

THE HIGH COURT OF MADHYA PRADESH

WP No.8448/2016

(Deepak Gupta & Anr. vs. State of M.P. & Ors.)

Gwalior, Dated : 09.08.2019

Ms. Tripti Agrawal, Counsel for the petitioner.

Shri Vijay Sundaram, Panel Lawyer for the respondents No.1 and 2/State.

Shri Sanjay Sharma, counsel for the respondent Nos. 3 to 17.

This petition under Article 226 of the Constitution of India has been filed against the order dated 7.6.2016 passed by Sub Divisional Officer-cum-Registrar Public Trust, Lashkar, District Gwalior in Case No.1/2015-2016/B-113(1) by which Girwar Lal (Dharmardh Trust) Dharmshala, Naya Bazar, Lashkar, Gwalior M.P. has been registered as public trust.

2. A preliminary objection has been raised by the counsel for the respondents that a statutory remedy under Section 8 of M.P. Public Trust Act, 1951 (Act 1951) is provided under the Act and, therefore, the writ petition directly against the order of Registration of Public Trust is not maintainable.

3. Per contra, it is submitted by the counsel for the petitioners that since the Public Trust was registered without following the due procedure of law as laid down under Section 5 of the Act, 1951, therefore, it cannot be said that the writ petition is not maintainable.

4. Heard the learned counsel for the parties.

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5. Although the petitioners have not taken any ground with regard to competency of the SDO-cum-Registrar Public Trust Act to act as a Registrar but this Court by order dated 4.12.2018 had passed the following orders:

“By this petition the petitioners have challenged the order dated 7.6.2016 passed by the SDO-cum-Registrar, Public Trust Lashkar, District Gwalior in Case No.01/2015-16/B-113(1) by which a Public Trust has been created.

The counsel for the State prays for and is granted three weeks' time to file return to the petition. **The State counsel is also specifically directed to place the order issued by the Collector delegating his power to the SDO under Section 34-A of Public Trust Act.**

It is well established principle of law that the powers to the SDO cannot be delegated by issuing work distribution memo but there has to be a specific notification issued under Section 34-A of the Public Trust Act.

List in January, 2019.

Interim relief to continue till next date of hearing.”

6. In response to the direction given by this Court by the above-mentioned order, the respondents have placed the copy of the work distribution dated 2.1.2016 issued by District Magistrate/Collector by which the SDO was given the powers under Section 34-A of the Act, 1951. The work distribution memo dated 2.1.2016 is as under:-

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कार्यालय जिला दण्डाधिकारी, ग्वालियर (म. प्र.)

॥ आदेश ॥

ग्वालियर दिनांक 2 जनवरी, 2016

कमांक: वयू/2-ख/स्था/6-17/2/2013/ श्री अजय देव शर्मा, संयुक्त कलेक्टर ग्वालियर की पदोन्नति होने के फलस्वरूप कार्यालयीन आदेश कमांक:वयू/2-ख/स्था/6-17/ 2/2013/ 12432 दिनांक 17-8-2015 द्वारा भारतीय/ राज्य प्रशासनिक सेवा के अधिकारियों के मध्य जारी किये गये कार्य विभाजन एवं आदेश दिनांक 16-9-15 द्वारा जारी किए गए संशोधित आदेशों को पुनः संशोधन करते हुए श्री महिप किशोर तेजस्वी संयुक्त कलेक्टर, श्री अखिलेश जैन संयुक्त कलेक्टर एवं श्री गणेश जायसवाल डिप्टी कलेक्टर को आवंटित कतिपय कार्य उनसे वापस लिया जाकर निम्नांकित अधिकारियों के मध्य कार्य आवंटन किया जाता है :-

क्र.	नाम अधिकारी	सौंपे गये कार्य का विवरण
1	2	3
1	श्री अखिलेश जैन संयुक्त कलेक्टर ग्वालियर	<ol style="list-style-type: none"> 1 अनुविभागीय अधिकारी लश्कर (वृत्त-लश्कर, गिरवाड़ी) 2 अनुविभागीय दण्डाधिकारी थाना क्षेत्र- कोतवाली, माधवगंज, जनकगंज, 3 म.प्र. भू-राजस्व संहिता 1959 एवं शासन के अन्य अधिनियमों/ नियमों/ निर्देशों/ परिपत्रों के अन्तर्गत अनुविभागीय अधिकारी (उप खण्ड अधिकारी) को प्रदत्त समस्त शक्तियों का प्रयोग 4 संबंधित थाना क्षेत्रों में दण्ड प्रक्रिया संहिता एवं अन्य अधिनियमों में उल्लिखित उपखण्ड मजिस्ट्रेट/ कार्यपालक मजिस्ट्रेट की शक्तियों का प्रयोग 5 अपने कार्य क्षेत्र में नजूल अधिकारी के रूप में शक्तियों का प्रयोग 6 शासन की समस्त योजनाओं के क्रियान्वयन एवं अनुश्रवण हेतु विभिन्न विभागों के अधिकारियों से समन्वय 7 मध्यप्रदेश लोक परिसर बेदखली अधिनियम के अन्तर्गत सक्षम प्राधिकारी 8 म.प्र. लोक न्याय अधिनियम 1955 की धारा 34 (क) के अन्तर्गत पंजीयक की शक्तियों प्रदत्त की जाती है। अतः उक्त अधिनियम के तहत पंजीयक के रूप में समस्त कर्तव्यों का निष्पादन 9 स्थान नियंत्रण अधिनियम के अन्तर्गत भाड़ा नियंत्रक अधिकारी की शक्तियों का प्रयोग

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क.	नाम अधिकारी	सौंपे गये कार्य का विवरण
1	2	3
		10 अनुविभाग लश्कर के व्यपवर्तन एवं अवैध कॉलोनाइजेशन पर नियंत्रण संबंधी कार्य-निष्पादित करेंगे ।
		11 राष्ट्रीय राजमार्ग के संख्या क्रमांक- 75 वायपास के लिए भूमि का अधिग्रहण संबंधी कार्य हेतु भू-अर्जन अधिकारी
		12 राष्ट्रीय राजमार्ग संख्या- 92 के भू-अर्जन करने संबंधी कार्य
		13 राष्ट्रीय राजमार्ग संख्या-3 के भू-अर्जन करने संबंधी कार्य
		14 अन्तव्यवसायी सहकारी समिति ग्वालियर
		15 अल्पबचत शाखा
		16 अधोहस्ताक्षरकर्ता द्वारा समय-समय पर सौंपे गये अन्य कार्य
02	श्री महिप किशोर तेजस्वी, डिप्टी कलेक्टर ग्वालियर	1 अनुविभागीय अधिकारी झाँसी रोड (वृत्त महलगाँव, मेहरा)
		2 अनुविभागीय दण्डाधिकारी थाना क्षेत्र झाँसी रोड, विश्व विद्यालय, इन्दरगंज, कम्पू
		3 म.प्र. भू-राजस्व संहिता 1959 एवं शासन के अन्य अधिनियमों/नियमों/ निर्देशों/परिपत्रों के अन्तर्गत अनुविभागीय अधिकारी (उप खण्ड अधिकारी) को प्रदत्त समस्त शक्तियों का प्रयोग
		4 संबंधित थाना क्षेत्रों में दण्ड प्रक्रिया संहिता एवं अन्य अधिनियमों में उल्लिखित उपखण्ड मजिस्ट्रेट/ कार्यपालिक मजिस्ट्रेट की शक्तियों का प्रयोग
		5 अपने कार्य क्षेत्र में नजूल अधिकारी के रूप में शक्तियों का प्रयोग
		6 शासन की समस्त योजनाओं के क्रियान्वयन एवं अनुश्रवण हेतु विभिन्न विभागों के अधिकारियों से समन्वय
		7 मध्यप्रदेश लोक परिसर बेदखली अधिनियम के अन्तर्गत सक्षम प्राधिकारी
		8 म.प्र. लोक न्यास अधिनियम 1955 की धारा 34 (क) के अन्तर्गत पंजीयक की शक्तियाँ प्रदत्त की जाती हैं। अतः उक्त अधिनियम के तहत पंजीयक के रूप में समस्त कर्तव्यों का निष्पादन
		9 स्थान नियंत्रण अधिनियम के अन्तर्गत भाड़ा नियंत्रक अधिकारी की शक्तियों का प्रयोग
		10 अनुविभाग झाँसी रोड के व्यपवर्तन एवं अवैध कॉलोनाइजेशन पर नियंत्रण संबंधी कार्य निष्पादित करेंगे ।
		11 जे.सी. शाखा
		12 न्यायालयीन प्रकरणों की मानीटरिंग संबंधी कार्य
		13 अधोहस्ताक्षरकर्ता द्वारा समय-समय पर सौंपे गये अन्य कार्य

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क.	नाम अधिकारी	सौंपे गये कार्य का विवरण
1	2	3
3	श्री गणेश जायसवाल डिप्टी कलेक्टर	<p>1 अनुविभागीय अधिकारी एवं अनुविभागीय दण्डाधिकारी मुरार (वृत्त मुरार एवं बड़ागाँव)</p> <p>2 अनुविभागीय दण्डाधिकारी थाना क्षेत्र- मुरार, ठाठीपुर, महाराजपुरा, गोला का मंदिर एवं हजीरा</p> <p>3 म.प्र. भू-राजस्व संहिता 1959 एवं शासन के अन्य अधिनियमों/नियमों/ निर्देशों/ परिपत्रों के अन्तर्गत अनुविभागीय अधिकारी (उप-खण्ड अधिकारी) को प्रदत्त समस्त शक्तियों का प्रयोग</p> <p>4 संबंधित थाना क्षेत्रों में दण्ड प्रक्रिया संहिता एवं अन्य अधिनियमों में उल्लिखित उपखण्ड-मजिस्ट्रेट/ कार्यपालिक मजिस्ट्रेट की शक्तियों का प्रयोग</p> <p>5 अपने कार्य क्षेत्र में नजूल अधिकारी के रूप में शक्तियों का प्रयोग</p> <p>6 शासन की समस्त योजनाओं के क्रियान्वयन एवं अनुश्रवण हेतु विभिन्न विभागों के अधिकारियों से समन्वय</p> <p>7 अनुविभाग क्षेत्र मुरार एवं ग्वालियर (ग्रामीण) के व्यपवर्तन एवं अवेध कॉलोनाईजेशन एवं अन्य समस्त कार्य पर नियंत्रण संबंधी कार्य निष्पादित करेंगे</p> <p>8 मध्यप्रदेश लोक परिसर बेदखली अधिनियम के अन्तर्गत सक्षम प्राधिकारी</p> <p>9 म.प्र. लोक न्यास अधिनियम 1955 की धारा 34 (क) के अन्तर्गत पंजीयक की शक्तियों प्रदत्त की जाती है। अतः उक्त अधिनियम के तहत पंजीयक के रूप में समस्त कर्तव्यों का निष्पादन</p> <p>10 स्थान नियंत्रण अधिनियम के अन्तर्गत भाड़ा नियंत्रक अधिकारी की शक्तियों का प्रयोग</p> <p>11 प्रभारी अधिकारी डायवर्सन शाखा</p> <p>12 भू-अभिलेख शाखा</p> <p>13 नजारत</p> <p>14 दूरिज्म</p> <p>15 परियोजना अधिकारी, जिला शहरी विकास अभिकरण ग्वालियर</p>

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क्र.	नाम अधिकारी	सौंपे गये कार्य का विवरण
1	2	3
		16 राहत, तकाबी एवं बाढ़
		17 सिटी ट्रांसपोर्ट सर्विस लिमिटेड में कलेक्टर की ओर से समन्वयक
		18 जिला दण्डाधिकारी की ओर से अनुसूचित जाति कल्याण थाना, महिला थाना
		19 अधोहस्ताक्षरकर्ता द्वारा समय-समय पर सौंपे गये अन्य कार्य ।

3/ उक्त आदेश तत्काल प्रभावशील होगा ।

(डॉ. संजय गौयल)
कलेक्टरजिला ग्वालियर (म0प्र0)
ग्वालियर, दिनांक: 2 जनवरी, 2016पृ.क्र.: क्यु/2-ख/स्था/6-17/2/2013/130
प्रतिलिपि :

1. आयुक्त, ग्वालियर संभाग ग्वालियर
2. पुलिस अधीक्षक ग्वालियर
3. अपर कलेक्टर / अपर जिला दण्डाधिकारी / मुख्य कार्यपालन अधिकारी जिला पंचायत ग्वालियर
4. श्री अजय देव शर्मा, अपर कलेक्टर ग्वालियर
5. श्री आर.सी. मिश्रा, संयुक्त कलेक्टर ग्वालियर
6. श्री अखिलेश जैन, डिप्टी कलेक्टर एवं अनुविभागीय अधिकारी मुरार
7. श्री महिप किशोर तेजस्वी, डिप्टी कलेक्टर ग्वालियर
8. श्री रिकेश कुमार वैश्य, डिप्टी कलेक्टर ग्वालियर
9. श्री गणेश जायसवाल, डिप्टी कलेक्टर ग्वालियर
10. श्री विजयराज, डिप्टी कलेक्टर एवं अनुविभागीय अधिकारी भितरवार
11. श्री एच.बी. शर्मा, डिप्टी कलेक्टर एवं अनुविभागीय अधिकारी ग्वालियर ग्रामीण
12. श्री विनोद कुमार सिंह, डिप्टी कलेक्टर ग्वालियर
13. श्री इकवाल मोहम्मद, डिप्टी कलेक्टर ग्वालियर
14. मुख्य कार्यपालन अधिकारी, जिला ई-गवर्नेंस सोसायटी ग्वालियर
15. अनुविभागीय अधिकारी ग्वालियर शहर/ चरकर/ झांसी रोड/ मुरार/ ग्वालियर ग्रामीण/ घाटीगाँव/ डबरा/ भितरवार
16. उप जिला निर्वाचन अधिकारी एवं स्थानीय निर्वाचन/ प्रभारी अधिकारी, आर.एम. शाखा
17. जिला प्रबंधक, लोक सूचना गारन्टी/ ई-गवर्नेंस जिला कार्यालय ग्वालियर
18. जिला सूचना एवं विज्ञान केन्द्र अधिकारी, जिला कार्यालय ग्वालियर की ओर सूचना का अधिकार अधिनियम से संबंधित वेबसाइट में तदनुसार संशोधन बाबत ।
19. तहसीलदार ग्वालियर/ डबरा/ भितरवार/ चीनोर/ तहसीलदार नजूल
20. मुख्य कार्यपालन अधिकारी जनपद पंचायत मुरार/घाटीगाँव (बरई)/डबरा/ भितरवार
21. अधीक्षक जिला कार्यालय/भू-अभिलेख/डायवर्सन/भू-प्रबंधन/
22. सहायक अधीक्षक राजस्व एवं सामान्य जिला कार्यालय ग्वालियर
23. स्टेनो-टू-कलेक्टर/अपर कलेक्टर/एडीएम/रीडर टू कलेक्टर/ अपर कलेक्टर/ ए.डी.एम.
24. संबंधित शाखाएं

डिप्टी कलेक्टर
जिला ग्वालियर (म0प्र0)

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7. The pivotal question for determination in the present case is that whether Collector who is de jure Registrar under Section 3 of the Act, 1951 can delegate its powers by issuing a work distribution memo or not?

8. Section 34-A of the Act, 1951 deals with the delegation of powers as Registrar which reads as under:-

“34A. Delegation of powers by Registrar. - Subject to the provisions of this Act and to such restrictions and conditions, as may be prescribed, the Registrar may, by order in writing, delegate all or any of his powers and duties under this Act to any Revenue Officer of his district not below the rank of a Sub-Divisional Officer.

9. The question that whether there has to be specific notification under Section 34-A of the Act, 1951 or the powers can be delegated by work distribution memo are no more *res integra*.

10. The Co-ordinate Bench of this Court in the case of **Praveen Malpani & Anr. vs. Mahendra Singh Gadwal & Anr.** by judgment dated 15.2.2018 passed in M.A.No.4917/2009 (Principal Bench) has held as under:-

“6. Before dealing with the rival contentions of the parties, it is apposite to refer the relevant provisions of the Trust Act, which read as under:

“Section 2(6). “Register” means the Registrar of Public Trust;”

“Section 3. Register of Public Trust.- (1) The [Collector] shall be the Registrar of Public Trusts in respect of every public trust the principal

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office or the principal place of business of which as declared in the application made under Sub-section(3) of Section 4 is situate in his district; (2) The Registrar shall maintain a register of public trusts, and such other books and registers and in such form as may be prescribed.”

“Section 34-A. Delegation of powers by Registrar.- *Subject to the provisions of this Act and to such restrictions and conditions, as may be prescribed, the Registrar may, by order in writing, delegate all or any of his powers and duties under this Act to any Revenue Officer of his district not below the rank of a Sub-Divisional Officer”*

7. In the considered opinion of this Court, the point involved in this case is no more re integra. In **Shri Deo Parasnathiji Mousuma Ghanshyam Budhu Singhai (Supra)** this Court opined as under:

“8. While interpreting a provision like section 34-A it must be borne in mind that statutory powers cannot be assigned without statutory authority to do so. It must, therefore, bear a strict construction. Now, that section speaks of an "order in writing" by the Registrar of Public Trusts, delegating all, or any of his powers and duties under the Act. The words used obviously contemplate the making of a separate "order in writing" by the Registrar after due application of his mind, and not a mere administrative direction in the nature of a Distribution memo issued by a Deputy Commissioner (now the Collector) for allocation of revenue work within his district. There is a distinction between an order of delegation of certain statutory functions and the administrative power of allocating business of particular officers. Even assuming that a delegation of powers under section 34-A is an administrative function, nevertheless such delegation could not be achieved by the issue of a Distribution Memo for a variety of reasons. In the first place, the section speaks of the Registrar of Public Trusts and not the Deputy Commissioner of a district. Secondly,

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the making of an order in writing" has to be after due application of his mind, and, therefore, it is not a mere ministerial act. Thirdly, issuance of a Distribution memo implies the existence of a power in several persons, and it merely allocates the work for administrative convenience, while a delegation under section 34-A results in conferral of jurisdiction on a particular officer in respect of functions of a judicial nature. In my view, when section 34-A speaks of an "order in writing", it implies the making of a general or special order by the Registrar of Public Trusts in his capacity as such, which must clearly define the nature of the functions that are assigned thereby."

[Emphasis Supplied]

8. The question of delegation of power through the work distribution order was again considered by the Division Bench of this Court in *M.P. No.1209/1991 [Smt. Buddhikai vs. Registrar Public Trust-cum-SDO & others]*. The relevant portion reads as under:

"As in the present case, the impugned order was passed by SubDivisional Officer the main ground of attack made in this petition is that there was no delegation of power in favour of the Sub-Divisional Officer and, therefore, the impugned order passed by him as Registrar of Public Trust is illegal and without jurisdiction. Considering this argument on behalf of the petitioner at the time of hearing of this petition on 19.04.1992, this Court was pleased to adjourn the hearing of the case so as to enable the learned Addl Adv. General appearing on behalf of the respondent No.1 to show whether the Registrar had delegated his power under section 34-A of the M.P. Public Trusts Act and on what ground. Today the learned Dy. Adv. General appearing on behalf of the respondent No.1 as also the learned counsel appearing for respondents No.2 & 3 admitted that except a distribution memo, there was no delegation of powers made in accordance with section 34-A of the Act. We are, therefore, of the

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view that on this short ground this petition deserves to be allowed and the impugned order dated 13.03.1991 (Annexure-P-3) of the respondent No.1 deserves to be quashed. Accordingly, this petition is hereby allowed. The impugned order dated 13.03.1991 (Annexure-P3) is quashed.”

[Emphasis Supplied]

9. The same principle was laid down in *M.P. No.1714/1992 [Ramnarayan Tiwari vs. The Sub-Divisional Officer & others]*. The relevant portion reads as under:

“In this connection, learned counsel for the petitioner has drawn my attention to Section.3 of the M.P. Public Trust Act, 1951 which inter alia provides that the Collector shall be Registrar of the Public Trust. My attention has been further drawn to Section 34(A) of the Act which provides for delegation of the power by Registrar to any Revenue Officer of the district not below the rank of Sub-Divisional Officer. In the present case, it has been averred by the petitioner that no such delegation has been made by the Registrar and on the basis of distribution memo respondent No.1 has exercised the power. This fact has not been controverted by respondents.

It is submitted by learned counsel for the petitioner that on the basis of distribution memo the Sub-Division Officer cannot exercise the power and in support of the aforesaid submission, learned counsel place reliance on judgment of this Court in *Shri Deo Parasnathji Mousuna Ghanshyam vs. Firm Kanhaiyalal, 1972 MPLJ 206.*

Mr. Kale could not point out anything to distinguish the aforesaid authority. In view of the authority of this Court, referred to above, the Sub-Divisional Officer cannot exercise the power on the basis of the distribution memo. Admittedly, respondent No.1 has passed the order on the basis of the distribution memo issued by the Collector, which will not confer jurisdiction on him and on

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this ground alone, the order impugned is fit to set aside and I do so accordingly.”

[Emphasis Supplied]

10. These judgments were again considered by this Court in **W.P. No.1230/2002 [Dr. M.K. Bhargava & others vs. Smt. Parmeshwari Devi Indra Kumar Trust]** decided on 13.04.2010. The *ratio decidendi* of aforesaid judgments was again followed by this Court by holding that “in the case at hand admittedly the Sub-Divisional Officer was discharging as ‘Registrar Public Trust’ on the basis of distribution memo by the Collector and not by virtue of any written order by the Registrar as contemplated under Section 34-A of the Trust Act, 1951. Thus, the Sub-Divisional Officer acted without jurisdiction and the order passed in such capacity on an application under Section 14 of the Trust Act, 1951 is a nullity in the eyes of law. Accordingly, the impugned orders dated 15.01.2001 and 22.02.2002 are hereby set aside and it is held that the distribution memo dated 04.05.1993 did not confer any jurisdiction in favour of the Sub-Divisional Officer under the Public Trust Act, 1951”.

11. The aforesaid judgments contains a common string which clearly lays down that the delegation of power under Section 34-A cannot be done in a routine manner. The specific order must be in writing and should be passed after proper application of mind. The power cannot be delegated through a work distribution order. I am bound by the aforesaid Single and Division Bench judgments in which aforesaid principle was laid down. So far the judgment of **Umedi Bhai (Supra)** on which reliance is placed by Mr. Rahul Mishra, learned G.A. is concerned, a plain reading of this judgment shows that this Court has merely held that under Section 34-A, the Registrar is further authorized to delegate all or any of his power and duty under this Act to any revenue officer of his district not below the rank of Sub-Divisional

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Officer. It is relevant to mention here that in this judgment the method and nature of delegation required was not subject matter of challenge. There is no quarrel between the parties that the Collector is competent to delegate the power to another officer in consonance with Section 34-A of the Act. The only question is regarding the manner and method of such delegation of power. Thus, the judgment of *Umdi Bhai (Supra)* is of no assistance to the other side.”

11. Thus it is clear that unless and until a separate notification under Section 34-A of the Act, 1951 is issued, the powers of the Registrar cannot be delegated to the SDO by work distribution memo. In the present case, no notification under Section 34-A of the Act, 1951 has been issued and the powers were conferred/delegated to the SDO by work distribution memo dated 2.1.2016, therefore it is held that the SDO had no jurisdiction to perform his duties as Registrar Public Trust Act, 1951. Therefore, the impugned order dated 7.6.2016 is without jurisdiction. Accordingly, the said order is hereby set aside. As a consequence thereof, it is directed that the application filed by the respondent No.3 for registration of the trust as Public Trust shall be placed before the Collector-cum-Registrar Public Trust Act, 1951 who shall either decide the application by itself or may transfer to any other authority after validly issuing a notification under Section 34-A of the Act, 1951. The parties are directed to appear before the Registrar/Collector, Gwalior on

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14.10.2019. The Registrar Public Trust Act/Gwalior is directed to proceed further in accordance with the procedure laid down under the Act, 1951.

12. With aforesaid observations, the petition is finally **disposed of**.

(G.S. Ahluwalia)
Judge

(alok)