MADHYA PRADESH HIGH COURT

State of M. P.

Vs.

Mother Superior Convent School
Misc. Petn. No. 203 of 1956, Decided on 30.9.1957, against order of Registrar, Public Trust, Sagar

(M. Hidayatullah, C.J. and G.P. Bhutt, J.)

23.08.1955. 30.09.1957

JUDGMENT

M. HIDAYATULLAH, C.J.

1. The order in this petition shall also govern the disposal of Miscellaneous Petition No. 216 of 1956.

2. These two petitions have been made under Articles 226 and 227 of the Constitution by the State of Madhya Pradesh. Miscellaneous Petition No. 203 of 1956 is directed against the Mother Superior Convent School through Mother Agnes, Mall Road, Sagar, District Sagar while Miscellaneous Petition No. 216 of 1956 is directed against Roman Catholic Church, Sagar, Roman Catholic Church, Bina, Roman Catholic Church and Orphanage, Shyampura, and Rev. C. Dubbleman, Bishop House, Queen's Road, Jabalpur. In both the petitions the Registrar of Public Trusts, Sagar, has been joined.

3. After the enactment of the Madhya Pradesh Public Trusts Act, 1951, these answering respondents were invited by the Registrar of Public Trusts to get the institutions under their control registered under the Act. The institutions represented to the Registrar that they were not affected by the provisions of the Act, that they were not public trusts, and that they were governed in the case of the answering respondents in Miscellaneous Petition No. 216 of 1956 by the canon law and in the case of the answering respondent in Miscellaneous Petition No. 203 of 1956 by a band of pious ladies who have pooled their energies and resources to further the cause of education and whose association is entirely voluntary and not subject to a trust.

4. It appears that the Deputy Commissioner, Sagar, addressed a letter to these various institutions on 2-2-1955 inviting them to furnish particulars required by section 4 of the Act and to get themselves registered. On behalf of the answering respondents in Miscellaneous Petition No. 216 of 1956 the matter was taken up by the Prefecture Apostolic and in the case of Miscellaneous Petition No. 203 of 1956 by the Mother Superior of the Convent. Both the Prefecture Apostolic and the Mother Superior set up pleas which are very similar in character, and the only difference in the written statements was as to the nature of the management of the properties under their control. The Prefecture Apostolic said that the property belonged to him because the Prefecture was registered under the Companies Act and the property was administered in accordance with canon law, while the Mother Superior contended that the property belonged to the band of pious ladies who had united together for a particular purpose. Both contended that the property was not impressed with any trust, much less a trust of a public character, and that there were no trustees or beneficiaries as such. They therefore claimed that the Act did not concern them, and section thereof was not applicable to them.

5. The Deputy Commissioner acting as the Registrar of Public Trusts held the prima facie view, as appears from his letter dated 24-2-1955 that these persons came within the reach of the definition contained in Section 2 (4) of the Act. Later, after hearing the parties he ruled that neither the institutions nor the Prefecture Apostolic and the Mother Superior came within the definitions of 'public trust' or 'working trustee'. He, therefore, ordered that the proceedings commenced against the answering respondents be filed.

6. In the two petitions before us the State Government has impugned the order of the Registrar and asked that it be quashed and has further asked that directions be issued to the Registrar of Public Trusts to commence proceedings for the registration of these alleged trusts.

7. The petitions were argued together along with three other cases which we have decided today. In view of the fact that some of the questions were common it was found convenient to hear them together. Later on, however, we were able to separate the other three cases from these two, because as stated in the orders which we have passed in those cases, they were to be decided on very narrow issues.

We announced in the Court that in our opinion these two petitions deserve to be dismissed, and we informed the parties that our considered order would be passed when it was ready. I now give the reasons for dismissing these two petitions.

8. At the hearing of these two petitions a preliminary objection was taken by the answering respondents that the State of Madhya Pradesh had no locus standi under the Act and that no petition can be entertained at the instance of the State Government for considering a question decided by the Registrar of Public Trusts. I shall deal with this objection first. Under the Act the Deputy Commissioner of the district within whose jurisdiction the alleged trust property is situate is designated the Registrar of such public trust: (Section 3 (1)). The duty of the Registrar is primarily to maintain a register of public trusts and such other books and registers as may be prescribed: Section 3 (2). Within three months from the date on which section 4 came into force in any area, the working trustee of every public trust was required to apply to the Registrar having jurisdiction for the registration of the public trust. The application had to be in the form prescribed by the rules. The Registrar was required to deal finally with the application on its merits, there being only one appeal provided by Sub-Section (5) of Section 4, which, however, is not pertinent in this context and need not be quoted: (Section 4).

9. If, however, the working trustee did not apply, right is conferred upon persons 'having an interest in a public trust' to make the application, and the Registrar is also empowered to make an inquiry into an alleged public trust on his own motion: Section 5 (1). The nature of the inquiry is to be found in Section 5, and the manner of holding such inquiry has been prescribed by the rules. The Registrar after completing the inquiry is required to give his findings on the matters contained in Section 5: Section 6. The Judges of this Bench have analysed the ambit of Sections 5 and 6 in previous cases: See *Laxmanrao v. Narayanarao,* [1] and *Swami Charananand v. Shri R. D. Gour,* [2] affirmed in the three cases which have been decided today: M. P. No. 455 of 1955 and M. P. No. 572 of 1955 and M. P. No. 25 of 1956. The Bench has pointed out that after the Registrar had given findings in the case he is required to enter the findings in the prescribed register and to publish copies of those findings upon the notice board of his office, and those entries become final, subject to the provisions of the Act: Section 7. I need notice only Section 8, which confers a right of suit on '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."

In the rest of the Act or the Rules there is one more provision with regard to appeal (S. 24), but that is a right of appeal against the decision of the Registrar acting under

section 23, which, however, is not the stage which was reached by the Registrar in the present case.

10. From this I have to see what locus standi the State Government has to file the present petition. The State Government was not a party before the Registrar, because no notice is required under the Act or the Rules to issue to the State Government. The Registrar's decision is made final, and the omission to provide for an appeal or suit at the instance of the State Government is plainly noticeable. The State Government cannot take advantage of Section 8, because (a) it confers only a right of suit, and (b) the State Government cannot be described as a party aggrieved. The scheme of the Act as gathered from the title, the preamble, and the provisions of Sections 4, 5 and 8 clearly shows that the inquiry is to be made by the Registrar with a view to ascertaining the existence of a public trust, whether on an application by the working trustee or any person interested or on his own motion. Where the working trustee does not apply for registration, and no person interested in the public trust moves the Registrar, and the Registrar has, after such inquiry as he thought necessary, convinced himself that no public trust exists, I do not see how the State Government can be described as an aggrieved party. If such a right was intended to be reserved to the State Government it would have been easy to confer that power upon the State Government. Indeed, the general superintendence of trusts which emerged from section 92 of the Code of Civil procedure is itself nullified by the provisions of the Act. In these circumstances, I do not think that the extraordinary powers of this Court can be invoked by the State Government to impugn an order made by the Registrar, who is given full powers and discretion to determine whether a public trust exists or not, subject only to a suit to be filed either by the working trustee or by a person interested in public trust. I do not think that the petition presented before us discloses any interest which entitles the State Government to maintain it before us. For this reason alone I think that these two petitions should be rejected as not disclosing sufficient interest in the petitioner.

11. Even if I be wrong on this part of the case, I think that the petitions must fail on merits. The facts in so far as they appear from the record before us are as follows: There is a private company registered under the Indian Companies Act in 1936 called the Prefecture Apostolic of Jabalpur. It has share holders and is subject to the general regulations, except some which have been excluded in the Articles of Association. The case of the answering respondents is that the management of the property acquired by the company and churches is in accordance with canon law of the Roman Catholics and that the Stated Government itself has stated in notification No. 4108-401-11, dated 14-10-1953 as follows:

"Whereas the State Government are satisfied that the properties belonging to and owned by the Roman Catholic Church in Madhya Pradesh (hereinafter referred to as the said Church) are properly and efficiently managed and administered under an elaborate set of rules contained in the Canon Law which ensure a standard of administration and management corresponding to that provided by the Madhya Pradesh Public Trusts Act, 1951 (XXX of 1951), ...'

They contend that necessity to register them, therefore, did not arise in the present case, and the order of the Deputy Commissioner to the petitioners to get them registered was therefore improper.

12. The learned Advocate-General contends however, that the definitions of 'public trust' and 'working trustee' are wide enough 'to include' churches and religious and charitable endowments and societies formed for religious and charitable purposes, which the answering respondents are, and he argues that the definition of a public trust is widened under the supreme powers exercised by the State Legislature under entries 10 and 28 of the Concurrent List.

13. In answer, the respondents contend that the intent and purpose of the Act was 'to regulate and make better provision for the administration of public, religious and charitable trusts in the State of Madhya Pradesh' and the existence of a trust was a 'sine qua non' of the application of the Act. They contend that if the words of the definition contained in Sub-Section (4) of section 2 are wide enough to include churches and religious institutions then the definition offends against Articles 25 and 26 of the Constitution. They also contend that the definition is 'ultra vires' the State legislature on the further ground that what is normally understood to be contained within the word 'trust' has been artifically enlarged to include something which is not and that such power does not exist. They rely upon the case of *Sales Tax Officer v. Budh Pradesh Jai Prakash,* [3] The learned Advocate-General, however, says that the powers of the State Legislature are to he gathered not only from entry No. 10 of the Concurrent List but also from entry No. 28 of that' List, and he draws our attention to a ruling of their Lordships of the Supreme Court reported in *Ratilal Panachand Gandhi v. The State of Bombay,* [4] where the power to enact the Bombay Act was taken to follow from these two entries.

In the alternative, the answering respondents contend that the canon law makes

elaborate rules for the administration of the properties held by the Prefecture Apostolic and that any law made contrary to canon law would in effect be an inroad upon the religious faith and practices of the Roman Catholics. According to them, canon law is a part of their religion, being in the nature of a mandate by the Pontiff, which the Roman Catholics have to obey and put into effect, whether they be plain member of the community or spiritual leaders or officers administering the church. They rely upon a number of rulings, in which the binding force of canon law has been laid down by High Courts in India.

14. It is convenient to begin first with an analysis of Articles 25 and 26 of the Constitution. That task, however, has been to a large extent unnecessary by two decisions of their Lordships of the Supreme Court reported in *Ratilal Panachand Gandhi v. The State of Bombay*, (supra). Their Lordships in those cases have made a distinction between matters of religion and the holding and management of property by religious institutions which, according to their Lordships, has to be held in accordance with law. Their Lordships made a distinction that while matters of religion were entirely outside the pale of municipal law and depended upon the beliefs and the tenets of a particular religion, the same, was not true of property, which had to be held and enjoyed in accordance with such law as the legislatures may choose to make. The distinction made by their Lordships is also clear upon a reading of the provisions of Articles 25 and 26 of the Constitution. I think that in matters of property there is always a secular angle which is supplied by the law of the country, and that no religious denomination can make a law about its own property and thus nullify the law of the land. The property of the Christian religious institutions, therefore, is as much subject to law as any other property privately held in our country. Of course, if matters of religion be involved in the disposal or use of the property, then to that extent laws cannot be made. But there is nothing to prevent the legislatures to enact laws for regulating property, be it private or belonging to religious institutions. I do not think that on this ground alone the State legislature was incompetent to make laws with regard to property possessed by religious institutions.

15. The next argument of the answering respondents, however, merits close attention. Their contention was that power to control trusts must be derived from entry No. 10 and that no assistance can be taken from entry No. 28 to amplify the ambit of entry No. 10. Both sides referred to legislative practice, and the answering respondents particularly relied upon the whole history of the law of trusts in England and in India.

They stated that every trust envisages the existence of trustees, cestui que trust, and property in respect of which the trust exists. They contended that it is not open to the

legislatures in India to depart from the law as understood to give an extended meaning to the entry, which must be limited to trusts in the ordinary sense. They referred to the case of Budh Prakash to establish that anything which cannot reasonably be brought within the ambit of an entry must be taken to be outside it. The State Government, on the other hand, contended that entry No. 28 mentions religious institutions and that it was open to the State legislature to combine the two entries and to say that religious institutions shall be regarded as public trusts.

16. In my opinion, the contention of the State Government is fallacious. No doubt, two or more entries can provide the power to make laws on a topic not included in any single entry, but the limit of each entry is fixed by the words used. Even if we were to put the widest meaning upon entry No. 10, it cannot be gainsaid that the existence of a trust alone gives the power to legislate upon trusts. Religious institutions may be controlled in ways other than by making them into trusts when they are not. If the argument be carried to its logical extreme, then incompatible entries like trade unions or electrical undertakings could be used with entry No. 10 to designate and include in the definition of 'trust' trade unions and electrical undertakings. But I need not go to this argument even, because in my opinion the scheme of the Act itself shows that what was intended was to regulate, not religious institutions but religious institutions impressed with the character of a public trust. The Act is instituted "The Madhya Pradesh Public Trusts Act'. The long title says that it is an Act to regulate and to make better provision for the administration of public, religious and charitable trusts in the State of Madhya Pradesh. The preamble also repeats the long title as being the reason for the enactment. Sections 4 and 5 mention particulars which are eminently appropriate in the case of public trusts and reflect the essentials of a trust. They do not require details of any institutions, association, or other body of managers which do not administer a public trust.

From these it is easy to see in what sense the definition of 'public trust' has been used in the Act.

17. The definition may now be quoted: '2 (4). "public trust" means an express or constructive trust for a public, religious or charitable purpose and includes a temple, a "math" a mosque, a church, a wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose;'

The word 'includes' is unfortunate. While it is not open to me to correct the language of the legislature, I feel that what was really meant was not something imperative which the words 'means and includes', when used, indicate: see *Dilworth v. The*

Commissioner of Stamps, [5] In any event, the existence of a public trust is, in my opinion, the sine qua non, of action in respect of temples, 'maths', mosques, churches and wakfs or societies formed for religious or charitable purposes. If the basic condition, viz., the existence of a public trust, be missing, I do not think that the definition could bring into the mischief of the Act religious and charitable institutions which do not administer any trust property. Indeed, this argument is fortified by Sections 4 and 5, to which I have already referred, and the nature of the inquiries and the entries to be made as a result of those inquiries in the register of public trusts. In the scheme of the Act, emphasis has every where been laid upon public trusts and the word 'trust' must be deemed in view of the provisions of section 2 (1) of the Act to refer to all the matters which the Indian Trusts Act, 1882, indicates. We have to assign to the word 'trust' the meaning as given in the Indian Trusts Act. That Act requires the existence of trustees, trust properties, and beneficiaries. I do not think that in the material which was before the Registrar there was anything to show that a public trust existed. In my opinion, the Registrar acted very correctly when he held that as a result of the inquiries such as he had been able to make he did not find the existence of a public trust.

18. It was contended that the word 'Church' itself is inapposite, and reference was made to the Bombay Act, where the word 'church' does not figure. It was contended that unlike a temple or a deity, which have a juristic existence, there is no such juristic person as church. It was contended that a church is an association of persons professing the Christian faith, and that they are not the beneficiaries of the church. Reference was made to the distinction existing between Mahommedan and Hindu laws on the one hand and canon law on the other. It was pointed out that whereas in the Mahomedan law there may be assumed to be a dedication of a mosque from the fact that public have been afforded a right to pray in the mosque, and a similar dedication in the case of a temple may be proved by showing that by a course of conduct it had come to be dedicated to the use of the Hindu public, the same did not follow in the case of a, church, because on the consecration of the church the property is deemed to become heavenly property and there are no beneficiaries as such. It was also pointed out that moneys given to the church did not bear the same character as moneys given into the hands of trustees. The officers of the church administer the property, especially in Roman Catholic institutions, in accordance with their own religious law, and the officers are not answerable to any beneficiaries as such. It was contended on the strength of certain cases that such moneys cannot be said to be impressed with a trust, either express or constructive, because the persons who give money to the church impose no conditions and leave the money to be spent on religious and charitable matters at the sweet option of officers, who are answerable to superiors. In such a state of affairs, where the dedication is not to the public but to

God and money is handed out, not as a trust, but as something to be used at the sweet will of the officers of the church concerned, there cannot be any public trust.

19. In my opinion, this argument has considerable force, and unless it can be shown that any portion of the money in the hands of the churchmen was impressed with trust, either express or constructive, it cannot be said that the officers of the church were in the position of trustees answerable at the instance of beneficiaries. The learned Registrar on the material before him came to the conclusion that no trust of this kind was proved in the present cases. In the case of the Convent he accepted the affidavit of the Mother Superior that the pious ladies had combined their resources to live a religious and retired life and to devote themselves to works of charity on a voluntary basis. In the case of the Prefecture Apostolic and the churches the learned Registrar was of the view that no trust could be found because the Prefecture Apostolic was a company registered under the Companies Act, with its own Directors, who were to administer the property in accordance with canon law and answerable to their superiors. I may point out that the State Government also seems to have accepted this position, and in view of this I do not see how the State Government can intervene in these matters to get the order of the Registrar quashed.

20. For these reasons, I think that these petitions ought to fail. We have already ordered their dismissal, and I have now given my reasons for the same. We did not determine counsel's fee at that time, because we had permitted counsel to file their certificate. Counsel's fee shall be Rs. 2007-(Two hundred) in each case.

G. P. BHUTT, J. :

21. I had the benefit of seeing the order which my Lord proposes to deliver. As the order has dealt exhaustively with points that arise for decision, I have not much to say.

22. The State Government has asked for writs of certiorari and mandamus. For the issue of these writs, the basic condition is the existence of a right in the petitioner, which has been the subject of adjudication by an inferior tribunal. See *Nakkuda Ali v. M. F. De S. Jayaratna,* [6] and *State of M. P. v. G. C. Mandawar,*[7]

23. Sections 4 and 5 of the M. P. Public Trusts Act, 1951 (hereinafter called the Act), contemplate only a working trustee of a public trust or a person having interest in public trust, or where they do not act, the Registrar, who have the right of action, ft is true that Sub-Section (2) of section 8 requires the Civil Court, to give notice to the State Government in a suit which may be instituted by a working trustee or person having interest in a public trust against the findings of the Registrar, and provides that the State Government, if it so desires, shall be made a party to the suit. But this does not mean that it has the right to act under the Act or to institute a suit against the findings of the Registrar. This is also made clear by the fact that under sub-section (4) of Section 27, the right of suit of the_ Advocate-General under section 92, Civil Procedure Code, has been taken away in matters covered by Section 26, in respect of which the Registrar may, on the application of any person interested in a public trust or otherwise, apply to the Court for directions. But while section 26 requires the Registrar to give an opportunity to the working trustee to be heard, there is no provision directing him to give notice to the State Government. There is, therefore, no right in the State Government to act, or be heard, in any proceeding under the Act. It cannot accordingly be said that any right of the State Government was the subject of adjudication by the Registrar.

24. It was, however, urged that in England the Crown as parents patriae is the constitutional protector of all property subject to charitable trusts and accordingly the Attorney General, who represents the Crown for all forensic purposes, is the proper person to take proceedings on behalf of and to protect charities, and the same power may be exercised in India by the State Government. In my opinion no analogy exists between the Crown in England which is the fountain-head of all laws, and the State Government, which can act only under statutory authority. I am, therefore, in respectful agreement with my Lord that the State Government has no right to intervene.

25. The expressions used in the Act, which are pertinent for consideration, are (i) public trust, (ii) trustee and (iii) working trustee, which are defined in section 2 as below:

> 'In this act, unless there is anything repugnant in the subject or context -
> (4) "public trust" means an express or constructive trust for a public, religious or charitable purpose and includes a temple, a "math", a mosque, a church, a

wakf or any other religious or charitable endowment and a society formed for a religious or charitable purpose;

* * * * *

(7) "trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager;

(9) "working trustee" means any person who for the time being either alone or in association with some other person or persons administers the trust property of any public trust and includes a manager of a public trust.'

Sub-section (10) of section 2 provides that words and expressions used but not defined in the Act and defined in the Indian Trusts Act, 1882, shall have the same meanings assigned to them in that Act.

26. The definition of public trust is doubtless also inclusive, and the word 'includes' is a phrase of extension and not of restriction. The question, however, is whether the definition of public trust can so far be extended as to include a charitable land religious institution which does not possess trust property. Since the definition is to be limited to the subject or context, the Endeavour in this regard should be not so much to lay down the extreme frontiers of the definition as to fit it suitably in the specific provision under which the proceeding is taken.

27. The Registrar has, in these cases, acted under section 5, read with section 4 of the Act. Under Section 5, an enquiry has to be directed for the purpose of ascertaining inter alia whether there is a trust which is a public trust and any property is the property of such trust, and also the names and addresses of the trustees. A trustee, according to the definition, means a person in whom the trust property is vested. Similarly the expression 'working trustee' used in section 4 means a person who administers the trust property. The expression 'trust property' has not been defined in the Act, and, therefore, the meaning that his assigned to it in the Indian Trusts Act must be applicable. It, therefore, appears that unless a religious and charitable institution has vested in it or administers, property to the ownership of which an obligation is annexed, it would not be amenable to the provisions of Sections 4 and 5. The Registrar, on enquiry, did not find the institutions in question, having any such property. His order, therefore, cannot be assailed in these proceedings.

28. In view of the above, I respectfully concur with the order proposed by my Lord

and the petitions accordingly must be dismissed with costs. Counsel fee Rs. 200/- in each case.

Petitions dismissed.

Cases Referred.

1. M. P. No. 521 of 1954, D/d. 18-10-1955 (Nag)

2. M. P. No. 495 of 1954, D/d. 5.4.1956 (Nag)

3. AIR 1954 SC 459

4. 1954 SCR 1055

5. (1899) AC 99 at pp. 105, 106

6. 1951 AC 66,

7. AIR 1954 SC 493