

*This petition having been heard and reserved for order, coming on for pronouncement this day, the Court passed the following:*

**ORDER**

The present petition has been filed challenging the order dated 22.7.2022 (Annexure P-1) passed by the Principal District Judge, Tikamgarh in MJC No. 23/2021, which are the proceedings in terms of section 26 of the M.P. Public Trusts Act 1951 (for short, Act 1951). By the said order, the said Court has rejected the application filed by the present petitioners under Order 14 Rule 1, 3 readwith section 151 CPC. The request of the petitioner to frame issues in terms of Order 14 rule 1 to 5 CPC and then to proceed further, has been turned down by the said Court.

2 . It is stated by the learned counsel for the petitioner that a frivolous complaint was filed by the present respondents No. 3 and 4 in the matter of improper management of the Trust known as Shri 1008 Digambar Jain Atishay Kshetra Papora Public Trust, Tikamgarh. The complaint was made to the respondent No.2 who forwarded the same to the respondent No.1-Registrar Public Trusts. It is further stated that the respondent No.1 caused an improper enquiry into the matter and forwarded the matter to the District Judge as per Section 26 of the Act of 1951 to issue appropriate directions. The petitioners moved an application before the District Court to frame issues in the matter and then to proceed further. However, by the order annexure P-1, the District Court has refused to frame issues, on the reasoning that issues are not required to be framed, and the matter will be decided after framing points of determining

while passing final orders in the matter.

The parties have restricted their arguments only to the aspect whether issues are required to be framed by the Court while taking up and deciding the proceedings under section 26 of the Act of 1951.

3 . The learned counsel for the petitioner contends that as per section 28 of the Act of 1951, even the Registrar is having power to take evidence. It is thus, contended, that without framing issues, taking of evidence shall not be practicable.

4. A further argument is raised that as per section 30, provisions of Code of Civil Procedure apply to proceedings under the Act before the Court. Thus, the same procedure as followed in trial of a civil suit has to be followed.

5. It is also argued that as per section 27 (3) of the Act, the order passed by the Court shall be deemed to be decree of the said Court and it shall be appealable only to the High Court. Further, regular suit is barred as per Section 27 (4), for the matters that can be agitated under section 26. Thus, it is contended, summary procedure cannot be followed and the same procedure as trial of civil suit has to be followed.

6. By referring to the definition of “decree” in terms of section 2 (2) of the Code of Civil Procedure, it is argued that the decree is expression of final adjudication, hence, by whatever name called, the order of the Court under Act of 1951 is a decree.

7. The learned counsel has relied on para-41 of the judgement of the Hon’ble Supreme Court in the case of **Ramrameshwari Devi Vs.**

**Nirmala Devi & Ors.**, reported in **2011 (8) SCC 249**. The learned counsel also relied on para-19 of the judgement in the case of **Makhan Lal Bangal Vs. Manas Bhunia**, reported in **2001 (2) SCC 652**, to contend that framing of issues is of paramount importance in the proceedings.

8. Per contra, it is argued by learned counsel for the respondents that the Court in terms of section 26 of the Act of 1951 is required to pass an order. As per Section 2 (14) of the Code of Civil Procedure, “order” is defined and the term “order” does not include “decree”. Thus, the order in proceedings under section 26 may be deemed to be decree of the Court, but it is not a “decree”.

9. It is also argued that the legislature has barred civil suit, only to provide speedy remedy in such matters of management of Public Trusts. If the regular trial procedure like trial of a civil suit is to be followed, there was no point in barring civil suit in the matter. The learned counsel for the respondent have relied on the judgement of the Hon’ble Supreme Court in the case of **Nedunuri Kameshwaramma Vs. Sampati Subba Rao**, reported in **AIR 1963 SC 884** and the case of **Sameer Singh Vs. Abdul Rab**, reported in **AIR 2015 SC 591**.

10. It is also argued by learned counsel for the respondents that even in proceedings under Order 21 Rule 97 CPC, a final adjudication is made, but there is no mandatory provision to frame issues, as a speedy remedy is contemplated.

11. Heard learned counsel for the parties and perused the record.

12. The sole question arising for determination in the present matter

is whether the District Court while deciding the proceedings under section 26 of Act of 1951 is under obligation to frame issues and then decide the matter.

13. The relevant provisions of the Act of 1951 are as under :-

"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.

" 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 subsection (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 subsection (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.

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.

29. Inquiry to be judicial inquiries. - All inquiries under this Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code.

30. Civil Procedure Code to apply to proceedings under this Act. - Save in so far as they may be inconsistent with any thing contained in this Act, the provisions of the Code of Civil Procedure, 1908 (V of 1908), shall apply to all proceedings before the Court in this Act.

31. Recovery of sums due under Sections 23 and 24 or rules. - All sums payable under Sections

23 and 24 or under any rule, if not paid, shall, notwithstanding anything contained in any law and without prejudice to any action liable to be taken under this or any other Act, be recoverable as an arrear of land revenue.

32. Bar to hear or decide suits. - (1) No suit to enforce a right on behalf of a public trust which has not been registered under this Act shall be heard or decided in any Court.

(2) The provisions of sub-section (1) shall apply to claim or set off or other proceeding to enforce a right on behalf of such public trust"

15. Thus, looking to the provision of section 27 (1), the argument of the petitioners that as per section 30 of the Act, the entire procedure for trial of a civil suit has to be followed, loses force and cannot be accepted.

16. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.

17. Where the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in

refutation thereof by the other side. In such an eventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been a mistrial and the proceedings stood vitiated. (See *Nagubai Ammal v. B. Shama Rao* [AIR 1956 SC 593] , *Nedunuri Kameswaramma v. Sampati Subba Rao* [AIR 1963 SC 884] , *Kunju Kesavan v. M.M. Philip* [AIR 1964 SC 164] , *Kali Prasad Agarwalla v. Bharat Coking Coal Ltd.* [1989 Supp (1) SCC 628] , *Sayed Akhtar v. Abdul Ahad* [(2003) 7 SCC 52] and *Bhuwan Singh v. Oriental Insurance Co. Ltd.* [(2009) 5 SCC 136]).

18. However, as discussed above, the scheme of the Act of 1951 does not provide for a “trial”, but an “inquiry”. Thus, the mandatory provisions as applicable to trial of a regular civil suit cannot be mechanically applied to proceedings under Section 26 of the Act of 1951.

19. The reliance of the petitioners on para-41 of the judgement of the Hon’ble Supreme Court in the case of **Ramrameshwari Devi Vs. Nirmala Devi & Ors.**, reported in **2011 (8) SCC 249**, seems to be misplaced as the said matter arose from a regular civil suit. The learned counsel also relied on para-19 of the judgement in the case of **Makhan Lal Bangal Vs. Manas Bhunia**, reported in **2001 (2) SCC 652**, to contend that framing of issues is of paramount importance in the proceedings. However, in the same judgement the Hon’ble Supreme Court in para 21 has held that defective framing of the issues though material, has not vitiated the trial inasmuch as the parties have gone to the trial with full knowledge of the allegations and counter-allegations made in the pleadings.



20. A Division Bench of this Court, in the case of **Dhanpal Singh & Ors. Vs. Hariram**, reported in **AIR 1974 MP 32**, has considered the scope of proceedings under section 26 and 27 of the Act of 1951 and has held that under section 27 the District Judge is given authority to decide whether a Trust is being properly managed or not, and if it is not being properly managed, then it can remove trustee (s), appoint trustee (s) and can give directions regarding management of the Trust. Thus, the scope is only to decide the aspects of management of Public Trust. By barring Civil Suit, the intention is to provide speedy efficacious remedy. The counsel for the respondents seem to be correct in submitting that if the same procedure as trial in a regular civil suit is followed, then the very objective of carving out the speedy remedy through the District Court shall be frustrated.

21. The reliance on section 28 of the Act of 1951 seems to be misplaced. The said provision merely enables the Registrar is having power to take evidence. Mere enabling a court or authority to take evidence does not make it mandatory to frame issues, unless provided expressly or by necessary implication.

22. In matters involving adjudication under Order 21 Rule 97 CPC, questions have cropped up, whether regular trial has to be carried out. In the judgement in the case of **Sabir Khan @ Billu Vs. Naushad Ahmad**, reported in 2014 SCC OnLine Utt 2382, the High Court of Uttarakhand has held as under :-

" Mr. Neeraj Garg, learned counsel appearing for the objector/petitioner, herein, has vehemently argued that objection

filed under Order 21 Rule 97 CPC should be decided as a suit after framing the issues as mandated by Order 21 Rule 101 and Rule 103 of CPC; since, no issue was ever framed, therefore, order passed by the learned Executing Court dismissing the objection under Order 21 Rule 97 CPC stands vitiated.

Objector/petitioner, herein, is claiming himself to be a tenant of the plaintiff/decreed holder, while decreed holder is seriously refuting the claim raised by the objector/petitioner, herein. Therefore, the only question which arose before the Executing Court was - As to whether objector/petitioner, herein, was in possession of the part of the suit property as a tenant of the plaintiff/decreed holder in his independent rights? This question was decided by the Executing Court against the objector/petitioner, herein."

Hon'ble Apex Court in the case of Nedunuri Kameswaramma v.

Sampati Subba Rao reported in AIR 1963 SC 884 held as under:

"Where the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mis-trial which vitiates proceedings. The suit could not be dismissed on this narrow ground, and also there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion and neither party claimed that it had any further evidence to offer." त्यमेव जयते

As per the dictum of Hon'ble Apex Court in the case of Nedunuri Kameswaramma (supra), if parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, then, non-framing of issue is not fatal.

As discussed hereinbefore, the only question for determination posed before the Executing Court was as to whether objector/petitioner, herein, is in possession of the part of the suit property as a tenant of the plaintiff/decreed holder in his own independent right, and this issue has been decided against the objector/petitioner, herein, although without framing the issue. Therefore, judgment passed by the Executing Court rejecting the objection of the objector cannot be said to have been vitiated by non-framing of the issues."

23. Thus, the petition seeking framing of issues holding it to be mandatory part of procedure seems to be misconceived. The scheme of sections 26 to 32 of the Act of 1951 does not provide for any such mandatory procedure for framing of issues, either expressly or by necessary implication. The District Court has already held that points of determination will be framed while finally deciding the matter. The Court is not barred from framing issues and/or from taking evidence. However, the discretion exercised by the Court in refusing to frame issues cannot be interfered with by holding it to be a violation of mandatory provision.

24. The petitioners have not been able to establish, on facts, at this stage, any prejudice caused to them by non-framing of issues.

25. The petitioners would always be to liberty to agitate at an appropriate stage, on facts, any prejudice caused to them by the procedure adopted by the District Court while deciding the proceedings.

26. The petition being devoid of merits, stands **dismissed**.

(VIVEK JAIN)  
JUDGE