(1999) 03 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Revision Petition No. 337/91

Gheesu Dass APPELLANT

Vs

Narsingh Kansara and Others RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:
Rajasthan Public Trusts Act, 1959 — Section 22

Citation : AIR 1999 Raj 298 : (1999) 3 RLW 1457 : (1999) 3 WLC 586

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Advocate : A.K. Singh, for the Appellant; N.M. Lodha and D. Kachhawaha, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Kokje, J.—The question involved in this case is as to whether a person, who objects to a particular property to be the property of a Public Trust, could maintain a suit relating to that property u/s 22 of the Rajasthan Public Trust Act. The plaintiff-revision petitioner brought a suit u/s 22 of the Act claiming that Shri Narsingh Bhagwan Temple situated in Jalore was the private and ancestral property of the plaintiff which has been wrongly declared to be and registered to be a Public Trust under the Act. On the Temple declared to be property of a Public Trust, the plaintiff filed an appeal u/s 20 of the Act which was rejected. He therefore filed a suit u/s 22 of the Act for cancellation of an entry regarding registration of the Public Trust as well as the suit property being shown as properly of the Public Trust. The respondents objected to the maintainability of the suit on the ground that a person who is challenging the existence of the Trust and who is setting up a title adverse to the Public Trust cannot maintain a suit u/s 22 of the Act for cancellation of entries in the Register of Public Trust. The trial Court framed a preliminary issue on the point and decided it against the plaintiff. The plaintiff has filed revision petition against that order.

2. The trial Court has mainly relied on the decision of this Court in Mehta

Charitable Trust v. Gulam Rasool 1986 RLR 695 and decision of the Supreme Court in Abdul Karim Khan and Others Vs. Municipal Committee, Raipur, The learned counsel for the revision petitioner has submitted that the decision of the Supreme Court in Abdul Karim Khan Supra, on which Mehta Charitable Trust''s Case Supra was based, was in a case to which Madhya Pradesh Public Trust Act applied. The learned counsel submitted that in Madhya Pradesh Act "person having interest" has not been defined, whereas in the Rajasthan Act it has been defined u/s 2(9), which will make a difference and the ruling would not be applicable to cases under Rajasthan Public Trust Act. The learned counsel for the non-petitioners submitted that the definition of the expression "person having interest" would not make any difference to the situation as even the definition given u/s 2(9) does not include a person having interest adverse to the interest of the Public Trust.

3. In order to appreciate the controversy correctly, I will have to examine the scheme of the Rajasthan Public Trust Act, 1959 as well as the Madhya Pradesh Public Trust Act, 1951. Section 22 of the Rajasthan Public Trust Act falls in Chapter 5 which relates to registration of Public Trust.

4. Section 16 provides that the Assistant Commissioner shall be in-charge of the registration of all Public Trusts having principal places of business within the local limits of the area of his jurisdiction. It also provides that the''Assistant Commissioner shall maintain the Register of Public Trust and such other Books and registra- tion in such form as has been prescribed.

5. Section 17 of the Act provides for registration of a Public Trust. The application for registration has to be in a prescribed form and has to contain the particulars about the urgent nature and object of Public Trust and the designation by which the Public Trust is or shall be known, the place where the principal office or the principal place of business of the Public Trust is situate, the name and address of the working trustee and the Manager, the mode of succession to the office of the trustee, the list of movable and immovable trust property and such description and particulars as may be sufficient for the identification thereof, the approximate value of the movable and immovable property etc.

6. Section 18 provides for an enquiry before registration 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 has to make an enquiry in the prescribed manner for the purpose of ascertaining whether a trust exists and whether such trust is a Public Trust, whether any property is the property of such trust, whether the whole or any substantial portion of the subject-matter of the trust is situate within his jurisdiction etc. The Assistant Commissioner has to give a public notice in prescribed manner of the inquiry proposed to be made by him under the provision and invite all persons having interest in the Public Trust under inquiry to refer within 60 days objection, if any, in respect of such trust.

7. Section 19 of the Act provides that on completion of the inquiry provided for u/ s 18, the Assistant Commissioner shall record his findings with the reasons therefore as to the matters mentioned in the said section.

8. Section 20 provides for an appeal against the finding of the Assistant Commissioner. Any working trustee or person having interest in a Public Trust or in any property found to be trust property, aggrieved by a finding of the Assistant Commissioner u/s 19, may within two months from the date of its publication on the notice board of the Assistant Commissioner, file an appeal before the Commissioner to have such findings set aside or modified.

9. Section 21 provides that the Assistant Commissioner shall cause entries to be made in the register in accordance with the findings recorded by him u/s 19 or, if an appeal has been filed u/s 20, in accordance with the decision of the Commissioner on such appeal, and shall cause to be published on the notice board of his office and at a conspicuous place in the city, town or village where the principal office or the principal place of business of the public trust is situate, the entries made in the register. Sub-section (2) of Section 21 provides that the entries so made shall, subject to the other provisions of the Act and subject to any change recorded under any provision of the Act or a rule made thereunder, be final and conclusive.

10. It is in this setting that Section 22 of the Act provides for a Civil Suit against the entries made u/s 21. It provides that any working trustee or the person having interest in a Public Trust or any property found to be the trust property, aggrieved by any entry made u/s 21 may within six months from the date of publication thereof on the notice board of the office of the Assistant Commissioner under subsection (1) of Section 21 institute a suit in a Civil Court to have such entries cancelled or modified.

11. The aforesaid provisions of the Rajasthan Act and Sections 3, 4, 5, 6, 7 and 8 of the Madhya Pradesh Act are pari materia.

12. The question arising in this case is whether "person having interest" mentioned in Section 22 can be a person who has interest adverse to the Public Trust and who is claiming the property found to be the trust property to be his own property and not the Public Trust property.

13. In Abdul Karim Khan v. Municipal Committee, Raipur Supra the plaintiffs, residents of a locality belonging to the Muslim community filed a representative suit under Order 1, Rule 8, C.P.C. for a permanent injunction against the Raipur Municipality claiming that the suit land was Old Kabristan registered under the Madhya Pradesh Public Trust Act and was a trust property and as such the Raipur Municipality could not claim any right or title to the said land. The Raipur Municipality disputed the claim. It was contended that the suit land was given to the Municipality by the State Govt. on a fixed rent and the Municipality had constructed some school buildings on the same. Several issues were raised, but the issue relevant for the purpose of this case related to the registration of the

plot in the register kept under the provisions of the Trust Act and its effect. The plaintiffs contended that the registration of the plot as a trust property in the register of the Registrar of Trust was conclusive against the Municipality and in favour of the plaintiff. The trial Court rejected the contention. Appeal of the plaintiffs was dismissed and a second appeal was also dismissed by the High Court. The matter then went to the Supreme Court. It was contended before the Supreme Court that, if any person, who claims interest in the property which is alleged to be the trust property, fails to satisfy the Registrar about his claim, he can file a suit u/s 8(1) of the Madhya Pradesh Act. The provision allows a suit to be filed subject to the condition prescribed by it and right to file such a suit is given to the working trustee, or a person having interest in a Public Trust or any ? property found to be the trust property. The Municipality was interested in the property in suit which was found to be the trust property and since it did not avail itself of the right to file a suit within the specified time, the order passed by the Registrar must be held to be final and conclusive against its claim. If finality did not attach to such an order even after 6 months had expired within the meaning of Section 8(1) then the provision contained in Section 4(5) will serve no purpose whatsoever. After examining the entire scheme of the Act, the Supreme Court rejected the contention. Observations in paragraphs 10, 11, 12, 13 and 14 in Abdul Karim''s case supra conclude the issue. It would be useful to reproduce relevant excerpts from them to understand the full meaning of the decision at pages 1746-1747.

"10. In testing the validity of this argument, we must bear in mind the important fact that the Act is concerned with the registration of public, religious and charitable trust in the State of Madhya Pradesh, and the enquiry which its relevant provisions contemplate is an enquiry into the question as to whether the trust in question is public or private. The enquiry permitted by the said provisions does not take within its sweep questions as to whether the property belongs to a private individual and is not the subject-matter of any trust at all. It cannot be ignored that the Registrar who, no doubt, is given the powers of a Civil Court u/s 28 of the Act, holds a kind of summary enquiry and the points which can fall within his jurisdiction are indicated by clauses (i) to (x) of Section 4(3). Therefore, prima facie, it appears unreasonable to suggest that contested questions of title, such as those which have arisen in the present case, can be said to fall within the enquiry which the registrar is authorised to hold u/s 5 of the Act.

11. Besides, it is significant that the only persons who are required to file their objections in response to a notice issued by the Registrar on receiving an application made u/s 4(1), are persons interested in the Public Trust not persons who dispute the existence of the trust or who challenge the allegation that any property belongs to the said trust. It is only persons interested in the Public Trust, such as beneficiaries or others who claim a right to manage the trust, who can file objections, and it is objections of this character proceeding from persons belonging to this limited class that fall to be considered by the Registrar.

12. It is true Section 8(1) permits a suit to be fifed by a person having interest in the Public Trust or any property found to be trust property. The interest to which this section refers must be read in the light of Section 5(2) to be the interest of a beneficiary or the interest of a person who claims the right to maintain the trust or any other interest of a similar character. It is not the interest which is adverse to the trust set up by a party who does not claim any relation with the trust at all.

13. Then again the right to file a suit to which Section 8(1) refers is given to persons who are aggrieved by any finding of the Registrar. Having regard to the fact that the proceedings before the Registrar are in the nature of proceedings before a Civil Court, it would be illogical to hold that the respondent who was not a party to the proceedings can be said to be aggrieved by the findings of the Registrar. The normal judicial concept of a person aggrieved by any order necessarily postulates that the said person must be a party to the proceedings in which the order was passed and by which he feels aggrieved. It is unnecessary to emphasise that it would be plainly unreasonable to assume that though a person is not a party to the proceedings and cannot participate in them by way of filing objections, he would still be found to file a suit within the period prescribed by Section 8(1) if the property in which he claims an exclusive title is held by the Registrar to belong to a Public Trust.

14. Similarly, the right to prefer an appeal against the Registrar''s order prescribed by Section 4(5) necessarily implies that the person must be a party in the proceedings before the Registrar; otherwise how would be know about the order? Like Section 8(1), Section 4(5) also seems to be confined in its operation to persons who are before the Registrar, or who could have appeared before the Registrar u/s 5(2). The whole scheme is clear; the Registrar enquires into the question as to whether a trust is private or public, and deals with the points specifically enumerated by Section 4(3)."

14. The learned counsel for the revision petitioner tried to distinguish this decision on the ground that "person having interest" was not defined in the Madhya Pradesh Act and has been defined in the Rajasthan Act. Section 2(9) of the Rajasman Act reads as under :--

"Section 2(9):-- "person having interest" or any expression signifying a person having interest in a public:--

(a) in the case of a temple, a person who is entitled to attend or is in the habit of attending performance of worship or service in the temple or who is entitled to partaking or is in the habit of partaking in the distribution of gifts thereof;

(b) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(c) in the case of a society registered or deemed to be registered under the Rajasthan Societies Registration Act, 1958 (Rajasthan Act 28 of 1958) or under any other analogous law in force in any part of the State, any member of such society; and

(d) in the case of any other public trust, any beneficiary;"

15. It is contended that a person setting up an interest adverse to the Public Trust or claiming ownership of a property declared to be the Public Trust has not been excluded from the definition of "person having interest" and therefore such a person would still be a person having interest in the property. It was pointed out that the definition was inclusive and not exhaustive and therefore a person having adverse interest to the trust in relation to the property declared to be the trust property shall also be a person having interest in the property.

16. In view of clear pronouncement of law on the point by the Supreme Court in Abdul Karim''s case supra, the contention cannot be accepted. It makes little difference whether the expression person having interest has been defined in the statute or not. When without the expression being defined in the Act, the Supreme Court came to the conclusion that a person having adverse interest cannot under the scheme of the Act be taken as person having interest, inclusive and not exhaustive, definition contained in the Rajasthan Act would not make any difference. If the definition in Rajasthan Act had specifically included a person claiming adverse interest to the trust in the property declared to be the trust property, to be included in the expression person having interest, that would have made difference because then the Legislative intent would clearly have been to include such a person also in persons having interest. When an inclusive definition is given, the categories of persons specifically included gives an indication of the other categories of persons which are not specifically mentioned, but which could all the same fall in the definition. Rule of Ejusdem generis has to be applied in the case. When all the four categories enumerated as included in the definition relating to the persons who have interest in favour of the Public Trust, it has to be held that by necessary implication those who held interest against the trust have to be excluded. This would further weaken the case of the revision petitioner-plaintiff.

17. In view of the aforesaid discussion, it has to be held that the suit u/s 22 of the Rajasthan Act was not maintainable and has been rightly held to be so by the trial Court. However, it has to be clarified that the plaintiff could file a regular civil suit u/s 9 of the CPC and non-maintainability of this suit should not be taken as a bar to entertainment of a regular civil suit or conversion of the present suit into, as suit u/s 9 of CPC subject to the General Law of the land. The trial Court shall be free to decide upon this in accordance with law. The revision petition is disposed of with aforesaid observations.