

CASE NO.:
Appeal (civil) 5565 of 1995

PETITIONER:
Seth Chand Ratan

RESPONDENT:
Pandit Durga Prasad (D) by Lrs. & Ors.

DATE OF JUDGMENT: 28/03/2003

BENCH:
S. Rajendra Babu & G.P. Mathur

JUDGMENT:

JUDGMENT

G.P. Mathur, J.

This appeal by special leave has been preferred against the judgment and order dated 7.3.1995 of a Division Bench of High Court of Madhya Pradesh by which the letters patent appeal preferred by the appellant was dismissed and the judgment and order dated 2.9.1994 of the learned Single Judge by which the writ petition filed by Pandit Durga Prasad, the predecessor-in-interest of respondent nos.1 (a) to (e) had been allowed was affirmed.

There is a temple known as Shri Madan Mohan Mandir in Jawahar Nagar, Harda in the District of Hoshangabad. There are some shops in the precincts of the temple which have been let out to different tenants. According to the appellant, the temple and the shops are owned and managed by a public trust known as Maheshwari Panchayati Mandir. While according to Pandit Durga Prasad, the predecessor-in-interest of respondent nos.1 (a) to (e), the temple and the shops are property of his family and they do not belong to any public trust.

Pandit Kamta Prasad (brother of Pandit Durga Prasad) moved an application on 29.8.1953 under Section 4 of the M.P. Public Trusts Act, 1951 (hereinafter referred to as "the Act") for registration of Shri Madan Mohan Temple Trust and the application was registered as Case No.73. In this application it was alleged that a public trust was established by His Holiness Param Vaishnav Raghu Nath Ji Vyas and he himself along with his two brothers, namely, Pandit Durga Prasad and Pandit Narayan Prasad were the trustees thereof. Another application was moved by Seth Champalal Sheonarayanji Rathi, Seth Laxminarayanji Rathi and some others on 30.8.1953 before the Registrar for registration of a trust known as Maheshwari Panchayati Mandir, Harda and this application was registered as case No.206. Seth Champalal Sheonarayanji Rathi was the father of the appellant Seth Chand Ratan. Seth Chand Ratan moved an application on 7.2.1955 for amalgamation of application nos.73 and 206. It appears that the Registrar held some inquiry in the application moved by Pandit Kamta Prasad. Subsequently, Pandit Kamta Prasad moved an application on 20.1.1955 for withdrawal of the application moved by him earlier for registration of the Trust. In this application, it was stated that the temple had been constructed by the forefathers of the applicant and no property or land, etc. had been given by anyone and it was the family of the applicant which was maintaining and managing the temple with their own money and consequently it was not a public trust. It was further stated that the application for registration of the trust had been given under some misconception about the provisions of the Act as it was thought that all temples had got to be registered. The Registrar by his order dated 19.7.1955 allowed this application for withdrawal of case no.73, which had

been registered on the application moved by Pandit Kamta Prasad. However, before the said order was passed, the application moved by Seth Champalal Sheonarayanji Rathi which had been registered as case no.206. had been allowed on 7.2.1955 and Maheshwari Panchayati Mandir had been registered as a public trust and Shri Madan Mohan Mandir and some other property including the shops in precincts thereof were shown to be the property of the aforesaid trust. Pandit Kamta Prasad thereafter moved an application for correction of records and vide order dated 31.12.1956 the Registrar directed that Shri Madan Mohan Mandir be recorded as private trust of Pandit Kamta Prasad.

Nearly 20 years thereafter, the appellant Seth Chand Ratan moved an application before the Registrar under Section 22 read with Sections 14 and 26 of the Act for issuing appropriate directions for proper management of the trust property. In this application Pandit Durga Prasad and some tenants of the shops were impleaded as opposite parties. Pandit Durga Prasad opposed the prayer made in the application on the grounds, inter alia, that Shri Madan Mohan Mandir and the properties in the precincts thereof were not properties of a public trust but were his private properties. The Registrar after hearing the parties passed an order on 13.12.1983 holding that the order passed in case no.206 directing registration of the trust as a public trust being of a binding nature, the validity of order dated 31.12.1956 has to be adjudicated upon by a Court under Section 26(1) (c) of the Act at the instance of Pandit Durga Prasad within 15 days from the date of the order and in case of his failure to do so, he shall make an application to the Court under Section 26(2) of the Act. Since Pandit Durga Prasad did not move an application to the Court, the Registrar himself made a reference to the Court under Section 26(2) of the Act, which was registered as Misc. Case No.2 of 1984. The First Additional District Judge, Hoshangabad, after hearing the parties decided the reference by his order dated 28.3.1985 and held that the order dated 31.12.1956 of the Registrar was not in accordance with law and was not binding. He accordingly directed that the trustees and managers of Maheshwari Panchayati Mandir, Harda, shall be handed over the management of Shri Madan Mohan Mandir and the tenants in the shops of the temple shall pay rent to them. It was further directed that the Registrar shall make inquiries from time to time and see that proper accounts of the income arising out of the temple are kept and the same is used for the purpose shown in the trust.

Pandit Durga Prasad then filed a writ petition under Articles 226 and 227 of the Constitution for quashing the order dated 13.12.1983 of the Registrar and the order dated 28.3.1985 passed by the First Additional District Judge, Hoshangabad in Misc. Case No.2 of 1984. Pandit Durga Prasad also filed Misc. First Appeal No.384 of 1987 under Section 27(3) of the Act before the High Court of Madhya Pradesh challenging the same judgment and order dated 28.3.1985 of First Additional District Judge, Hoshangabad in Misc. Case no.2 of 1984. The appeal was filed long after the expiry of period of limitation and accordingly an application under Section 5 of the Limitation Act for condonation of delay was filed. This application was rejected and consequently the appeal was also dismissed by the High Court on 26.11.1988. The writ petition filed by Pandit Durga Prasad was, however, allowed by a learned Single Judge by the judgment and order dated 2.9.1994 and the order dated 13.12.1983 of the Registrar and also the order dated 28.3.1985 passed by the First Additional District Judge, Hoshangabad were quashed. Seth Chand Ratan thereafter filed a letters patent appeal against the aforesaid decision of the learned Single Judge, but the same was dismissed by the impugned judgment and order dated 7.3.1995.

Learned counsel for the appellant has submitted that the Registrar having registered Maheshwari Panchayati Mandir as a public trust by the order dated 7.2.1955 and the said order having become final and conclusive in view of sub-section (2) of Section 7 of the Act, the only remedy available to Pandit Kamta Prasad was to file a civil suit under Section 8 of the Act. However, instead of pursuing the aforesaid remedy, he moved an application for correction of record, which was allowed by the Registrar on 31.12.1956. Learned counsel has submitted that the Registrar had absolutely no jurisdiction to entertain the aforesaid application and

consequently the order passed by him on 31.12.1956 directing correction of record is wholly illegal and without jurisdiction and is a nullity in the eyes of law. Learned counsel has further urged that the temple and the shops in the precincts thereof were properties of Maheshwari Panchayati Mandir, which was a public trust and, therefore, the application moved by the appellant, Seth Chand Ratan under Section 22 read with Section 26 of the Act was fully maintainable and the Registrar had rightly passed an order on 31.12.1983 directing Pandit Durga Prasad to seek appropriate directions from the Court and on his failure to do so, he rightly referred the matter to the Court. The First Additional District Judge, Hoshangabad, it is urged, was fully competent to enter upon the reference and the order passed by him to the effect that the order dated 31.12.1956 of the Registrar was not in accordance with the provisions of the Act and was not binding and that the management of Shri Madan Mohan Mandir and the shops in precincts thereof shall be handed over to the trustees and manager of Maheshwari Panchayati Mandir is perfectly correct. Learned counsel has further submitted that the order passed by the First Additional District Judge is deemed to be a decree of the Court under Sub-section (3) of Section 27 of the Act against which an appeal lies to the High Court. The appeal preferred by Durga Prasad having been dismissed by the High Court on 26.11.1988, the order passed by the First Additional District Judge became final and binding between the parties and it was not at all open to the High Court to quash the very same order in a writ petition under Article 226/227 of the Constitution. It has thus been submitted that the impugned orders dated 2.9.1994 of the learned Single Judge and also the order dated 7.3.1995 of the Division Bench in letters patent appeal are wholly illegal and deserve to be set aside.

Learned counsel for the contesting respondents (legal representatives of Pandit Durga Prasad) has submitted that Pandit Kamta Prasad had moved the application for registration of Shri Madan Mohan Mandir as a public trust under a mistake of law as M.P. Public Trusts Act 1951 had come into force in the year 1951 and he acted under a misconception that every temple has got to be registered under the said Act. It was under these circumstances that he moved an application for withdrawal of case no.73 which was allowed by the Registrar on 19.7.1955. Learned counsel has further submitted that the order passed by the Registrar on 7.2.1955 for registration of Maheshwari Panchayati Mandir as a public trust was illegal as Seth Champalal Sheonarayanji Rathi had also moved an application for amalgamation of case no.73 and case no.206 and the aforesaid order was in fact an ex-parte order against Pandit Kamta Prasad. When he came to know of the aforesaid order, he applied for correction of records which was allowed by the Registrar vide order dated 31.12.1956 and Shri Madan Mohan Mandir was recorded as a private trust of the family of Pandit Kamta Prasad. Since the Registrar had committed a mistake while passing the order dated 7.2.1955 by which Maheshwari Panchayati Mandir was registered as a public trust, the said mistake was rightly corrected by him. The further argument of the learned counsel is that the order passed by the Registrar on 31.12.1983 by which he made a reference to the Court was illegal inasmuch as such a direction could only be issued in the case of a public trust but as the temple and the shops were not the property of a public trust, no such reference could be made and the order passed by the First Additional District Judge is also illegal and the same was rightly quashed in the writ petition preferred by Pandit Durga Prasad.

Before examining the contentions raised by the learned counsel for the parties, it will be convenient to take note of few provisions of the Act. Section 2(4) defines "public trust" and it 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. Section 3 provides that the Collector shall be the Registrar of Public Trusts and he shall maintain the register of public trusts and such other books and registers and in such form as may be prescribed. Section 4 provides that within three months from the date of coming into force of the Section, the working trustees of every public trust shall apply to the Registrar having jurisdiction for the registration of the public trust. Sub-section (3) of

Section 4 lays down that the application shall be in such form as may be prescribed and shall contain the particulars enumerated in this sub-section. Sub-section (5) of Section 4, provides an appeal against the decision made by the Registrar regarding registration of a public trust and it also lays down that the order of the appellate authority shall be final. Section 5 enjoins the Registrar to make inquiry in the prescribed manner for the purposes of ascertaining whether the trust is a public trust; whether any property is the property of the trust; the names and addresses of the trustees and managers and the mode of succession to the office of the trustee of such trust; the amount of gross average annual income and expenditure, etc. Section 6 lays down that 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 8 lays down that any working trustee or person having interest in a public trust or any property found to be trust property, feeling 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. Section 26 lays down that if the Registrar is satisfied on the application of any person interested in the public trust or otherwise that the original object of the trust has failed; or the trust property is not being properly managed or administered; or 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 a specified time. Where the trustee so directed fails to make an application as required and the Registrar considers it expedient to do so, he shall himself make an application to the Court. Sub-section (1) of Section 27 lays down that 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 order thereon as it may consider appropriate. The powers which can be exercised by the Court have been enumerated in Sub-section (2) of this Section. Sub-section (3) of Section 27 is important and it lays down that 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. Sub-section (4) provides that no suit relating to public trust under Section 92 of the Code of Civil Procedure shall be entertained by any Court on any matter in respect of which an application can be made under Section 26.

The reason which weighed with the learned Single Judge for allowing the writ petition was that in case no.73, which was initiated by Pandit Kamta Prasad, a detailed inquiry was made by SDO, Harda and after recording statement of some witnesses he had come to the conclusion that Shri Madan Mohan Mandir and the shops in the precincts thereof were the personal property of Pandit Kamta Prasad not that of Maheshwari Panchayati Samaj. The order passed by the Registrar on 7.2.1955 in case no.206 directing that the aforesaid property belonged to and was being managed by a public trust, namely, Maheshwari Panchayati Samaj had been passed on account of a clerical mistake. Thus, it was held that there was no occasion for the Registrar to make a reference to the Court under Section 26 of the Act and consequently the order dated 31.12.1983 making the reference and the order passed by the Court (First Additional District Judge) on 28.3.1985 were illegal. The Division Bench has also concurred with the aforesaid reasoning of the learned Single Judge.

In our opinion, the view taken by the High Court is not supported by the provisions of the Act. Pandit Kamta Prasad had himself moved an application under Section 4 of the Act on 29.8.1953 for registration of Shri Madan Mohan Mandir as a public trust and this application was registered as Case No.73. However, subsequently he moved an application on 20.1.1955 for withdrawal of the aforesaid application. This application was opposed by Seth Champalal Sheonarayanji Rathi (father of the appellant) by filing a detailed objection on 6.4.1955. The Registrar by his order dated 19.7.1955 allowed the application for withdrawal moved by Pandit Kamta Prasad and it was mentioned in the order that this was being permitted at his own risk. The proceedings initiated by Pandit Kamta Prasad having been withdrawn, the result was that no final order, one way or the other, was passed in case no.73 and, therefore, any report submitted by the SDO in the said case could

not form the basis for holding that the order passed in case no.206 initiated on the application of Maheshwari Panchayati Samaj had been passed on account of any clerical mistake. The scheme of the Act shows that after holding an inquiry, as provided under Section 5, the Registrar has to record his findings with reasons therefor and Section 7 enjoins making of entries in the register in accordance with the findings recorded under Section 6. Sub-section (2) of Section 7 lays down that the entries so made shall, subject to the provisions of the Act, be final and conclusive. Section 8 confers a right upon a person who is aggrieved by any finding of the Registrar recorded under Section 6 to institute a suit in a Civil Court within six months to have such finding set aside or modified. In view of these provisions, the order passed by the Registrar in case no.206, by which it was held that Maheshwari Panchayati Mandir is a public trust and Shri Madan Mohan Mandir and the shops in the precincts thereof were the property of the trust and were being managed by it, became final and conclusive. The only remedy available to Pandit Kamta Prasad was to institute a civil suit under Section 8 of the Act for setting aside the said finding. In these circumstances, it was not open to the Registrar to entertain a correction application and to record that Shri Madan Mohan Mandir is a private trust of Pandit Kamta Prasad which he did by his order dated 31.12.1956. The High Court was, therefore, wrong in holding that the order dated 7.2.1955 in case no.206 was passed on account of clerical mistake.

There is another ground on which the order passed by the High Court cannot be sustained. As mentioned earlier, the Registrar made a reference to the Court on 31.12.1983 under Section 26(2) of the Act, which was registered as Misc. Case No.2 of 1984. The First Additional District Judge, Hoshangabad decided the said reference by the judgment and order dated 28.3.1985 and held that the order passed by the Registrar on 31.12.1956 is not in accordance with law and is not binding upon him. He further issued directions that the trustees and managers of Maheshwari Panchayati Mandir, Harda shall be handed over the management of Shri Madan Mohan Mandir and the tenants shall pay rent to them. This order, which is deemed to be a decree under Sub-section (3) of Section 27 of the Act was challenged by Pandit Durga Prasad by filing Misc. First Appeal No.384 of 1987 before the High Court but the same was dismissed by the order dated 26.11.1988. In this appeal, Seth Chand Ratan and the Registrar of Public Trust were arrayed as respondent nos.1 and 2 and the nine tenants of the property were arrayed as respondent nos.3 to 11. The result of the dismissal of the appeal was that as between the parties the order passed by the First Additional District Judge, Hoshangabad in Misc. Case No.2 of 1984 became final. It is noteworthy that the writ petition has been decided on 2.9.1994 long time after the dismissal of the first appeal. The learned Single Judge did not at all advert to the fact that against the judgment and decree dated 28.3.1985 of the First Additional District Judge, Hoshangabad, an appeal had been preferred in the High Court by Pandit Durga Prasad and the same had been dismissed on 26.11.1988. It was argued on behalf of the appellant in the letters patent appeal that in view of the statutory provision of the appeal, the writ petition ought not to have been entertained. The Division Bench brushed aside the argument by merely observing that existence of an alternative remedy does not divest the High Court of its jurisdiction to entertain a petition under Articles 226 and 227 of the Constitution. In our opinion, the Division Bench failed to notice that the Statute itself provided a regular appeal to the High Court against the judgment and order of the Court (First Additional District Judge) which was deemed to be a decree and the said remedy had already been availed of by the writ petitioner by filing an appeal which had been dismissed, and the result whereof was that the judgment and order of the Court attained finality between the parties. In almost similar circumstances in Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat, 1969 (2) SCC 74, this Court had examined the propriety of the High Court in entertaining a writ petition. In this case, a suit for eviction had been filed by a landlord which was decreed by the trial court and the decree had been confirmed in appeal by the District Judge. Thereafter, the tenant preferred a revision before the High Court which was dismissed by a learned Single Judge. The tenant then filed a writ petition under Articles 226 and 227 of the Constitution challenging the same order of

the Appellate Court (District Judge), which was allowed by the Division Bench of the High Court. In appeal this Court set aside the judgment of the Division Bench of the High Court with the following observations :

". In *Chandi Prasad Chokhani v. The State of Bihar* 1962 (2) SCR 276, it was said that save in exceptional and special circumstances this court would not exercise its power under Article 136 in such a way as to bypass the High Court and ignore the latter's decision which had become final and binding by entertaining an appeal directly from orders of a Tribunal. Such exercise of power would be particularly inadvisable in a case where the result might lead to a conflict of decisions of two courts of competent jurisdiction. In our opinion the course which was followed by the High Court, in the present case, is certainly one which leads to a conflict of decisions of the same court.

Even on the assumption that the order of the appellate court had not merged in the order of the single Judge who had disposed of the revision petition we are of the view that a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under Section 115 of the Code of Civil Procedure. If there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the court to prevent abuse of process as also to respect and accord finality to its own decisions.

This being the legal position, the writ petition filed by Pandit Durga Prasad was not maintainable and the High Court committed manifest error of law in entertaining and allowing the same.

Even otherwise, the view taken by the Division Bench of the High Court for repelling the objection of the appellant regarding the maintainability of the writ petition that an alternative remedy does not divest the High Court of its powers to entertain petitions under Article 226 and 227 of the Constitution, has hardly any application on the facts of the present case. It has been settled by a long catena of decisions that when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is no doubt a rule of policy, convenience and discretion and the Court may in exceptional cases issue a discretionary writ of certiorari. Where there is complete lack of jurisdiction for the officer or authority or Tribunal to take the action or there has been a contravention of fundamental rights or there has been a violation of rules of natural justice or where the Tribunal acted under a provision of law, which is ultra vires, then notwithstanding the existence of an alternative remedy, the High court can exercise its jurisdiction to grant relief. In the present case, the alternative remedy of challenging the judgment of the Court was not before some other forum or Tribunal. On the contrary, by virtue of Sub-section (3) of Section 27 of the Act, the order passed by the Court amounted to a decree against which an appeal lay to the High Court. When the party had statutory remedy of assailing the order passed by the District Court by filing an appeal to the High Court itself, he could not bypass the said remedy and take recourse to proceedings under Articles 226 and 227 of the Constitution. Such a course of action may enable a litigant to defeat the provisions of the Statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fee or deposit of some amount or fulfilment of some other conditions for entertaining the appeal.

For the reasons stated, we are clearly of the opinion that the High Court committed manifest error of law in entertaining and allowing the writ

petition filed by Pandit Durga Prasad and, therefore, orders passed by the learned Single Judge on 2.9.1994 and by the Division Bench in letters patent appeal on 7.3.1995 are liable to be set aside.

In view of Section 8 of the Act, a person feeling aggrieved by any finding of the Registrar recorded under Section 6 of the Act, can institute a civil suit within six months of publication of notice under Sub-section (1) of Section 7 of the Act to have such finding set aside or modified. Since the Registrar had passed an order on 31.12.1956 for recording Shri Madan Mohan Mandir as a private trust of Pandit Kamta Prasad, there was no occasion for him to file a civil suit to establish his right. Having regard to the peculiar facts of the present case, we consider it in the interest of justice that an opportunity be given to the contesting respondents to establish their right by instituting a civil suit, which they may do within three months from today.

The appeal is accordingly allowed and the judgment and orders dated 2.9.1994 of the learned Single Judge and that of the Division Bench dated 7.3.1995 are set aside. It will, however, be open to the contesting respondents to file a suit in the Civil Court in accordance with Section 8 of the Act within three months from today. The appellants will be entitled to their costs.