

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
HON'BLE SHRI JUSTICE VIVEK AGARWAL

Writ Petition No. 4731/2016

Trimurti Charitable Public Trust & Anr.
vs.
Munikumar Rajdan & Ors.

Shri V.K. Bhardwaj, Senior Advocate with Shri A.V. Bhardwaj, learned counsel for the petitioners.

Shri B.K. Agrawal and Shri Anmol Khedkar, learned counsel for the respondents.

ORDER
(29 / 07 /2016)

The petitioners are aggrieved by order dated 04.07.2016 passed by the court of 7th Additional District Judge, Gwalior whereby application under Order 1 Rule 10 of CPC filed by the plaintiff Munikumar Rajdan has been accepted on the ground that provisions contained in Section 8 (2) of the Madhya Pradesh Public Trust Act, 1951 are mandatory.

Learned counsel for the petitioners submits that no order could have been passed which prejudices the interest of the present petitioners after such a long time gap especially when suit was filed by the plaintiff Munikumar Rajdan in the year 2000 and in the written statement specific plea was taken that the suit which has been filed seeking declaration for cancellation of registration of the trust has to necessarily include Registrar Public Trust as a party and same has not been impleaded as a party, therefore, the suit is not maintainable. Therefore, now after 16 years of institution of the suit, application under Order 1 Rule 10 of CPC is not maintainable.

Learned counsel for the petitioners also submitted that as per the provisions contained in Section 8 (2) of Madhya Pradesh Public Trust Act, 1951 the civil court is required to 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. Therefore, an application under Order 1 Rule 10 of CPC was not maintainable at the instance of the plaintiff and was only a deliberate attempt to delay the proceedings in the suit. It has also been submitted that amendment taking away the right accrued to party by elapse of time should not be allowed as has been laid down in the case of **Prigonda Hongonda Patil vs. Kalgonda Shidgonda Patil and others** as reported in **AIR 1957 S.C. 363** so also on the decision of this High Court as reported in **1981 M.P. Weekly Notes 175 Shankarlal vs. Kothari & Co. Ratlam** so also on the decision of this High Court in the case of **Beesa Porwal Jain Shwetambar Teerth Sangodhia & Anr. vs. Poonamchand** as reported in **1981 JLJ 496** to bring home the issue that application under Order 1 Rule 10 of CPC could not have been allowed causing prejudice to the present petitioners. On the other hand, learned counsel for the respondents has relied on the decision reported in **1966 MPLJ Short Note 106 Swami Vidyanand Saraswati vs. Hazarilal Choubey**.

As per the judgment in the case of *Prigonda Hongonda Patil (supra)*, the ratio of the judgment is that all amendments ought to be allowed which satisfy the two conditions (a) not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. In the case of *Shankarlal (supra)*, the ratio is that court action or inaction of court should not prejudice a party. In the case of *Beesa Porwal Jain Shwetambar Teerth Sangodhia (supra)*, this Court held that under the provisions of Section 8 (2) of Madhya Pradesh Public Trust Act, 1951 notice to the State Government through Registrar should have been sent after the institution of the suit as the issuance of notice is mandatory. It has been further held that any order passed by the trial court prior to issuance of notice is without jurisdiction. Same is the ratio of the case of *Swami Vidyanand Saraswati (supra)*.

Thus, in this backdrop, two things needs to be

examined.

(i) If the provisions of Section 8 (2) of Madhya Pradesh Public Trust Act, 1951 are mandatory, (ii) whether an application under Order 1 Rule 10 of CPC could have been allowed in the garb of mandatory compliance of Section 8(2) of Madhya Pradesh Public Trust Act, 1951.

Non-compliance of the said provision contained in Section 8 (2) of Madhya Pradesh Public Trust Act, 1951 by the court for long 15 years could render the proceedings before the trial court as without jurisdiction as has been held in the case of *Beesa Porwal Jain Shwetambar Teerth Sangodhia (supra)*.

The rights would have been accrued in favour of the petitioners only when judgment and decree would have been passed by the trial court, therefore, it cannot be said that any right which had already accrued have been taken away by the action of the trial court if it decides to make a mandatory compliance of the provisions contained in Section 8 (2) of Madhya Pradesh Public Trust Act, 1951 but what is to be seen is that whether in the name of compliance of Section 8 (2) of Madhya Pradesh Public Trust Act, 1951, application under Order 1 Rule 10 of CPC would have been allowed.

(2) Order 1 Rule 10 (2) of CPC deals with authority of the court to strikeout or add parties. This is distinct from the mandatory requirement of Section 8 (2) of Madhya Pradesh Public Trust Act, 1951 to issue notice to the State Government through Registrar and, therefore, the trial court clearly exceeded its authority in allowing the application under Order 1 Rule 10 of CPC whereby allowing the plaintiff to add Registrar Public Trust as a party. Section 8 (2) of Madhya Pradesh Public Trust Act, 1951 only requires notice and leaves it to the discretion of the Registrar to approach the court and express its desire to be made a party, if he so requires. The learned trial court to save its own skin in not following the mandatory provisions of Section 8 (2) of Madhya Pradesh Public Trust Act, 1951 and without

distinguishing the difference between issuance of notice and addition of a party, allowed the application under Order 1 Rule 10 of CPC which is far in excess of the requirement of Section 8 (2) of Madhya Pradesh Public Trust Act, 1951. Thus the trial court has just acted illegally and the impugned order dated 04.07.2016 deserves to be quashed and is quashed. It is held that in the name of mandatory notice to the State Government, Registrar Public Trust could not have been impleaded as a party on an application under Order 1 Rule 10 of CPC filed at the behest of the plaintiff.

The impugned order is set aside and petition is allowed.

Certified copy as per rules.

(Vivek Agarwal)
Judge

(alok)