

HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SINGLE BENCH:

HON. SHRI JUSTICE ROHIT ARYA

WRIT PETITION NO.3202/2010

.....Petitioner: Maa Sheetla Sayapeeth Mandir
Vyavasthapan Samiti/Shitla
Mata Kalyan Samiti

Versus

.....Respondents : State of M.P. and others

Shri K.S. Tomar, Senior Advocate, assisted by Shri S.S. Tomar,
Advocate for petitioner.

Smt. Nidhi Patankar, Government Advocate for
respondents/State.

Date of hearing : 01/09/2016

Date of order : 20/09/2016

Whether approved for reporting :

ORDER
(20/09/2016)

Per Justice Rohit Arya,

A society vide Annexure P/2 shown to have been registered under the provisions of Society Registrickaran Adhinyam, 1973 (for brevity "the Adhinyam of 1973") on 16/3/2009 in the name of Shitla Mata Kalyan Samiti; the petitioner, has approached this Court with the grievance initially against the notice dated

10/5/2010, Annexure P/1, under Section 5 (2) of the Public Trust Act (hereinafter referred to as "the Trust Act") read with Rule 5 (1) of the Public Trust Rules, 1962 under the signatures of Registrar, Public Trust, Gwalior inviting objections on an application filed by the Ex-officio Tehsildar under Section 4 of the Trust Act for registration of public trust in the name of Mandir Maa Shitla Mata Nyas, Village Satau, District Gwalior. The notice was published in the Gazette as well on 28/5/2010 calling upon the interested persons to file objections on 11/6/2010 in the matter of enquiry as regards registration of the trust as contemplated under Section 5 of the Trust Act. During pendency of the petition, the findings recorded by the Registrar, Public Trust, under Section 6 of the Trust Act and further order for registration of Public Trust on 3/7/2010 has been challenged.

2. Petitioner has contended that Shitla Mata temple is one of the oldest temple of the area and was originally constructed 400 years ago by the forefather of the petitioner-Late Shri Gajadhar Singh, which was initially installed at village Kharaua, Tehsil Gohad, District Bhind, but later on as Goddess Shitla Mata in his dreams expressed her wishes to shift her and install in the forest area away from his residence, therefore, by obeying the orders of Goddess Shitla Mata the forefathers of the petitioner installed the Deity Shitla Mata in Kho known as Shitla Mata Mandir, Kho. After the death of Gajadhar Singh, his son Ramanand Singh and then his son Mahant Har Govind Singh and thereafter present Mahant

Nathuram is in charge of the Deity's worship and management. As such, it is a private temple and property of Mahant Nathuram since Samvat 1669 (year 1612). Now in the interest of temple and the Deity it was decided in the year 2009 to get the society registered under the Adhinyam of 1973 in the name of Shitla Mata Kalyan Samiti, Satau, Tehsil Gwalior, District Gwalior. Accordingly, the society is registered vide registration certificate dated 16/3/2009.

With the aforesaid pleadings, it is submitted that the society being administered under the Adhinyam of 1973, the provisions of the Trust Act are not applicable to it in the light of provisions contained under Section 36 (1) (b) of the Trust Act and, therefore, the impugned notice issued under Section 5 of the Trust Act and published in the Gazette calling upon the objections for registration of trust in the name of Mandir Maa Shitla Mata Nyas is patently illegal and contrary to the provisions of the Trust Act.

The order dated 3/7/2010 passed by the Registrar, Public Trust, recording the findings under Section 6 of the Trust Act and further direction for registration of the public trust is without jurisdiction and illegal. The said order is also patently illegal and contemptuous, as despite interim order passed by this Court on 24/6/2010 staying further proceedings of registration of the society as public trust pursuant to notice dated 10/5/2010, the same has been passed.

3. The respondents have filed counter affidavit. It is contended that temple of Maa Shitla is located on survey nos.397, 398, 399 and 400. The same is recorded as forest land in the revenue records. The temple is situated on survey no.398. As such, it is the public property. Petitioner without disclosing the fact that the temple is on the Government land and not on the private land manipulated issuance of the registration certificate, Annexure P/2, under the provisions of the Adhinyam of 1973. Petitioner though submitted reply on 11/6/2010 in response to the notice dated 10/5/2010 published in the Gazette, but did not submit any document much less title document in respect of Shitla Mata Mandir showing his ownership or any right and interest therein. Even the registration certificate allegedly obtained by them and annexed as Annexure P/2 was not submitted. Reply to the aforesaid objection was also submitted by the applicant-Ex Officio Tehsildar on 1/7/2010, wherein the facts were reiterated that the temple is in the Government land and as such, it is a public property. Offerings and belongings of the Deity is also public property. The public trust was constituted to save the property and the public money, to ensure development of the temple and to checkmate misuse, misappropriation and encroachment in the vicinity of the temple. As such, the process for constitution of public trust was in pure public interest. Moreover, Shitla Mata Mandir though is claimed to have been managed by the

forefathers of the petitioner for last 400 years, but without any proof of ownership or right and interest in the temple and the society is allegedly registered in the year 2009 only.

It is also pointed out that due to large scale encroachment in the area, a Public Interest Litigation has also been filed pending consideration before this Court vide Writ Petition No.1331/2009 (Rajkumar Mishra vs. State of M.P. and others), wherein directions have been issued to the Collector for enquiry, investigation and removal of encroachment in the same vicinity/area.

4. It appears that the Registrar, Public Trust, upon consideration of application filed under Section 4 of the Trust Act with documents and objections submitted by petitioner on 11/6/2010 has passed a detailed order on 3/7/2010.

4.1. Before further proceeding with the contentions advanced as regards the non-applicability of the provisions of the Trust Act and that the impugned notice dated 10/5/2010 issued under Section 5 of the Trust Act is without jurisdiction, this Court considers it apposite to address on the propriety in passing the order dated 3/7/2010 in the teeth of the interim order passed by this Court on 24/6/2010 in presence of counsel for the petitioner as well as respondents/State.

It appears that neither the petitioner nor the counsel for respondents/State notified the authority about the interim order

passed on 24/6/2010, as there is no documentary evidence in that behalf on record *albeit* petitioner in the amended petition has stated that the interim order was brought to the notice of the authority, to which there is no reply. The amendment application was filed on 28/6/2011 and the same was pressed at belated stage, which was allowed on 15/3/2016. There appears to be no contempt proceedings initiated.

Be that as it may. This Court cannot be oblivious of the fact that the impugned order is passed during the currency of interim order passed by this Court and, therefore, for this reason alone the impugned order dated 3/7/2010 deserves to be and is accordingly set aside.

4.2. Now turning to the question of applicability of the Trust Act and legality and validity of the impugned notice dated 10/5/2010, Annexure P/1, issued under Section 5 of the Trust Act, it is considered appropriate to consider the material placed before this Court in the writ petition in support of the claim of right and title since Samvat 1669 (year 1612) over the Shitla Mata Mandir as a private property. Except a photocopy of the alleged resolution signed by some persons for registration of the society, photocopy of the registration certificate dated 16/3/2009 and byelaws of the society, there is no documentary evidence as regards title, possession or any other right and interest of the society in relation to Maa Shitla Temple on record. It appears that, no document was

filed before the Registrar, Public Trust, alongwith the reply dated 11/6/2010 also. There is no denial to the fact specifically pleaded by respondents/State in page nos.4 and 5 of the counter affidavit that location of Shitla Mata Temple is in survey nos.397, 398, 399 and 400 and the temple is constructed on survey no.398; forest land mutated in revenue record. Under these circumstances, in the opinion of this Court, the claim of the petitioner that Shitla Mata Mandir is a private property is not sustainable and is hereby rejected.

4.3. Therefore, the question arises “whether a skeleton society constituted on papers having no title and right over the Shitla Mata Mandir can claim to be running the temple and, therefore, the affairs of the society can be said to be administered under the provisions of the Adhiniyam of 1973. Therefore, the same is exempted from the purview of Trust Act in view of Section 36 (1) (b) of the Trust Act?” For this purpose it is expedient to refer to provisions of Section 36 of the Adhiniyam of 1973:-

“36. Exemption.-(1) Nothing contained in this Act shall apply to-
(a) xxxxx
(b) a public trust administered under any enactment for the time being in force, and”

The legislature has consciously used the phrase “**administered** under any enactment for time being in force” and has not used the word “registered”. The meaning attributed to the word administered takes its colour from the meaning of the word “administration”, means management of the affairs of an

institution: S.K. Singh v. V.V. Giri, AIR 1970 SC 2097 referred to. The word “administered” defined in Black's Law Dictionary and is understood in legal parlance as management. As such, for attracting the provisions of Section 36 (1) (b) of the Trust Act, the public trust or society must be engaged in the activities of management of its properties/estate/assets with its functional orientation amenable to regulatory measures as provided for under the Adhiniyam of 1973.

Careful perusal of the provisions of the Adhiniyam of 1973 suggests that through various provisions not only the registration of the society, but its constitution, working, financial conditions are regulated by the Madhya Pradesh Societies Registrarian Adhiniyam, 1973 (hereinafter referred to as “the Act”). Section 3 (e) defines a Society to mean “a society registered or deemed to have been registered under this Act”. The Act contains many provisions which give extensive powers of control to the Registrar over the affairs of a society. Section 11 empowers the Registrar to amend memorandum, regulations and byelaws of a society if he considers that the amendment is necessary in the interest of the society. Section 20 deals with property 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 provides as to what books of account 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 taken

possession of funds and property of the society through a duly authorised person. Section 28 provides for filing of RETURNS and authorises 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. The decision of the Registrar is binding on the society. The Act also authorises the State Government under section 33 to supersede society in case of mismanagement and to remove the Governing Body and appoint a person to manage the affairs of a society. As such, a society registered under the Adhinyam of 1973 is required to maintain complete record not only as regards its members, but also its property, it has to file annual return, audit, inspections etc. There is no document in the aforesaid context placed on record to claim that the said society is administered under the provisions of the Adhinyam of 1973. There is no document placed on record or even before the Registrar, Public Trust, with its objection dated 11/6/2010 in the context of and with reference to obligation of the society of having assets, i.e. immovable and movable properties and compliance of various provisions of the Act in the matter of management of such assets, as detailed above, so that society may be said to be administered by the provisions of the Act. Under these circumstances, the contention of learned counsel for the petitioner that it is immune from the applicability of the provisions of Trust Act under Section 36 (1) (b) of the Trust Act

cannot be countenanced and the same is hereby rejected.

Learned counsel for the petitioner has cited judgments viz. *Shankar Singh and others vs. Sanstha Sonabai Shrivikashram, Khurai and another, 1976 JLJ 465, Digamber Jain Hitopadeshini Sabha, Bina and another v. Shri Narendra Kumar Bukharia and others, 1991 JLJ 93 and Julious Prasad vs. State of M.P. and others, 2010 (I) MPJR 40* in support of his contentions, but looking to the aforesaid facts, the judgments, so cited, are distinguishable and are of no assistance to the petitioner, as in all these cases there was no dispute as regards ownership, right and interest of the public trust registered as a society and the dispute related to transaction of the property and in that context the Court has upheld the claim of immunity of the society from applicability of the provision under Section 36 (1) (b) of the Trust Act. In this context it may be noted that the reliance upon the decision in a case without semblance of factual situation is not only misplaced, but also misdirected, as the ratio of a judgment neither can be understood nor applied without factual context. The Hon'ble Supreme Court in the case of *Ambica Quarry Works vs. State of Gujarat and others, (1987) 1 SCC 213* has observed that:

“The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

In the case of *Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd., (2003) 2 SCC 111* it has been observed that:

“It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

Further, in the case of *Bharat Petroleum Corporation Ltd. and another vs. N.R. Vairamani and another*, AIR 2004 SC 4778 the Hon'ble Supreme Court has held that:

“a decision cannot be relied on without disclosing the factual situation.”

Now, as this Court has upheld the applicability of the Trust Act, hence, maintainability of the application filed under Section 4 of the Trust Act by the Ex-officio Tehsildar for registration of the trust Mandir Maa Shitla Mata Nyas, village Satau, District Gwalior and issuance of notice under Section 5 (1) of the Trust Act inviting objections by the respondent no.2-Registrar, Public Trust, are hereby upheld. Consequently, the Registrar, Public Trust, is directed to initiate the proceedings *de novo* from the stage of notice under Section 5 of the Trust Act dated 10/5/2010. Petitioner, if so chooses, may submit title documents and other related or relevant documents in support of the objections raised on 11/6/2010 within two weeks. Thereafter, the authority shall proceed to decide the objection in accordance with law and pass necessary orders.

Accordingly, with the aforesaid observations and directions, the writ petition stands allowed in part and disposed of.

(Rohit Arya)
Judge

Arun*

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ORDER post for 20/09/2016

(Rohit Arya)
Judge
19/09/2016