

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 25th OF AUGUST 2023

WRIT PETITION NO.21499 of 2022

BETWEEN:-

**SHRI MAHADEV JI MANDIR TRUST, THROUGH
SARVARAHAKAR SUDAMA PRASAD PRAJAPATI, S/O.
SHRI MAHESH PRASAD, AGED ABOUT 51 YEARS,
BADHAIYA MOHALLA, JABALPUR (M.P.)**

.....PETITIONER

***(BY SHRI SANJAY K. AGRAWAL AND SHRI PRIYANK CHOUBEY -
ADVOCATES)***

AND

- 1. THE STATE OF MADHYA PRADESH, THROUGH
PRINCIPLE SECRETARY, REVENUE, VALLABH
BHAWAN, BHOPAL (M.P.)**
- 2. COLLECTOR, DISTRICT JABALPUR (M.P.)**
- 3. REGISTRAR, PUBLIC TRUST/SUB DIVISIONAL
OFFICER (REVENUE), ADHARTAL, JABALPUR
(M.P.)**

....RESPONDENTS

***(SHRI GIRISH KEKRE – GOVERNMENT ADVOCATE AND SMT. ARTI
DWIVEDI – PANEL LAWYER)***

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Reserved on : 23.08.2023
Pronounced on : 25.08.2023
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This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Pleadings are complete. Counsel for the parties are ready to argue the matter finally. It is accordingly finally heard.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner is questioning the validity of order 17.12.2021 (Annexure P/1) passed by the Registrar, Public Trusts saying that though the Registrar, Public Trusts exercising power provided under Section 22 of the M.P. Public Trusts Act, 1951 (hereinafter referred to as the 'Act, 1951') has passed the impugned order, but he is not an authority notified and therefore, he cannot exercise the power of Registrar, Public Trusts and pass the impugned order.

3. Shri Sanjay K. Agrawal, learned senior counsel appearing for the petitioner submits that the order passed by the Registrar directing certain things to be done and conduct which has been shown by him do not empower him to exercise that power and, therefore, the order is without jurisdiction. He has also pointed out that the Registrar exercised the power under Section 22 of the Act, 1951 and issued certain directions which could have been done only by the Civil Court, if any, reference is made under Section 26 of the Act, 1951 and the Civil Court proceeded therein and exercised the power as provided under Section 27 of the Act, 1951 but here, order of Registrar, according to Shri Agrawal is without jurisdiction. In support of his contention, he has placed reliance upon the decisions reported in **1971 J LJ SN 135- Dalludas Vs. Registrar of Public Trusts,**

Hoshangabad and 1972 JLJ SN 6 - Sheoprasad Dubey Vs. Registrar, Public Trusts, Sagar and others and submitted that in view of the aforesaid, the petition deserves to be allowed and the order of Registrar to the extent of direction issued by him is liable to be set aside.

4. Reply has been filed on behalf the respondents justifying the order passed by the Registrar pointing out that petitioner has also filed a petition on earlier occasion, therefore, for the same cause of action, this petition is not maintainable. They have also pointed out that since certain irregularities were noticed by the Registrar and, therefore, whatever direction issued by the authority, can be issued even under Section 22 of the Act, 1951. They have also stated in the reply that the power exercised by the authority as a Registrar, Public Trusts is proper for the reason that though there is no specific notification but under the Work Distribution Order, Collector has assigned the work of Registrar Public Trusts and as such, the order passed by the Registrar cannot be said to be without competence merely because there was no specific notification issued by the State Government notifying him as the Registrar, Public Trusts.

5. Considering the submissions made by learned counsel for the parties and perusal of record, since the challenge is confining to the extent that though the authority which had passed the order under the capacity of Registrar, Public Trusts i.e. Sub Divisional Officer but not notified as the Registrar, Public Trusts by the State Government, therefore, he cannot perform such a function and the order passed by him is without jurisdiction. Although, this can be answered by the State Government whether he is notified authority or not but in the reply submitted by the respondents, they have taken a stand that the Sub Divisional Officer has

been assigned the work of Registrar, Public Trusts by the Collector under an order of work distribution and, therefore, the same can be done by the said authority and that authority can perform the function of Registrar, Public Trusts. According to counsel for the State, there is nothing illegal in it. However, I am not satisfied with the stand taken by the State for the reason that the Registrar has been defined under Section 3 of the Act, 1951 which reads as under:-

“3. Registrar of public trusts. (1) The Collector shall be the Registrar of Public Trusts in respect of every public trust the principal 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.”

6. From the definition provided of the Registrar, it is clear that the Collector shall be the Registrar of Public Trusts. This Court considering the definition of Registrar as mentioned in Section 3 of the Act, 1951 has passed an order in case of **Budhoolal Vishwakarma and another Vs. Registrar, Public Trusts, Jabalpur and others** reported in **1964 MPLJ 887**, wherein it was observed by the Court that ‘Collector is a *persona designata*’ under the Act and he alone could act as the Registrar of Public Trusts and no one else. Even an Additional Collector would have no power to act as the Registrar of Public Trusts and any action taken by him shall be without jurisdiction.

7. Moreover, in the Act 1951, there is a provision i.e. Section 34-A which deals with the delegation of powers of 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.”

8. With regard to the fact whether there has to be a specific notification under Section 34-A of the Act 1951 or the powers can be delegated by the work distribution memo has already been settled. Recently, in **Writ Petition No.8001/2022 (Prashant Sharma Vs. State of Madhya Pradesh and others)** relying upon an earlier decision on this issue, the writ Court has observed as under:-

“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 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, 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. Buddhibai vs. Registrar Public Trust-cum-SDO & others]. The relevant portion reads as under:

"As in the present case, the impugned order was passed by Sub Divisional 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 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 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 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.”

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.

Accordingly, this Court is of the considered opinion that the SDO, Sheopur has no authority to exercise the powers of Registrar Public Trust, therefore, the order dated 02.03.2022 is quashed as without jurisdiction.”

7. As far as second contention of counsel for the petitioner is concerned, that the Registrar, Public Trusts by the impugned order issued certain directions taking management of the Trust in hand and directed for constitution of a Committee which can manage the affairs of the Public Trust and thereafter referred the matter to the Civil Court as per provisions of Section 26 of the Act, 1951. Under the Act, 1951, Section 22 deals with the power of Registrar which reads as under:-

“**22. Power of the Registrar.-** The registrar shall have powers.-

(a) to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust;

(b) to call for or inspect any extract from any proceedings of the trustees of any public trust or any book or account in the possession of or under the control of the trustees;

(c) to call for any return, statement, account or report which he may think fit from the trustees or any person connected with a public trust:

Provided that in entering upon any property belonging to the public trust the officer making the entry shall give reasonable notice to the trustee and shall have due regard to the religious practices or usages of the trust.

8. From perusal of the aforesaid provision it is clear that the Registrar is only empowered to make inspection of the property belonging to the

Public Trusts and to inspect the relevant record of the Public Trusts so as to ascertain whether functioning of the Trust is being conducted as per the provisions of law or not. If in the opinion of the Registrar, he finds any irregularities in the functioning of the Public Trusts then after giving proper notice to the trustees, make a report and if so requires forward the same to the Civil Court for appropriate action. However, the Registrar itself cannot make any observation or can pass any order for management of the Public Trusts or will not try to administered the same. It can be done only by the Civil Court that too under the circumstance when application is made to the Court under Section 26 of the Act, 1951. In the case of *Dalludas (supra)*, the Division Bench has held as under:-

“There is no power in the Act under which the Registrar can remove an existing trustee and appoint another by his own order. The only provision in such a matter where the Registrar is not satisfied about the capacity of the working trustee is Section 26 of the Act. Under that provision a reference has to be made to the Civil Court and directions of the Civil Court have to be sought for removal of the trustee and for appointment of another trustee. That procedure having not been followed, the order passed by the Registrar is without jurisdiction, and is accordingly quashed. Petition allowed.”

9. Likewise, in case of *Sheoprasad Dubey (supra)*, the Court has held as under:-

“The Registrar has no jurisdiction to appoint any committee to take charge of the trust property. The only powers given are enumerated by clauses (a), (b) and (c) of Section 26 of the Act. The intention of the legislature is that whenever the Registrar considers it necessary that some arrangement should be made to manage the trust property, he should apply to the District Judge who has powers to make arrangement of the trust property, and if an interim arrangement is called for, an application is to be made to the District Judge for the same. Petition partly allowed-order appointing committee to take charge of the trust property set aside.”

10. In a case reported in **1967 J LJ SN 3 Laldas (Mahant) Vs. Registrar, Public Trusts and another**, the Division Bench has held as under:-

“There is no provision whatsoever in the M.P. Public Trusts Act, 1951, empowering the Registrar to give direction with regard to custody, safety or investment of such movable property as gold or silver belonging to a public trust.”

11. If reply of the State is seen, it is clear that the State in paragraph 8 of its reply has admitted this situation and submitted that the Registrar cannot issue any direction for appointing a Committee or to take the charge of the property of trust. Even otherwise, in view of the language used in Section 22 of the Act, 1951 and also in view of the judgements of the High Court, it is clear that the Registrar while issuing directions had exceeded its jurisdiction which are beyond the scope of power vested in it. The impugned order, therefore, is also without jurisdiction.

12. Considering the aforesaid, the petition is **allowed**. The order impugned dated 17.12.2021 (Annexure P/1) is accordingly set aside.

(SANJAY DWIVEDI)
JUDGE