allowed in part. Impugned order is hereby set aside. Learned lower appellate judge is directed to decide the appeal afresh in the light of the aforesaid discussion within a period of three months from the date of appearance.

Parties to appear before the lower appellate court on 20th May, 2010.

Record of the courts below be sent back immediately.

No order as to costs.