

## STATE OF MAHARASHTRA AND ANR.

v.

SHRI CHANDER KANT

October 29, 1976

[A. N. RAY, C. J., M. H. BEG AND V. R. KRISHNA IYER JJ.]

*Code of Civil Procedure, s. 80—Whether applicable to suits filed under-section 9(1) of the (M.P.) Public Trusts Act, 1951.*

The respondent filed this suit against the order of the Registrar of Public Trust, Amraoti, declaring the Ganjanan Maharaj Sansthan of Mangrul—Dastagir to be a public trust. The Additional District Judge's order dismissing the suit, was upheld in appeal by the Single Judge of the High Court on account of the respondent's failure to serve a notice under-section 80 C.P.C. Allowing a Letters Patent Appeal, a Full Bench of the High Court held that s. 80 C.P.C. was not applicable to suits filed under-section 8 of the (M.P.) Public Trusts Act, 1951.

Allowing the appeal, the Court

HELD : Section 8 of the Act indicates that the suit contemplated there is against the public officer in his official capacity within the meaning of Section 80 of the Code of Civil Procedure. The words "Act purporting to be done in official capacity" apply to non-feasance as well as to misfeasance. No distinction can be made between acts done illegally and in bad faith and acts done bonafide in official capacity. [994 C, 995 D]

*Sawai Singhat Nirmal Chand v. Union of India* [1966] 1 S.C.R. 986 referred to.

*Bhagchand Dagadusa v. Secretary of State for India in Council and others* (54 L.A. 338), *Prasaddas v. Bennerjee* I.L.R. [1930] (57) Cal. 1127, applied.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1798 of 1968.

(From the Judgment and Decree dated 16.6.1966 of the Bombay High Court in Appeal No. 13/62)

*V. S. Desai & M. N. Shroff* for the appellants.

*A. G. Ratnaparkhi*, for the respondent.

The Judgment of the Court was delivered by

RAY, C. J.—This appeal by certificate is from the judgment dated 16 June 1966 of the High Court at Bombay (Nagpur Bench).

The respondent filed this suit against the State claiming that the order dated 1 March, 1955 in Revenue case declaring Gajanan Maharaj Sansthan of Mangrul-Dastagir to be a public trust be set aside. The plaint was filed under section 8(1) of the Public Trust Act (M.P. Public Trusts Act 1951) against the State of Madhya Pradesh and the Registrar of Public Trust, Amraoti.

It is admitted by the parties that no notice under section 80 of the Code of Civil Procedure was given. The defendants took the plea that the suit was liable to be dismissed by reason of no notice under section 80 of the Code of Civil Procedure having been given.

**A** The Additional District Judge by his order dated 26 March, 1957 held a notice under section 80 of the Code of Civil Procedure was necessary and the suit was not maintainable and ordered the dismissal of the suit.

The respondent filed an appeal. The learned Single Judge agreed with the view of the Additional District Judge.

**B** A Letters Patent Appeal was filed. The matter was placed before a Full Bench. The Full Bench held that the provisions of section 80 of the Code of Civil Procedure had no application to a suit filed under section 8 of the Madhya Pradesh Public Trusts Act, 1951 (hereinafter referred to as the Act).

**C** This Court in *Sawai Singhai Nirmal Chand v. Union of India*<sup>(1)</sup> held that notice under section 80 is necessary for setting aside orders of attachment and sale of property.

The provisions contained in section 8 of the Act indicate that the suit contemplated there is against the Public Officer in his official capacity within the meaning of section 80 of the Code of Civil Procedure.

**D** The provisions of section 80 of the Code of Civil Procedure are express, explicit and mandatory. See *Bhagchand Dagadusa v. Secretary of State for India in Council and others*<sup>(2)</sup>.

**E** The Registrar in the present case held it to be a public trust. The declaration sought for in this suit is that this is not a public trust. The High Court was wrong in holding that the suit under section 8 of the Act cannot be regarded as a suit against the Government.

The Full Bench held that neither the Government nor the Registrar was competent to give any relief to any person who felt aggrieved by the order of the Registrar.

**F** The following provisions of the Act are important to be noticed. The Collector shall be the Registrar of Public Trusts in respect of every public trust the principal office or the principal place of business of which is situate in his district. Within three months from the date on which section 4 comes into force in any area or from the date on which a public trust is created, the working trustee of every public trust shall apply to the Registrar having jurisdiction for the registration of the public trust. On receipt of an application the Registrar shall make an inquiry as contemplated in section 5 of the Act. The Registrar then shall record his finding with reasons. The Registrar shall cause entries to be made in the register. Any person aggrieved by any finding of the Registrar may within six months from the date of the publication of the notice institute a suit in a civil court to have such finding set aside or modified. In every such 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. All monies belonging to a public

(1) [1966] 1 S.C.R. 986.

(2) 54.I.A. 338.

trust shall be kept in a Scheduled Bank. No sale, mortgage, exchange or gift of any immovable property and no lease for a period exceeding seven years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building belonging to a public trust, shall be valid without the previous sanction of the Registrar. The Budget of every public trust where the gross annual income of which exceeds one thousand rupees shall be submitted to the Registrar. The Registrar shall have powers to enter on and inspect or cause to be entered on and inspected any property belonging to a public trust, or to call for any return, statement, account or report as contemplated in section 22 of the Act. If the Registrar finds any defects in the administration of the public trust the Registrar may require the working trust as to submit an explanation. The Registrar has power as contemplated in section 26 of the Act to direct the trustee to apply to court for directions in certain cases. If the trustee fails to do so the Registrar shall himself make an application. The State Government may make rules for the purposes mentioned in the Act.

These provisions indicate that the Registrar is a Public Officer. The words "act purporting to be done in official capacity" have been construed to apply to non-feasance as well as to misfeasance. The word "act" extends to illegal omissions. See *Prasaddas v. Bennerjee*(<sup>1</sup>). No distinction can be made between acts done illegally and in bad faith and acts done *bona fide* in official capacity. See *Bhagchand Dagadusa's* case (supra). Section 80 of the Code of Civil Procedure therefore is attracted when any suit is filed against a Public Officer in respect of any act purporting to be done by such Public Officer in his official capacity.

The language of section 80 of the Code of Civil Procedure is that a notice is to be given against not only the Government but also against the Public Officer in respect of any act purporting to be done in his official capacity. The Registrar is a Public Officer. The order is an act purporting to be done in his official capacity.

In the present case, the suit is to set aside the order made by a Public Officer in respect of an act done in the discharge of his official duties. Therefore, notice under section 80 of the Code of Civil Procedure was required.

For the foregoing reasons the judgment of the High Court is set aside. Parties will pay and bear their own costs.

M.R.

*Appeal allowed.*

(1) I.L.R. (1930) 57 Cal. 1127.