

Om Prakash Sharma vs The State Of Madhya Pradesh on 12 July, 2011

HIGH COURT OF MADHYA PRADESH AT JABALPUR

Writ Petition No : 5399 OF 2010

Ashok Kumar Panchratan

- V/s -

Registrar, Public Trust and another

Present : Hon'ble Shri Justice Rajendra Menon.

Shri R.N.Singh, Senior Counsel with Shri Alok Pathak, for the petitioner.

Shri Rajesh Tiwari, Govt. Advocate, for respondent no.1

Shri Kishore Shrivastava, learned Senior Counsel with Shri Abinash Jargar and
Shri A.Sapre for respondent no.2.

ORDER

(12- 07-2011) Challenging the order dated 27-03-2010 (Annexure P-8) passed by the Registrar, Public Trust, respondent no.2 directing for issuance of non bailable warrant of arrest against the petitioner under Section 28 of the M.P. Public Trust Act, 1951, the petitioner has filed this writ petition.

2. From the facts that have come on record and on considering the detailed submissions made by the learned Senior Counsel for the parties at the time of hearing, records indicate that Shri Digambar Jain Panchayat Committee Trust was constituted on 15-02-1956 and is registered under the M.P. Societies Registration Act, so also under the M.P. Public Trust and is a public trust since 1972.

3. The dispute in question pertains to the handing over of charge on the post of President of the Trust in question and the petitioner and respondent no.2 are making rival contentions.

4. Petitioner was elected as President of the trust for a period of 3 years. After completing the tenure of 3 years i.e. from 2004-2007, it seems that the voter list was prepared and on the ground that the petitioner and the earlier committee members were not preparing the voter list fairly, they were committing illegality, respondent Pankaj Jain and one Anand Jain filed two complaints before the Registrar, Public Trust, Bhopal. On the complaints being received, the Registrar, Public Trust on 27-10-2007 passed an interim order Annexure P-1 restraining the Committee headed by the petitioner from preparing the voter list and undertaking membership drive contrary to the bylaws of the society. This order Annexure P-1 dated 27-10-2007 was challenged by the petitioner before this court in W.P.No.16876/2007 and the said petition is still pending. Even though initially stay

was granted but subsequently the stay was vacated and in view of the same the process of election was concluded and respondent Pankaj Jain is said to have been elected as President of the Trust. After the election was over, an application was filed by the respondent no.2 before the respondent no.1, requesting for charge of the affairs and properties of the trust. The Registrar, Public Trust vide order dated 22-12-2009 accepted respondent no.2 as President and directed the petitioner to hand over charge. Against this order, records indicate that the petitioner preferred an appeal before the District Judge, Bhopal under section 27 of M.P. Public Trust Act 1951 and the same was dismissed on 02-03-2010 on the ground that the order is not appellable under Section 24 of the M.P. Public Trust Act. Thereafter the petitioner preferred a writ petition before this court being W.P.No.3344/2010. The said writ petition was also disposed of with observation and direction that the petitioner can take recourse to the remedy available before the Registrar, Public Trust. The order passed by this court is filed in this petition as Annexure P-2 dated 18-03-2010.

5. It is the case of the petitioner that on 25-02-2010 on the directions of the respondent no.1 one B.B.Singh, Naib Tehsildar, Nazul City Circle, Bhopal conducted the process of handing over and taking over of charge vide Annexure P-3 and in this process respondent Pankaj Jain was also present the charge was given and communication of Pankaj Jain in this regard is Annexure P-4 dated 25-02-2010. Thereafter records indicate that various proceedings were held not only before the Registrar, Public Trust but also before the District Court at Bhopal and before this court and finally orders were passed by the Registrar, Public Trust, directing for handing over of charge by the petitioner to the respondent no.2. However, on the ground that the petitioner despite of these directions is not handing over charge and is keeping the keys and other valuable of the Trust, application was filed before the Registrar and on the ground that the petitioner is avoiding appearance before the Registrar and is not complying with the order of the Registrar, the impugned action is taken.,

6. Shri R.N.Singh, learned Senior Counsel, appearing for the petitioner made a singular contention before this court, it was submitted by Shri R.N.Singh, learned Senior Counsel that the Registrar in the impugned order dated 27-03-2010 has indicated that non bailable warrant of arrest is issued on the basis of power conferred upon him under section 28 sub section 10(3) of the M.P. Public Trust Act , 1951. It was emphasized by Shri R.N. Singh, learned Senior Counsel that under the M.P. Public Trust Act, 1951, there is no such provision in Section 28 sub section 10(3). Taking me through the provisions of Section 28, Shri R.N.Singh, learned Senior Counsel for the petitioner argued that the said provision only empowers the Registrar to exercise powers conferred under the Code of Civil Procedure for the purpose of the clauses a, b, c, and d indicated therein. The said provision does not empower the Registrar to issue non bailable warrant of arrest. It is argued by Shri R.N. Singh, learned Senior Counsel for the petitioner that arresting a person and restraining movement of person amounts to interfering with the personal liberty of the person concerned. Therefore, in the absence of any statutory provisions conferred on respondent no.1 to issue non bailable warrant of arrest against the petitioner, it is stated that the order passed is unsustainable and cannot be upheld.

7. Shri Rakesh Tiwari, learned Govt. Advocate, for the State pointed out that the provisions of Section 28 sub section 10(3) mentioned in the impugned order is an error committed by the authority, the authority has exercised the powers under section 28 read with the provisions of Order

16 Rule 19 (C) CPC. Accordingly, it is stated that as the petitioner was refusing to comply with the directions issued for handing over charge inspite of the fact that he has lost in the election, the impugned action is taken and under section 28 read with order 16 Rule 10 the Registrar is entitled to issue bailable warrant. Accordingly, it is the case of the State Government that the power has been properly exercised and no case is made out for interference.

8. The respondent no.2 has filed detailed a reply and during the course of hearing of the writ petition, Shri Kishore Shrivastava, learned Senior Advocate, took me through the various documents available on record, particularly the manner in which the petitioner has tried to avoid handing over of charge. The affidavit filed by the petitioner and certain orders passed by this court in the proceedings on 14-09-2010 to indicate that the conduct of the petitioner disentitles him from claiming any discretionary relief from this Hon'ble Court. It was the case of the respondent no.2 that the petitioner is a person who has come to this court by suppressing material facts and his conduct of non handing over charge inspite the orders passed by the statutory authorities indicate that he is not acting in a legal manner, once he has lost election and therefore, the discretionary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India should not be exercised in favour of such person. Placing reliance on judgments of the Supreme Court in the cases of K.D.Sharma Vs. Steel Authority of India Ltd. and others, (2008)12 SCC 481, Dalip Singh Vs. State of Uttar Pradesh and others (2010) 2 SCC 114 and 1996(1) SCC 435 (State of Kerala Vs. M.K.Kunhikannan Nambiar Manjeri Manikoth, Naduvil (Dead) and others) Shri Kishore Shrivastava, learned Senior Counsel argued that the petitioner is a person who is in the habit of disobeying the law full and reasonable orders passed by the statutory authorities and such a person should not be given the benefit of discretionary relief by this court. Finally taking me through the provisions of section 26 read with sections 28 and 29 of the M.P. Public Trust, 1951 Shri Kishore Shrivastava tried to emphasize that the Registrar exercised powers under the M.P. Public Trust Act discharging his judicial function, the proceedings before him are judicial proceedings and therefore to compel the performance of an act he can issue bailable warrant. In sum and substance the detailed arguments of Shri Kishore Shrivastava, learned Senior Counsel for respondent no.2 was to the effect that the conduct and attitude of the petitioner disentitles him from claiming any discretionary relief from this Hon'ble Court and therefore, the petition should be dismissed.

9. I have heard learned counsel for the parties and perused the record.. From the facts that have come on record, it is clear that the Registrar, respondent no.1 has issued non bailable warrant of arrest for production of the petitioner before him by exercising his power under Section 28 of the M.P. Public Trust Act, 1951. Section 28 of the Act reads as under :

:28. Officers holding inquiries to have the powers of Civil Court;- In holding inquiries under this Act, the Registrar shall have the same powers as are vested in courts in respect of the following matters, under the Code of Civil Procedure, 1908 (V of 1908), in trying a suit-

- (a) proof of facts by affidavits;
- (b) summoning and enforcing attendance of any person and examining him on oath;
- (c) compelling the production of documents;

(d) issuing of commissions.

10. Even though in the order impugned the section is mentioned as Section 28 sub section 10(3) but in the return filed by the respondent no.2 it is stated that he has exercised the powers under Section 28 read with Order 16 Rule 10(3). As far as Section 28 is concerned, it empowers Registrar holding inquiry under the Act to exercise some powers as are vested in a court for the purpose of requiring proof of facts by affidavits, summoning and enforcing attendance of any person and examining him on oath, compelling the production of documents and issuing of commissions. In the present case admittedly the powers exercised by the Registrar was not in any proceedings pending before him under the M.P. Public Trust Act. The proceedings were already concluded and it was the case where the direction issued by the Registrar, Public Trust was not being complied with by the petitioner. According to the petitioner he had complied with the direction but as he was not responding to the notice of Registrar, the impugned action is taken. Be that as it may be the power conferred under section 28 can be exercised by the Registrar only if any proceeding was pending before him. For the purpose of complying with the directions already issued, the provisions of section 28 cannot be made use of. The open words of that section clearly indicate that it is applicable when the Registrar is holding an inquiry under the Act. In the present case, non bailable warrant of arrest is issued even though no inquiry under the Act was pending. That apart non bailable warrant of arrest can be issued only if the person to whom summon was issued and whose attendance was required for the purpose of examining him on oath was not appearing or has not produced some document. In the present case neither any inquiry was pending in which the petitioner's attendance was required nor he was required to produce any document in the pending proceedings. If the petitioner was not complying with the directions of giving charge of the trust inspite of the orders passed, the Registrar could have initiated proceedings against him for breach of orders and contempt by making a reference in this regard under the Contempt of Court Act or the aggrieved person of the trust through the Registrar could make complaint and initiate proceedings under the common law for the act of the petitioner in not handing over the charge. The act of the petitioner may amount to usurping power of the trust without any authority, the act of the petitioner may be a criminal offence or civil offence but for compelling the petitioner to hand over charge only such proceedings can be initiated as is permissible under law., Issuance of non bailable of arrest has the effect of violating the Fundamental right to life and liberty of a person and the Registrar or any other statutory authority can exercise these powers only if the statutory provisions so permit. No provision, statutory in nature is brought to the notice of this court on the basis of which the Registrar is empowered to issue non bailable warrant of arrest for production of a person before him, the only provision is contemplated under sub section a, b, c & d of section 28 and in the present case none of these provision are applicable. That being so it is a case where the fundamental right to life and liberty of the petitioner is taken away by directing for his arrest and restraining his movement by the authority who is not empowered

under law to so. Having held so the question canvassed by Shri Kishore Shrivastava with regard to entitlement of the petitioner to seek discretionary and equity relief from this court has to be taken note.

11. The principles laid down by the Supreme Court in the case of K.D,Sharma and Dalip Singh (Supra) that the extraordinary equitable discretionary jurisdiction under Article 226 of the Constitution of India should not be issued in favour of a person who does not come with clean hands or has suppressed material fact. If the petition filed by the petitioner and the documents are perused it can be seen that this is not a case where it can be said that the petitioner has suppressed any fact. If the pleadings of the petitioner are taken note of , it would be seen that he does admit the fact about the term being over , preparation of the voter list by him, passing of the order Annexure P-1 dated 27-10-2007 by the Registrar , filing of the writ petition by him W.P.No.16876/2007, pendency of the same before this court and election of respondent no.1 during the pendency of these proceedings. He also points out in the writ petition that the orders and dispute were challenged before the Civil Court and the High Court but they did not yield any result. It is the case where it cannot be said that the petitioner has come out by suppressing material fact. The petitioner clearly says that by the order dated 22-12-2009 the petitioner was directed to hand over charge, he also points out that he challenged these proceedings before the District Judge, Bhopal, which was dismissed. Thereafter he filed W.P.No.3344/2010 before this court and the orders passed by this court vide Annexure P-2. He also mentions about the handing over of charge at the instance of Naib Tehsildar vide Annexures P-3 and P-4 and it is his case that the charge has been handed over to the petitioner. Be that as it may be looking to all the pleadings and material available on record this court is unable to accept the contention of Shri Kishore Shrivastava, learned Senior Counsel for respondent no.2 to the effect that the petitioner has not come with clean hands and has suppressed the material fact from this court. The case of suppression of material fact is not made out in the present case.

12. Taking note of the totality of the facts and circumstances of the case and the documents available on record read with the pleadings of the parties, I am of the considered view that this is not a case where the petitioner can be held to be responsible suppressing material facts or documents, the petitioner may be responsible for making vague allegation but the petition cannot be thrown out on the ground that the petitioner has not come with clean hands before this court. The principles laid down in the case of K.D,Sharma and Dalip Singh (Supra) will not apply in the facts and circumstances of the present case.

13. Having held so this court exercising jurisdiction discretionary in nature and being a court of equity has to ensure that the justice is done to all concerned and a person who takes law into his own hands cannot be permitted to get away by taking shelter of statutory provisions, to that effect the submission made by Shri Kishore Shrivastava, learned Senior Counsel warrants consideration.

14. Admittedly, the petitioner has lost the election and should have gracefully handed over charge of the trust and its property to the newly elected president. Even though Shri R.N.Singh learned Senior Counsel for the petitioner by referring to certain documents particularly the panchanama Annexure P-4 and the order of the Registrar, Public Trust dated 25-03-2010 tried to emphasize that the petitioner had handed over charge to respondent no.2 Pankaj Jain, the proceedings of this court which was held on 14-09-2010 indicate that the petitioner was directed to clarify as to how and in what manner the entire charge of the temples coming under the trust, the Daan Petis, the keys of the store and the keys of other properties were handed over. Even though the petitioner was directed to file affidavit, the petitioner has filed contradictory affidavits and the same are vague and it is still not clear as to whether he has in fact handed over the entire charge or not. That being so if the charge is not being handed over by the petitioner, this court having taken note of these facts cannot permit the petitioner to get a way and enjoy the properties of the trust in an illegal manner. Under such circumstances, it is a fit case where prima facie on being satisfied that the petitioner may not have handed over charge of the trust property, consequential direction can be given by this Court by exercising suo motu power under Article 226 of the Constitution of India so as to do complete justice to all concerned and to uphold the rule of law. Accordingly, even though this court finds that the order impugned passed by the Registrar, Public Trust is wholly unsustainable and cannot be upheld and even though the petition to the extent of quashing the aforesaid order is allowed, the following directions are required to be issued in the facts and circumstances of the case to protect the interest of justice, to uphold the rule of law and to resolve the dispute.

15. Accordingly, respondent no.2 is granted liberty to file a certified copy of this order alongwith detailed compliant /representation to the Superintendent of Police Bhopal giving particulars of the property of the trust and other documents and records etc. which according to the said respondent is still with the petitioner. On the same being done, the Superintendent of Police, Bhopal shall appoint a senior police official working under him to conduct an inquiry into the matter and after holding such procedure that may be permissible under law shall ensure that the charge of the entire trust (i.e. all the property, record and documents etc.) is handed over to the office bearers of the trust and if on such inquiry it is found that the petitioner or any of his associates has illegally retained the trust property and such act of the petitioner or his associates amounts to a criminal offence the Superintendent of Police shall register criminal case against the petitioner or any other person found responsible and prosecute the petitioner for the same in accordance with law.

16. The Registrar, Public Trust is also granted liberty to take note of the activities of the petitioner and in case it is found that the petitioner has disobeyed the lawful order passed by the Registrar, Public Trust in the discharge of his statutory quasi judicial function, as per the M.P. Public Trust Act, the Registrar, Public Trust is granted liberty to initiate proceedings for contempt against the petitioner under the

Contempt of Courts Act by making reference in this regard to the appropriate court.

17. Even though during the course of hearing Shri Kishor Shrivastava, learned Senior Counsel for respondent no.2 has tried to indicate that the action be taken against the petitioner under section 195 read with section 340 CrPC for filing false affidavit keeping in view the directions issued hereinabove, for the present this court does not deem it proper to proceed in this regard.

18. Accordingly, this petition even though is allowed to the extent of quashing the impugned order. The aforesaid directions are issued to protect the interest of the trust and to ensure that the justice is done to the trust and its properties and the petitioner is compelled to follow the rules of law.

19. With the aforesaid the petition stands disposed of. No order as to costs.

(RAJENDRA MENON) JUDGE hsp