

HIGH COURT OF CHHATTISGARH, BILASPUR**FA No. 406 of 1998**

1. Shivwanath Jogi , aged about 65 years, son of Kuleshwarnath Jogi, Pujari, resident of village Mungeli, Tahsil Mungeli, Bilaspur.
2. Ramnath Jogi (Appellant No. 3) died through Narsingh Nath Jogi, son of Kuleshwarnath Jogi, aged about 65 years, R/o Mungeli, District Bilaspur Now Mungeli (C.G).
3. Bharathnath Jogi, aged about 49 years, son of Bawannath Pujari, resident of village Mungeli, Tahsil Mungeli, District Bilaspur, Now Mungeli. **--- Appellants**

Versus

1. Ganesh Bajpai aged about 54 years son of Devi Prasad Bajpai, resident of Bada Bazar, Tahsil Mungeli, Distt. Bilaspur.
2. State of Madhya Pradesh (now Chhattisgarh) through the Sub-Divisional Officer, Mungeli, Distt. Mungeli **--- Respondents**

For the applicant	:	Mr. B.D. Guru, Advocate
For Respondent No.1	:	Mr. Sanjay Patel, Advocate
For the State	:	Mr. Aditya Sharma, Advocate

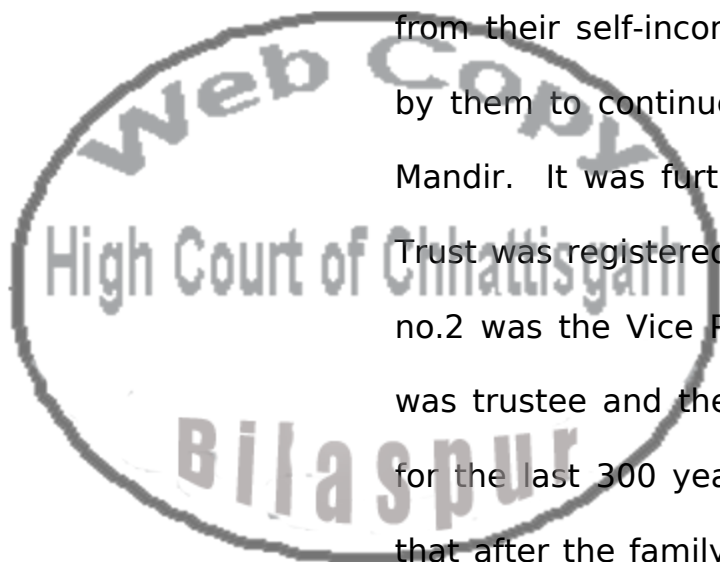
Hon'ble Shri Justice Goutam Bhaduri

Order on Board**02.01.2019**

1. The present appeal is against the order dated 06.05.1998 passed by the First Additional District Judge, Bilaspur in Misc. Civil Case No.8 of 1996 whereby the learned court below has directed for dissolution of the Trust Committee and further directed the Registrar Public Trust to form new Public Trust within a period of 3 months.
2. The present appeal was initially preferred by Vishwanath Jogi (since deceased) as appellant No.1, Shivnath Jogi as appellant No.2, Ramnath Jogi as appellant No.3 (since

deceased) and Bharatnath Jogi as appellant No.4. After death of appellant No.3 Ramnath Jogi his legal representative Narsinghnath Jogi was brought on record as appellant No.3(a).

3. (i) Learned counsel for the appellant would submit that initially an application was preferred by Vishwanath Jogi, Shivnath Jogi, Ramnath Jogi & Bharatnath Jogi under section 27 of the M.P Public Trust Act, 1951 wherein it was stated that the ancestors of the appellants have established Maha Maya Mandir Trust, Mungeli, which is 300 years old and the temple was constructed by Pranaynath Jogi, their ancestors from their self-income and the entire expenses were borne by them to continue worship and met the expenses of the Mandir. It was further stated that Maha Maya Devi Mandir Trust was registered in 1952 and Vishwanath Jogi, applicant no.2 was the Vice President and Applicant No.5 Bharatnath was trustee and they were continuing to carry on worships for the last 300 years through their ancestors. It is stated that after the family was divided into 4 divisions and all the respective family of the applicants were worshipping the goddess according to their own arrangements. After 1952 when two trustees were appointed, both of them were died and in 1989 the Registrar Public Trust has appointed 9 trustees wherein one Ganesh Bajpai was appointed as President and Vishwanath Jogi the applicant was appointed as Vice President apart from other trustees.
- (ii) It is contended that after the appointment of trustees in 1989 no meeting was convened by the newly appointed President nor the budget was ever passed. The income and



expenditure of offerings were also not accounted for and physical verification of the Trust property i.e., both movable and immovable properties was not done. It was stated that the Trust Committee had 32.68 acres of agricultural land at Tingipur and the income arising out of that has not been accounted for. It is further contended that the order dated 28.06.1989 whereby 9 trustees were appointed itself was void ab-initio and the entire management of the temple was not according to the benefit and scheme of the Trust. It is further stated that the appointment of trustees of 1989 be declared as void and the Trust which is made be also declared void and the new trustees be appointed. It was further stated that the priest (Pandit) of the worship of Mandir may be appointed from the family of the applicant alone. It is further contended that while the application was being adjudicated by the Court below u/s 27 of the Act, the Court misdirected itself and has directed to give an amount of 10% from the offering made in temple which is against the scheme of the trust as the appellants are not aggrieved by other finding but for the fact that the prayer in the temple exclusively belongs to the appellant in the capacity of Priest (Pandit). Therefore, they have all the rights and control over managing the affairs in the best possible manner including the offerings to the deity.

4. Learned counsel further submits that creation of the trust of Mandir qua worship and immovable property of the trust cannot be amalgamated as they are two distinct and separate entities and the creation of trust is only for worship. It has nothing to do with the income which is entirely

separate and distinct affairs. It is contended under the facts of this case the order of framing a scheme itself would lead to creation of trust in its entirety which is bad and need to be interfered.

5. Learned counsel for respondent No.1 as also learned State Counsel supports the order of the Court below.
6. Perused the order of the Court and records. A perusal of the order would show that the court below has exercised its jurisdiction on the basis of application made by the Registrar u/s 26(2) of the M.P. Public Trust Act, 1951. For the sake of convenience, section 26(1) are reproduced here-in-below:

“26. Application to Court for directions.- (1) If the Registrar on the application of any person interested in the public trust or otherwise is satisfied that,--

(a) the original object of the public trust has failed;

(b) the trust property is not being properly managed or administered or

(c) the direction of the Court is necessary for the administration of the public trust;

he may, after giving the working trustee an opportunity to be heard direct such trustee to apply to Court for directions within the time specified by the Registrar.

(2) If the trustee so directed fails to make an application as required or if there is no trustee of the public trust or if for any other reason, the Registrar considers it expedient to do so, he shall himself make an application to the Court.”

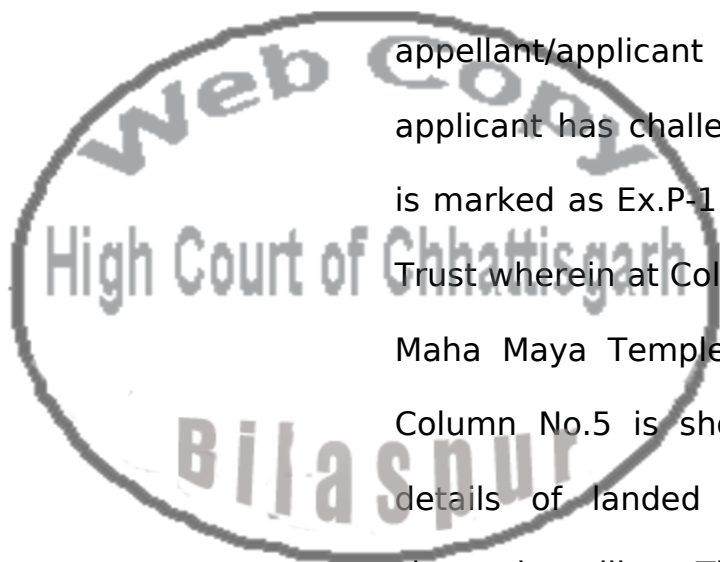
7. Another set of application filed by the applicants was distinctly considered on its merit and it was held that since creation of the Trust has not been challenged by the appellant in view of section 8 of the Act, 1951, the same was not considered. Section 8 of the Act of 1959 is reproduced herein below:

“8. Civil suit against the finding of 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 Suit to have such finding set aside or modified.

(2) In every 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.”

8. A perusal of section 8 along-with tenor of application filed by appellant/applicant u/s 27 of the Act would show that the applicant has challenged the order dated 28.06.1989 which is marked as Ex.P-1. Ex.P-1 is copy of the Register of Public Trust wherein at Column No.2, the name of Trust is shown as Maha Maya Temple, Mungeli. The Object of the trust in Column No.5 is shown as worship. In column No.9, the details of landed property admeasuring 32.68 decimal situated at village Tigipur is shown. Another property details is shown at Chhattan, Tahsil Mungeli. In the said Ex.P-1, at column 6 & 7 the particulars of document creating trust, names of newly appointed 9 trustees have been shown which includes the name of Vishwanath Jogi at Serial No.2 as Vice President and Bharathnath Jogi at Serial No.6 as a Trustee who is also applicant along-with other persons. The said Exhibit is dated 08.04.1996. Ex.P-2 is a document of Registrar of Public Trust and the particulars of document at Column No.6 would show that the trust was created on first of March, 1952. The appellants have not placed any



document of original trust deed of 1952. Therefore, if at all the appellants were aggrieved by the finding of Registrar rendered u/ss 6 & 7 of the Act, 1951, it was incumbent to challenge the same within six months under sub-section (1) of section 7 and should have filed the civil suit to have such finding set aside or modified. Having not been done so it has attained finality. Therefore, the creation of trust at belated stage in absence of filing of civil suit u/s 8 of the Act 1951 cannot be further challenged. The tenor of the order would show that the entire adjudication was made on the application made by the SDO/Registrar which was considered as per Section 26(2) of the Act. Section 26 (2) contemplates that the registrar if it considered expedient to do so may make an application to the Court when he finds that the original object of the trust is failed or the Trust property is not being properly managed or administered and the direction of the Court is necessary for administration of Public Trust.

9. Section 27 of the Act, 1951 lays down the power of the Court which reads as under:

“27. Court's power to hear application.- (1) On receipt of such application the Court shall make or cause to be made such inquiry into the case as it deems fit and pass such orders thereon as it may consider appropriate.

(2) While exercising the power, under sub-section (1) the Court shall among other powers, have power to make an order for :-

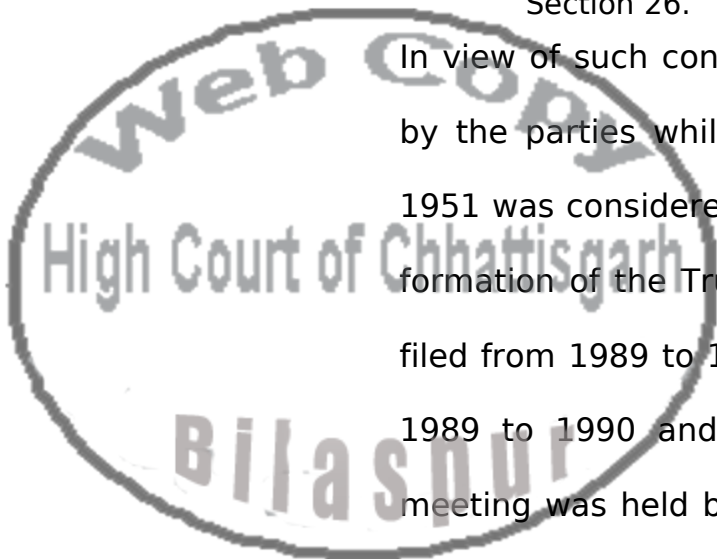
- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) declaring what portion of the trust property or of the interest therein shall be allocated to any particular object of the trust;

- (d) providing a scheme of management of the trust property;
- (e) directing how the funds of a public trust whose original object has failed, shall be spent, having due regard to the original intention of the author of the trust or the object for which the trust was created;
- (f) issuing any directions as the nature of the case may require.

(3) Any order passed by the Court under sub-section (2) shall be deemed to be a decree of such Court and an appeal shall lie therefrom to the High Court.

(4) No suit relating to a public trust under Section 92 of the Code of Civil Procedure, 1908 (V of 1908), shall be entertained by any Court on any matter in respect of which an application can be made under Section 26."

In view of such contemplated power when the evidence led by the parties while enquiry was made u/s 27 of the Act, 1951 was considered, the Acting Trustee admitted that after formation of the Trust Committee, the audit report was not filed from 1989 to 1995. Further no meeting was held from 1989 to 1990 and in between 1991 and 1995 only one meeting was held but no document was filed. In respect of the expenses of day to day affairs is also not proved properly. The offerings made to the deity was also not accounted for nor proper administration was made. Therefore, it was found that even the trustees who were appointed failed to discharge their duty to administer the trust property. The evidence also reflects that when the trustees are not in harmony with each other, which eventually affected the working of the trust and the income received were not properly utilized for the development of the temple, the Court was bound to formulate the scheme of management.



10. Para 11 of the order would show that the scheme of management was formulated which included that out of the offerings made, 10% would be paid to the priests (Pandits) who were performing Pujas in the temple till the fresh trust committee is formulated. The following scheme of management as per para 11 of the order was made by the Court which is reproduced for ready reference :

11. स्कीम आफ मैनेजमेन्ट के अंतर्गत इस न्यायालय को प्राप्त शक्तियों के अंतर्गत निम्नलिखित उप-नियमों की रचना की जाती है:—

1. मंदिर की भूमि को कृषि हेतु प्रदाय किये जाने के नीलाम कार्यवाही प्रतिवर्ष पंजीयक सार्वजनिक न्यास/अनुविभागीय अधिकारी मुंगेली के निर्देशन में की जावे, तथा नीलाम की राशि को बैंक के खाते में जमा किया जावे।
2. मंदिर में नवरात्रि के अवसर पर जलाये जाने वाले ज्योति कलश की राशि को रसीद के माध्यम से ही प्राप्त किया जावे।
3. मंदिर की चढ़ौत्री का हिसाब-किताब प्रत्येक दिवस संघारित करते हुये बैंक में जमा किया जावे।
4. मंदिर की पूजा करने वाले पुजारियों तथा मंदिर की आय को दृष्टिगत रखते हुये समुचित वेतन निर्धारण किया जावे। तथा उन्हे चढ़ौत्री की राशि में से 10 प्रतिशत राशि पृथक से भी अदा की जावे।
5. महामाया देवी रतनपुर की ट्रस्ट कमेटी के संचालन कार्यवाही व योजना का अध्ययन करके अन्य एसे नियम बनाये जाये जो मंदिर संचालन हेतु व्यवहारिक व हितकर हो।

11. The submission made by the counsel that the trust would not have been created as the entire performance of *Pujas* were made by the applicants/appellants and they are not concerned with the immovable property of the trust cannot be appreciated. The appellant stresses upon the fact that the entire right to perform Puja should be in the hand of the appellant as Pujaris. Certainly, the said right as per the scheme as has been made has not been affected. To offer a

Puja in the Mandir to the deity by priest would not automatically envelop the the offering made to the deity to be the property of the priests (Pujaris). The offers are made by the worshipers to the deity not to the priests, therefore, the circuitous route to have a right over the offerings being made to the deity through the priests cannot be given effect to. The court below has directed the Registrar Public Trust to prepare a new trust committee. Therefore, if the trust is not properly managed or administered then the Court is empowered u/s 27 to order for new trust and till the trust is created, the direction of the Court as has been reproduced herein before would continue. After careful examination of the issues, I am of the opinion that no interference is required in the order impugned. The Registrar Public Trust is further directed to create new Trust Committee within a further period of six months from the date of receipt of the order. Till then the direction given by the Court below shall continue.

12. With the above direction/ observations, this appeal is disposed of.

Sd/-
GOUTAM BHADURI
JUDGE