(2008) 01 RAJ CK 0099

In the Rajasthan High Court

Bheru Mal APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 17(1), 18, 23, 24

Citation : (2008) 2 RLW 1453

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.—Under challenge in this petition is the order dated 21.1.95 whereby Asstt. Devisthan Commissioner, Bikaner directed initiation of inquiry u/s 18 of the Rajasthan Public Trust Act, 1959 (for short "the Act") against the petitioner in relation to temple in question. This order was earlier challenged by the petitioner in appeal before the Devasthan Commissioner at Udaipur who by his order dated 18.11.96 dismissed the same as premature, which is also under challenge in this writ petition.

2. I have heard Mr. M.S. Singhvi learned Counsel for the petitioner, Mr. Shyam Ladrecha, learned Govt. counsel appearing for the respondent State and Mr. A.K. Khatri learned Counsel appearing for the respondent No. 4 Ganesh Ram.

3. Mr. M.S. Singhvi, learned Counsel for the petitioner has argued that the order sheet dated 13.1.95 directing initiation of inquiry in regarding temple of Mataji situated at Rajdesar at Tehsil Ratangarh district Churu could not have been legally passed as the same authority viz. Asstt. Commissioner, Devisthan had earlier served a notice to the petitioner on the basis of survey report submitted by inspector. Devisthan for penalty proceedings u/s 70 of the Act. The petitioner in response to the notice submitted that the temple in question was a private temple of Kuldevi of their family. This temple was constructed by his grand father Nathuram on his private land about 85 years ago. In support of his contention,

the petitioner had also filed his affidavit alongwith photostat copy of the patta. The petitioner further contended that this temple did not fall within the purview of public trust as defined u/s 2(11) of the Act. There was therefore no question of violation of Section 17(1) of the Act. This temple would not even be covered by the definition of temple given in Section 2(16) of the Act. Learned Counsel submitted that Asstt. Commissioner, Devasthan convinced with the explanation submitted by the petitioner dropped the penalty proceedings by his order dated 19.4.95. A similar notice was thereafter again served by the Asstt. Commissioner, Devisthan vide order dated 17.11.87. The petitioner submitted similar reply to such notice and the Asstt. Commissioner, Devisthan thereupon by his order dated 17.2.88 dropped the proceedings u/s 70 of the Act. The very same authority thereafter yet again issued the notice dated 21.12.94 on allegation of violation u/s 17(1) of the Act and required the petitioner to show cause as to why should be not be penalised in terms of the aforesaid provision for not having got the temple registered. These proceedings were initiated on the basis of an application/complaint submitted by the respondent No. 4. The petitioner again submitted reply to the notice inviting attention of the Asstt. Commissioner, Devasthan towards the fact that earlier twice proceedings initiated u/s 70 of the Act have been dropped. Learned Counsel argued that penalty proceedings u/s 70 being in nature of judicial proceedings, having once attained finality could not be re- opened. Only remedy available to an aggrieved person was to file appeal under Sub-section (7) of Section 17. Such remedy would even be available to the respondent No. 4 though, of course, with leave of the appellate authority. Mr. M.S. Singhvi, learned Counsel, in support of his arguments relied on the judgments of the Supreme Court in Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, and A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

4. Per contra, Shri A.K. Khatri, learned Counsel for the respondent No. 4 submitted that the scope of the penalty proceedings u/s 70 of the Act is altogether different than the proceedings u/s 18. Penalty proceedings are initiated for violation of Sub-section (1) of Section 17. Such proceedings were earlier initiated on the report submitted by the Devisthan Inspector who in his survey mentioned the temple in question at Serial No. 9 as one such private trust which was not registered. In those proceedings, however, the respondent No. 4 was not a party and therefore, he had no opportunity to produce before the Competent Authority any evidence to substantiate the fact that temple in question was not a private property of the petitioner but was in fact constructed on the public land received by way of grant from Government of that time. It was submitted that the right of appeal u/s 17(6) is available to only such person who is a party to the proceeding u/s 17. In the present case, however, proceedings u/s 70 were initiated on allegation of violation of Section 17(1) and, therefore, this matter was essentially confined to the petitioner only. Since the mense rea on the part of the petitioner could not be substantiated before the Asstt. Commissioner, at that time, penalty order was not passed against him. Merely

because proceedings u/s 70 were dropped, that would not preclude the Competent Authority to hold an inquiry u/s 18. It was argued that inquiry u/s 18 has much wider ramification because it postulates the public notice in the prescribed manner of the inquiry proposed to be made under its Sub-section (1) and invite all persons having interest in the public trust under inquiry to prefer within sixty days objections, if any, in respect of such trust. Learned Counsel also invited the attention of the Court towards the application which was submitted by respondent No. 4 (Annex. 6) before the Asstt. Commissioner, Devisthan wherein it was submitted that temple was constructed on the public land and all the properties situated on the land of the temple including the buildings and shops, were public properties. In this connections reference was also made to Patta issued by the then Government in Samvat 1960 ''Miti Jeth Badi 15''.

5. Learned Counsel during the course of arguments also produced certified copy of the said Patta obtained from Rajasthan State Archieves Bikaner. Learned Counsel Shri A.K. Khatri relied on the judgment of Division Bench of this Court in Mehta Charitable Trust Pali v. The Commissioner Devasthan Vibhag Rajasthan, Udaipur and Ors. RLR 1994 (2) 49, Ram Swaroop v. Commissioner Devasthan and Ors. RLR 1999(1) 291 and State and Anr. v. Shivdayal and Ors. RLR 1988 18. Learned Counsel, therefore, submitted that appeal was rightly rejected by the Devasthan Commissioner as being premature because the inquiry proceedings are yet to be held where the petitioner would also have the opportunity to participate. He, therefore, submitted that the writ petition be dismissed.

6. Shri Shyam Ladrecha, learned Govt. Counsel appearing for the State has also supported the impugned order and argued that the petition cannot resist inquiry u/s 18 simply because another inquiry was earlier held u/s 70 of the Act. He while adopting the argurnents made by Shri A.K. Khatri, learned Counsel for the respondent No. 4, joined him in submitting that the petition be dismissed.

7. I have given my thoughtful consideration to the rival submissions advanced by the learned Counsel for the respective parties and perused the material on record and. respectfully studied the cited case laws produce before the Court.

8. Question that arises for determination in this petition is whether the penalty proceedings which were earlier initiated against the petitioner for contravention of Sub-section (1) of Section 17 for not getting the temple in question registered would be construed as a bar for initiation of a regular inquiry u/s 18 of the Act. Proceedings initiated u/s 70 cannot be construed to be described only administrative in nature. Since such proceedings visit the person against whom they are held with penal consequences, they have to have some semblance of judicial proceedings and, therefore, the submission made by Mr. M.S. Singhvi learned Counsel for the petitioner to that extent are liable to be upheld. But then, further question that arises is whether the penalty proceedings initiated against the. petitioner in which neither respondent No. 4 nor anyone else from the general public had an opportunity to-participate and substantiate the fact

that temple in question was in fact a public property having been constructed on the land received by way of grant from the Government of that time would bar regular inquiry envisaged in Section 18 of the Act. In order, therefore, to have a glimpse of the scheme of the legislation it would be apposite to reproduce hereunder all the three relevant provisions i.e. Sections 17, 18 and 70.

Section 17. Registration of public trusts: (1) Within (two years) from the date of the application of this section to a public trust or from the date on which a public trust or from the date on which a public trust is created, whichever is later, the working trustee thereof shall apply to the Assistant Commissioner having jurisdiction for the registration of such public trust.

(2) The Assistant Commissioner may, for reasons to be recorded in writing, extend the period prescribed by Sub-section (1) for the making of an application for registration by not more than three months.

(3) Each such application shall be accompanied by such fee, if any, not exceeding five rupees, and to be utilized for such purpose, as may be prescribed.

(4) The application shall be in such form as may be prescribed and shall contain the following particulars, namely-

(i) the origin (so far as known), nature and object of the public trust and the designation by which the public trust is or shall be known;

(ii) the place where the principal office or the principal place of business of the public trust is situate;

(iii) the names and addresses of working trustee and the manager; (iv) the mode of succession to the office of the trustee;

(v) the list of the movable and immovable trust property and such description and particulars as may be sufficient for the identification thereof;

(vi) the approximate value of the movable or immovable property;

(vii) the gross average annual income derived from movable and immovable property and form any other source, if''any, based on actual gross annual income during the three years immediately preceding the date on which the application is made for the period which has elapsed since the creation of the trust, whichever period is shorter, and, in the case of newly created public trust, the estimated gross annual income from all such sources;

(viii) the amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the period to which the particulars under Clause (vii) relate, and in the case of a newly created public trust, the estimated annual expenditure in connection with such public trust;

(ix) the address to which any communication to the working trustee or manager in connection with the public trust may be sent;

(x) such other particulars as may be prescribed:

Provided that the rules made may provide that in the case of any oral public trusts, it shall not be necessary to give the particulars of the trust property of such value and such kind as may be specified therein.

(5) Every application made under Sub-section (1) shall be signed and verified in accordance with the manner laid down in the Code of Civil Procedure, 1908 (Central Act of V of 1908) for signing and verifying plants. It shall be accompanied by a copy of the instrument of trust (if such instrument has been executed and is in existence) and, where the trust property includes immovable property entered in a record of rights, a copy of the relevant entries relating to such property in such record of rights shall also be enclosed.

(6) No Assistant Commissioner shall proceed with any application for the registration of a public trust in respect of which an application for registration has been filed previously before any other Assistant Commissioner and the Assistant Commissioner before whom the application was filed first shall decide which Assistant Commissioner shall have jurisdiction to register the public interest.

(7) An appeal against the order of the Assistant Commissioner before whom the application was filed first, given Sub-section (6) may be filed within sixty days before the Commissioner and, subject to the decision on such appeal, the order of the Assistant Commissioner under Sub-section (6) shall be final.

Section 18. Inquiry for registration:- (1) On receipt of an application u/s 17 or upon an application made by any person having interest in a public trust or on his own motion, the Assistant Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining-

(i) whether a trust exists and whether such trust is a public trust;

(ii) whether any property is the procedure of such trust;

(iii) whether the whole or any substantial portion of the subject matter of the trust is situate within his jurisdiction;

(iv) the names and addresses of the working trustee and the manner of such trust;

(v) the mode of succession to the office of the trustee of such trust;

(vi) the origin, nature and object of such trust;

(vii) the amount of gross average annual income and expenditure of such trust; and

(viii) the correctness or otherwise of any other particulars furnished under Sub-section (4) of Section 17,

(2) The Assistant Commissioner shall give in the prescribed manner public notice

of the inquiry proposed to be made under Sub-section (1) and invite all persons having interest in the public trust under inquiry to prefer within sixty days objections, if any, in respect of such trust.

Section 70, Penalty, (1) whoever contravenes any provision of Sub-section (1) of Section 17 or of Sub-section (1) of Section 23 or of Section 27 or of Section 30 or of Sub-sections (2) and (3) of Section 66 shall be punished with fine which may extend to give hundred rupees.

(2) Whoever contravenes any of the provisions of this Act or the rules made thereunder for the contravention of which no specific penalty has been provided shall be punished with fine which may extend to one hundred rupees.

8. So far as the proceedings initiated u/s 70 are concerned, there can be no doubt that such proceedings are meant to punish those who contravenes the provisions of Sub-section (1) of Section 17 or Sub-section (1) of Section 23 or of Sections 27, of Section 30 or of Sub-section (2) and (3) of Section 66. Section 17 interalia provide that the working trustee of a public trust shall apply for registration of the trust within two years the date of the application of this section to a public trust or from the date on which the public trust is created, whichever is later, to the Asstt. Commissioner having jurisdiction for the registration of such public trust. Such application should be accompanied by a copy of the trust instrument of wherever executed and the trust property and the relevant records of right in relation to immovable property of the trust and requisite fee. Order passed in such proceedings is made appealable under Sub-section (7) of Section 17 of the Act within 60 days of the date of passing the order under Sub-section (6) thereof for registration of the trust or otherwise by the Asstt. Commissioner, Devasthan. Now in the present case, what is evident is that the authorities instead of making an inquiry u/s 18, straight way proceeded against the petitioner u/s 70 for violation of Sub-section (1) of Section 17 of the Act. This was simply based survey report of Devesthan Inspector who however could not substantiate that temple was a public trust in that proceedings whereas the petitioner produced photostat copy of patta asserting that the temple was constructed by his grand father on his private land some last 85 years ago. Petitioner now wants to foreclose the option available to the authority u/s 18 for a regular inquiry to be held on the basis of application submitted by the respondent No. 4. The order dated 13.1.95 has also been passed on the proceedings which were originally started u/s 70 but the Asstt. Commissioner, Devasthan, Bikaner in due defence to the earlier orders passed by his predecessors dropping such proceedings, dropped the penalty proceedings this time too. However, by subsequent order dated 21.1.95 directed that despite of proceedings u/s 70 having been dropped, there would be no impediment to go ahead with the inquiry u/s 18 and directed so. This order dated 21.1.95 is under challenge in the present proceedings.

9. Proceedings of the inquiry initiated u/s 18 can be held on basis of an application u/s 17 which, as noticed above, could be made (1) at the instance of

the working trustee of the public trust. (2) Upon an application made by any person having interest in public trust, which is the case in the present matter or (3) at his own motion by the Asstt. Commissioner. Although, the Asstt. Commissioner had option of initiating inquiry u/s 18 at the time when he earlier received survey report from his inspector but now that he has initiated such inquiry by exercising the second option available to him namely on the basis of application made by respondent No. 4 who has interest in the public trust in question, it cannot be said that he is debarred from doing so only because penalty proceedings u/s 70 of the Act were dropped earlier.

10. Scope of inquiry u/s 18 is quite vast and which is to be held in the prescribed manner for the purpose of asserting (i) whether a trust exist or whether such trust is a public trust (ii) whether any property is the property of such trust (iii) whether the whole or any substantial portion of the subject matter of the trust is situate within his jurisdiction; (iv) the names and addresses of the working trustee and the manager of such trust; (v) the mode of succession to the office of the trustee of such trust; (vi) the origin, nature and object of such trust; (vii) the amount of gross average annual income and expenditure of such trust; and (viii) the correctness or otherwise of any other particulars furnished under Sub-section (4) of Section 17. What is significant to notice is that Sub-section (2) of Section 18 interalia provides that Asstt. Commissioner shall give in the prescribed manner public notice of the inquiry proposed to be made under Sub-section (1) and invite all persons having interest in the public trust and inquiry within 60 days objections, if any in respect of such trust. This inquiry, therefore, postulates a public notice inviting from persons having interest in the public trust their objections within 60 days in respect of such trust. Scope of inquiry u/s 18 is, therefore, much wider as anyone from general public can participate therein whereas penalty proceedings u/s 70 are merely directed against the alleged defaulter. If the intention of contravention of the provisions of Section 17(1) is not proved by positive evidence, the competent authority may not decide to impose penalty upon such defaulter.

11. In the present case, as already noticed above, the Asstt. Commissioner instead of proceeding in inquiry u/s 18 in the first instance straightway issue notice to the petitioner u/s 70 for alleged violation of Section 17(1). Mere withdrawal of notice or for that matter not imposing penalty pursuant to such notice does not preclude the Asstt. Commissioner to hold the inquiry contemplated by Section 18 notwithstanding the fact that inquiry proceedings u/s 70 are judicial in nature. This is so because registration of temple as public trust by recourse to Section 17(1) of the Act is one of the three prescribed modes in Section 18. Apart from the application u/s 17(1) made by the executive trustee of even if the option of the Asstt. Commissioner to initiate such proceedings ''on his own motion'' also is taken to have been exhausted his not for having initiated such inquiry on the basis of survey report received from Devasthan Commissioner, dropping of proceedings u/s 70 of the Act does not bind strangers which were not party to such proceedings. Since respondent No. 4 was not a

party to the proceedings u/s 70 of the Act not only he would be not bound by the decision of the Asstt. Commissioner not to imposing penalty upon the petitioner but he also for the same reason can have no right to file appeal under Sub-section (7) of Section 17 against such decision. That right is reserved for the same person concerned who has either approached the Asstt. Commissioner on his own for getting the public trust registered against any order that might be based on such application or who has not approached according to law and was required to approached the Asstt. Commissioner for getting the such temple registered. It logically follows therefore is that inaction omission on the part of Asstt. Commissioner in not proceeding to hold an inquiry u/s 18 on the basis of survey report by invoking third mode of such provision viz so proceedings on his own motion would not preclude him to proceed in, a regular inquiry on the basis of an application received from the respondent No. 4.

12. On perusal of first order dated 19.4.85 indicates that the petitioner had with his reply produced before the Asstt. Commissioner photostat copy of Patta and no other document whatsoever was produced by the Devasthan Inspector or the Department in support of their claim and it was owing to that reason that the proceedings were dropped. Second order dated 17.2.88 was based completely on the first order dated 19.4.85. When however third notice was served on the petitioner again proceedings u/s 70 against him were dropped. But the Asstt. Commissioner in those proceedings persuaded by the respondent No. 4 that the temple in question was constructed on a public land received by way of grant of charitable purposes from the Government of the day on Samvat 1960 ''Miti Jeth Badi 15'' which was not placed in record on the earlier proceedings, Commissioner while dropping the proceedings u/s 70 this time again, decided to proceed in an independent inquiry u/s 18. Certified copy of Patta which has been produced in the Court during the course of argument makes out a case worth inquiry and, therefore, the inquiry can be held only even* if penalty was not imposed on the petitioner on earlier occasion became the Patta which now sought is to be produced by respondent No. 4 was not there before the Competent Authority. Tatio of two Supreme Court judgments relied on by the learned Counsel for the petitioner therefore cannot be applied to the facts of the present case.

13. Division Bench of this Court in Mehta Charitable Trust Pali v. The Commissioner Devasthan Vibhag Rajasthan, Udaipur held that the inquiry proceedings conducted in the scope of Section 18 is quashi judicial in nature wherein prior to the date of registration of the public trust, the authority is required to provide the opportunity of hearing to all concerned and while deciding the objections should give valid reasons in support of its findings. A Coordinate bench of this Court in Ramkishore in a similar case held that Asstt. Commissioner, Devasthan could not declare a temple as a public trust on the basis of order passed in the penalty proceedings u/s 70. Such a finding could have been arrived at by him only in a duly instituted inquiry u/s 18 which postulates a public notice in the prescribed manner inviting all persons having

interest in such public trust. Similar observations were also made in Ramswaroop (supra).

14. Matter can be approached even from another angle. Even if the inquiry has been held and the matter has been finalised, the Asstt. Commissioner by invoking jurisdiction u/s 24 of the Act can at any time amend the entries of public trust made in the register u/s 21 and 23 if it appears to him that any particular relating to a public trust, which was not the subject matter of the inquiry u/s 18 or Sub-section (2) of Section 23, as the case may be, has remained to be inquired into, for that purpose the Asstt. Commissioner may make further inquiry in the prescribed manner, record of its findings and make or amend the entries in the register in accordance with the decision arrived at and the provisions of Section 19 to Section 23 shall, so far as may be applied, to such inquiry proceedings. When finality has not been attached even to the entries made in respect of a public trust based on the inquires u/s 18 and 23, as manifest from the legislative scheme, reflected from Section 24, the contention that non imposition of penalty in the proceedings u/s 70 should be taken as a bar for initiation of inquiry u/s 18 cannot be accepted.

15. In view of what has been discussed above, I do not find any merit in the writ petition. The writ petition is, therefore, dismissed with no orders as to costs.