

HIGH COURT OF MADHYA PRADESH: BENCH AT
INDORE
W.P. No.5664/2016
(Manurai Samaj Dharshala Nyas Vs. The Registrar of
Public Trust and another)

Indore, dated 19.06.2018

Shri V.K.Jain, learned senior counsel along with Shri Abhishay Jain, learned counsel for the petitioner.

Shri A.K.Sethi, learned senior counsel along with Shri Manu Maheshwari, learned counsel for the respondents.

The petitioner before this Court Murai Samaj Dharmshala Nyas a registered public trust has filed this present petition being aggrieved by order dated 25.06.2016 Annexure P/12 passed in Case No.76-B/113/2015-16 by the Registrar of Public Trust.

02. The facts of the case reveal that the petitioner is a registered public trust duly registered under the provisions of the M.P. Public Trust Act, 1951 and a certificate of registration is also on record 27.09.1983. The petitioner trust was formed by a declaration dated 26.01.1982 and the prescribed procedure was followed while registering the trust and a Dharmshala known as Dharmshala at No.2 Nawlakha, Indore was declared as trust property and was recorded as trust property in the property register of the trust.

03. A civil Suit was preferred challenging the registration of petitioner trust i.e. Civil Suit No.COS 83-A/2003 before the 7th Civil Judge, Class-I, Indore by certain persons including the then president of respondent No.2 Murai (Mourya) Samaj Indore namely Phoolchand Verma who was the plaintiff No.10 in the civil suit. The suit was dismissed by judgment and decree dated 04.07.2003 and being aggrieved by judgment and decree passed in the civil suit an appeal was preferred i.e CRA No.62-

A/2003 before the 13th Additional District Judge, Indore and it was dismissed on 11.05.2004. No second appeal was preferred in the High Court, meaning thereby the judgment and decree delivered in civil suit became final and has not been challenged till date. In respect of registration of trust which was done in the year 1983 and in respect of the property owned by the trust in the year 2004 after a lapse of 31 years the respondent No.2 Shri Murai (Mourya) Samaj Indore, which is a society registered under the provisions of Society Registration Act, 1983, which was registered in 1985 preferred an application under Section 9 of the M.P. Public Trust Act, 1951 stating that the society which came in existence subsequent to the registration of the trust is the owner of the Dharamshala and the entry in respect of the Dharmshala should be deleted from the trust deed. An application was also preferred under Section 5 of the Limitation Act for condoning the 31 years of delay in filing the application under Section 9 of the Public Trust Act, 1951. Learned Registrar Public Trust has allowed the application preferred by respondent No.2 and has deleted the entry in respect of Dharmshala and the application filed by the trust i.e. that present petitioner under Order 7 Rule 11 of the Code of Civil Procedure has been dismissed.

04. Shri Jain, learned Counsel for the petitioner has vehemently argued before this Court that such an application on behalf of respondent no.2, a society was not at all maintainable under Section 9 of the Public Trust Act, 1951 and the Registrar has erroneously by ignoring the statutory provisions as contained under the M.P. Public Trust Act, 1951 has deleted the entry in respect of Dharamshala. He has prayed for quashment of the order passed by the Registrar.

05. On the other hand, Shri Sethi, learned senior counsel has vehemently argued before this Court that the property in question that is Dharmshala is being managed by society which is came in existence 1985, and therefore, as the society respondent No.2 was managing the Dharamshala, it was the property of the society, an application was rightly preferred under Section 9 of the Public Trust Act, 1951 which was very much maintainable and in case any person is aggrieved in respect of title of Dharmshala, he is certainly free to file a civil suit. He has also argued that the delay was rightly condoned in the matter and the order passed by the Registrar of Public Trust does not want any interfere.

06. Heard learned counsel for the parties and perused the record. The matter is being disposed of with the concern of the parties at motion stage itself.

07. Undisputedly, the facts of the case reveal that the petitioner is a registered public trust duly registered under the provisions of the M.P. Public Trust Act, 1951. The trust was registered on 27.09.1983 and the trust deed is also on record and the Dharamshala also finds place in the list of the properties of the trust, meaning thereby right from 1983, the trust deed reflects the Dharmshala to be under the control and under the ownership of the public trust. The most important aspect of the case is that a civil suit was preferred i.e civil suit No.83-A/2003 challenging the registration of the public trust and for declaration that the Dharamshala is not the property of the trust and it is the property of respondent No.2. In the civil suit one Phoolchand Verma who was president of the society which came into existence in the year 1985 and who was the President of the society from 2000-2006 was one of the plaintiff, meaning thereby the society was very much aware of the registration of

the trust and inclusion of Dharmshala as the property of the trust. The civil suit was dismissed vide judgment and decree dated 04.07.2003

08. In the year 2014 after a lapse of 31 years by filing an application under Section 9 of the Public Trust Act, 1951, the same society who is now presided over by Naresh Verma as President, who is a real brother of Phoolchand Verma started claiming the ownership of the Dharmshala and a prayer was made before the Registrar of public trust for deleting the entry in respect of the Dharmshala from the trust deed. The learned Registrar has allowed the application.

09. The relevant statutory provisions necessary for deciding the present case, as contained under Section 4 to Section 9 of the M.P. Public Trust Act, 1951 reads as under:

“Section 4. Registration of public trusts:-

Section 5. Inquiry for registration. - (1) On receipt of an application under Section 4 or upon, an application made by any person having interest in a public trust or on his own motion the Registrar shall make an inquiry in the prescribed manner for the purpose of ascertaining, -

- (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 the addresses of the trustees 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 trust; and
- (viii) the correctness or otherwise of any other particulars furnished under sub-section (3) of Section 4.

(2) The Registrar shall give in the prescribed manner public notice of the enquiry proposed to be made under sub-section (1) and invite all persons interested in the public trust under inquiry to prefer objections, if any, in respect of such trust.

Section 6. Findings of the Registrar. - On completion of the inquiry provided for under Section 5, the Registrar shall record his findings with reasons therefor as to the matters mentioned in the said section.

Section 7. Registrar to make entries in the register. -

- (1) The Registrar shall cause entries to be made in the register in accordance with the findings recorded by him under Section 6 and shall publish on the notice board of his office the entries made in the register.
- (2) The entries so made shall, subject to the provisions of this Act and subject to any change recorded under any provision of this Act or a rule made thereunder, be final and conclusive.

Section 8. Civil suit against the finding of the Registrar. -

- (1) Any working trustee or person having interest in a public trust or any property found to be trust property, aggrieved by any finding of the Registrar under Section 6 may, within six months from the date of the publication of the notice under sub-section (1) of Section 7, institute a suit in a Civil Court to have such finding set aside or modified.
- (2) In every such suit, the Civil Court shall 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.
- (3) On the final decision of the suit, the Registrar shall, if necessary, correct the entries made in the register in accordance with such decision.

Section 9. Change. - (1) Where any change occurs in any of the entries recorded in the register, the working trustee shall, within ninety days from the date of the occurrence of such change or where any change is desired in such entries in the interest of the administration of the such public trust, report in the prescribed manner such change or proposed change to the Registrar.

(2) If, on receipt of such report and after making such enquiry' as the Registrar may consider necessary, the Registrar is satisfied that a change has occurred or is necessary in any of the entries recorded in the register in regard to a particular public trust, he shall record a finding with the reason therefor and subject to the provisions contained in sub-section (3) amend the entries in the said register in accordance with such finding.

(3) The provisions of Section 8 shall apply to any finding under this section as they apply to a finding under Section 6.”

Section 9 of the M. P. Public Trust Act, 1951 empowers the working trustee only to report the change to the Registrar.

Section 9(1) is in three parts :

(i) where any change occurs in any of the entries recorded in the register, the working trustees shall,

(ii) within ninety days from the date of the occurrence of such change or where any change is desired in such entries in the interest of the administration of such public trust,

(iii) report in the prescribed manner such change or proposed change to the Registrar.

The use of word '**shall**' after the words '**working trustee**' makes it very clear that it is only the working trustee who can file an application u/S. 9 before the Registrar Public Trust.

Hon'ble Justice G. P. Singh, in 'Principles of Statutory Interpretation', [13th Edition Chapter 5(6)(e)] has dealt with the use of the word 'shall', 'may', 'must' and 'should'. The relevant paragraph ie., paragraph (3), reads as under :

“(e) Use of 'shall' or 'shall and may'; 'must' and 'should'

The use word 'shall' raises a presumption that the particular provision is imperative; but this *prima facie* inference rebutted by other considerations such as object and scope of the enactment and the consequences flowing from such construction. There are numerous cases where the word 'shall' has, therefore, been constructed as merely directory.

“The word 'shall'”, observes Hidayattullah, J. “is ordinarily mandatory but is sometimes not so interpreted if the context or the intention otherwise demands”, and point out Subbarao, J : “When a statute uses the word 'shall' *prima facie* it is mandatory, but the court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the statute:”. If different provisions are connected with the same word 'shall', and if with respect to some of them the intention of the Legislature is clear that the word 'shall' in relation to them must be given an obligatory or a directory meaning, it may indicate that with respect to other provisions also, the same construction should be placed”.

10. In the light of the aforesaid, it can be safely gathered that use of word 'shall' casts a mandatory duty upon the working trustee only to take appropriate action by filing an application before the Registrar, Public Trust.

The working trustee is required to report to the Registrar within ninety days from the date of the occurrence of such change or where any change is desired in such entries in the interest of the administration of such public trust.

The aforesaid function has been assigned to the working trustee only and to none else and, therefore, in the considered opinion of this Court, an application by a stranger under the aforesaid provision is not at all maintainable and the learned Registrar, Public Trust should have dismissed the application at the threshold.

11. In the present case the trust was registered after following the due process of law, proper notice was issued and trust deed was registered right from 1982. The property i.e. Dharamshala is undisputedly the trust property. The respondent No.2 has filed an application under Section 9 of the M.P. Public Trust Act, 1951. The application was certainly not at all filed by working trustee nor such an application for deleting the property can be said to be in the interest of administration of such public trust, and therefore, at the first instance the application itself was not at all maintainable.

Secondly, the society has failed in its attempt by filing a civil suit and for claiming title of the Dharmshala as the civil suit was dismissed though, it was preferred by Phoolchand Verma as plaintiff who was president at the relevant point of time of the Murai (Mourya) Samaj Indore. Now, Shri Naresh verma is the real brother of Phoolchand Verma and now who is

the society's president, taking shelter of Section 9 and has filed an application after lapse of 31 years claiming the Dharamshala.

In the considered opinion of this Court, such an application was not at all maintainable and secondly in light of the judgment and decree passed in Civil Suit No.83-A/2003 passed by 7th Civil Judge, Class I dated 04.07.2003 which is binding upon the parties, the Registrar of Public Trust could not have passed the impugned order as has been done in the present case.

Thirdly, the Registrar could not have condoned the delay of 31 years in a mechanical manner. The present case reflects a very sorry state of affairs. The Registrar of public has ignored all the statutory provisions as contained in the Public Trust Act, 1951 and in a mechanical manner has passed the impugned order which is contrary to the statutory provisions, and therefore, the writ petition deserved to be allowed, and is accordingly allowed. Order dated 25.06.2017 passed in Case No.76-B/113/2015-16 is hereby quashed. The petitioner trust, as the Dharmshala is the trust property, shall manage all the affairs of Dharmshala and all of the earnings of Dharmshala and the other properties of the trust shall be deposited in the account of petitioner trust only.

Certified copy as per rules.

(S. C. Sharma)
Judge