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Writ Appeal No.278/2015

Writ Appeal No.279/2015

22.07.2015

Shri Ajay Bagadiya, learned counsel along with Shri Vishal Baheti, learned counsel for the appellants.

Shri Piyush Mathur, learned Senior Counsel with Shri Vivek Phadke, learned counsel for the respondent No.1.

Shri Pushyamitra Bhargava, learned Deputy Advocate General for the respondent / State.

They are heard.

2. Brief facts of the case are that appellant No.1 filed an application under Section 9 of the Madhya Pradesh Public Trust, 1951 before the respondent / Registrar, Public Trust, Indore for recording change in the entries in the Trust Register. In the said application, Mukesh Tongya, Poonamchand Gangwal and Sharad Jain were impleaded as non-applicants (objectors).

3. The Registrar, Public Trust, Indore, after issuing notice to the parties, by order dated 10.05.2013 directed the parties to make a reference before the District Judge. Thereafter, appellant No.2 (Bhagwan Bahubali Digambar Jain Trust Gommatgiri, Indore) filed a reference before the Court of District Judge, Indore, who transferred the case to learned 13th Additional District Judge, Indore, which was registered as Civil Original Suit No.20-A/2013 on 26.08.2013. The learned 13th Additional District Judge, Indore granted

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temporary injunction in favour of appellant No.2. The respondent No.1 challenged the said order by filing Miscellaneous Appeal No.2292/2014, which is pending before this Court.

4. During pendency of the proceedings before the learned 13th Additional District Judge, an application under Order 7 Rule 11 of the Civil Procedure Code was filed for dismissing the case. Learned trial Court rejected the said application against which civil revision was filed. After participating in the proceedings before the trial Court, Writ Petition No.5280/2014 was filed by the respondent No.1 challenging the order dated 10.05.2013 passed by the Registrar, Public Trust, Indore, on the ground that no opportunity of hearing was provided to them, as required under Section 26 (1) (c) of the Madhya Pradesh Public Trust Act, 1951.

5. The present appellants, after receipt of notice from the learned Writ Court, filed detail return, raising a preliminary objection regarding maintainability of the writ petition on the ground of delay and laches and availability of alternative remedy.

6. In his return filed by the Registrar, Public Trust, Indore, Officer-in-Charge admitted that no opportunity of hearing, as required under Section 26 (1) (c) of the Madhya Pradesh Public Trust Act, 1951 was provided, as the question

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of affording an opportunity of hearing by the Registrar, Public Trust, Indore does not arise. Relevant paragraph No.4 of the reply reads, as under: -

“4. It is submitted that the Registrar, Public Trust while considering the applications as aforesaid filed at the instance of Respondent Nos. 2 and 3 issued notices to the parties and thereafter only passed a reasoned order dated 10.05.2013. In the order dated 10.05.2013 it has been specifically mentioned by the Registrar, Public Trust, Indore that as per the provisions of Section 9 (3) and Section 26 and 27 of the MP Public Trust Act, the jurisdiction to hear the matter is vested under the learned District Judge and as such the matter is referred to the learned District Judge for deciding the matter finally. Further, as the jurisdiction to hear the matter is vested with the learned District Judge, the question of affording an opportunity to hearing by the Registrar, Public Trust, Indore, does not arise.”

7. Learned Writ Court considering the fact that statutory provisions of law do provide for grant of opportunity to the working trustees and as per the reply filed by the learned Registrar, no opportunity of hearing was provided to the working trustees, including the private respondents and the learned Registrar in a most mechanical manner passed the order dated 10.05.2013, and therefore, quashed the said order and remanded the matter back to the Registrar, Public Trust and directed the parties to appear before the Registrar,

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Public Trust, Indore on 15.07.2015 and the learned Registrar, after granting an opportunity of hearing to the parties, shall be free to pass an appropriate order, in accordance with law with the statutory provisions, as contained under the Madhya Pradesh Public Trust Act, 1951.

8. It is this order by which the appellants are aggrieved and challenged the same on the ground that their preliminary objection was not decided by the learned Writ Court, while disposing of the writ petition.

9. It is also submitted that as per the order dated 10.05.2013, notices were issued, and therefore, sufficient compliance of the provisions of Clause (c) of sub-section (1) of Section 26 of the Madhya Pradesh Public Trust Act, 1951 has been made. It is also submitted that once the respondents participated in the proceedings before the learned Civil Judge and when their application under Order 7 Rule 11 of the CPC was rejected, the writ petition filed by them was not maintainable; proper remedy for them to pursue their appeal and revision against the order, rejecting their application under Order 7 Rule 11 of the CPC and the impugned order of grant of injunction.

10. He has also drawn our attention to Sections 8 & 9 (1) of the Madhya Pradesh Public Trust Act, 1951 and Clause 4 of the writ petition and submitted that delay of thirteen months

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in filing the writ petition has not been properly explained. He also placed reliance on paragraphs No.16 and 18 of the decision of the Apex Court in the case of **Basanti Prasad v. Chairman, Bihar School Examination Board and others** reported in **2010 (1) MPLJ 328** and the decision in the case of **Ashok Kumar v. District Magistrate, Basti** reported in **2012 (3) MPLJ 346** and submitted that where there is an inordinate and unexplained delay and third party rights are created in the intervening period, the learned Writ Court would have declined to interfere in the matter by passing the impugned order and prays that both the writ appeals be allowed.

11. In reply, Shri Piyush Mathur, learned Senior Counsel submits that as per reply of the Registrar, Public Trust, Indore, no notice was served to the private respondents nor any opportunity of hearing was provided to them. He submitted that there is no material on record nor the same has been filed along with the present appeals that the private respondents were duly served before the Registrar, Public Trust or they were duly represented and opportunity of hearing was provided to them. He also submitted that only three persons were impleaded in the application filed before the Registrar, Public Trust, Indore, whereas before the learned District Judge, Indore, total twenty persons were

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impleaded and most of them were not impleaded before the Registrar, Public Trust, Indore, and therefore, learned Writ Court rightly held that no opportunity of hearing was provided to the private respondents while passing the order dated 10.05.2013.

12. He further submits that there is no bar in filing writ petition. The private respondents within a reasonable time, may challenge the order passed by the Registrar, Public Trust, Indore, if the same is in violation of the statutory provisions and their appearance or participation in the proceedings before the learned Civil Judge does not preclude them to challenge the same. He submitted that the writ petition was filed within a reasonable time, and therefore, there is no inordinate or unexplained delay, hence, there is no reason to explain the same and rightly no detail reason has been stated in Clause 4 of the writ petition. He further submitted that the decision in the case of **Basanti Prasad v. Chairman, Bihar School Examination Board** (supra) cited by the learned counsel for the appellants will not be applicable in the present facts and circumstances of the case, because, in the aforesaid matter, there was unexplained and inordinate delay of more than fourteen years and prayed for dismissal of both the writ appeals.

13. From the aforesaid, it is not in dispute that private

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respondents were not heard by the Registrar, Public Trust, Indore, before passing order dated 10.05.2013. There is no material that the private respondents were duly served. From perusal of the order of the learned Writ Court, we find that the learned Writ Court has passed the impugned order on the ground that opportunity of hearing was not provided to the private respondents and the Registrar, Public Trust has passed the impugned order in a most mechanical manner, without considering the provisions of Madhya Pradesh Public Trust Act, 1951.

14. It is well settled that writ petition not being a suit nor an application to which Limitation Act applies. No limitation is provided for such proceeding. But the equitable principle of delay has been applied where the delay is unreasonable and unexplained, as a rule of discretion.

15. In view of the aforesaid, we are of the view that the learned Writ Court has not committed legal error in passing the impugned order.

16. Both the writ appeals have no merit. Writ Appeal No.278/2015 and Writ Appeal No.279/2015 are accordingly dismissed. No costs.

□(P.K. Jaiswal)
Judge

(Tarun Kumar Kaushal)
Judge