
(2019) 01 RAJ CK 0082
In the Rajasthan High Court
Case No : Civil Writ No. 18920 Of 2018

Guman Singh And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Public Trust Act, 1954 — Section 18(1), 18(2)
Rajasthan Public Trust Rules, 1962 — Rule 20, 21, 21(3), 23

Citation : (2019) 01 RAJ CK 0082

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Akshiti Singhvi

Final Decision : Dismissed

Judgement

The instant petition has been filed by the petitioners challenging the order dated 12.10.2018, passed by the Appellate Authority-Commissioner Devsthan Department, Udaipur whereby the Appellate Authority has set aside the order dated 16.07.2018 passed by the Assistant Commissioner, Devsthan Department, Jodhpur, registering the Trust on the application filed by the petitioners.

The brief facts of the case are that an application was filed by the petitioners before the Assistant Commissioner for registration of the Trust. The said application was filed by the petitioners in Form No.6, alongwith list of properties held by the temple.

It is pleaded by the petitioners that on such application being filed, the Assistant Commissioner, Jodhpur directed issuance of notice of the said application on 15.01.2018 and invited objections and fixed the next date on 16.03.2018.

It is pleaded that on 16.03.2018, since no objections were received, despite service of notice, the petitioners were directed to produce evidence.

The petitioners have pleaded that after issuance of notice on 15.01.2018 to all

the parties including Gram Panchayat Chawanda, the same had returned duly served and even NOC was issued by the Gram Panchayat for creation of the said Public Trust.

The petitioners have further pleaded that the Assistant Commissioner being satisfied about service of notices and compliance of Section 18(2) of the Public Trust Act, 1954 vide order dated 16.07.2018 allowed the petitioner's application and directed creation of Shree Chamunda Mataji Trust as Public Trust.

The petitioners have pleaded in the writ petition that in order to usurp the Trust property, the private respondents filed an appeal before the Commissioner, Devsthan Department questioning the creation of Public Trust on various grounds.

The impugned order dated 12.10.2018 came to be passed by the Commissioner, Devsthan Department and by the said order, the order of the Assistant Commissioner has been set aside and matter has been remanded back to the Assistant Commissioner to hold proper enquiry after affording adequate Opportunity of hearing to all the parties concerned and further compliance of Section 18(1) of Public Trust Act, 1954 has to be ensured.

Learned counsel for the petitioners-Ms. Akshiti Singhvi submitted that the impugned order is an illegal order passed by the Appellate Authority without considering the entire facts.

Learned counsel argued that the Appellate Authority has only recorded an erroneous finding with respect to not effecting proper service on private respondents and the same can at the most be an irregularity and no illegality had been committed by the Assistant Commissioner while registering the registered Trust.

Counsel further argued that in the memo of appeal which is placed on record in the writ petition, the private respondents had not questioned the validity of the order of registering the Trust on any substantial ground but only on account of not effecting service, the order has been set aside by the Appellate Authority.

I have heard learned counsel for the petitioner.

This Court finds that in the impugned order, the finding has been recorded by the Appellate Authority by considering the various order-sheets that notices inviting objections were issued on 15.01.2018 and next date was fixed on 16.03.2018.

It is recorded in the order that Tehsildar, Jodhpur after service of the notice had sent the receipt vide order dated 28th March, 2018. The Appellate Authority found that in the order-sheet of the Assistant Commissioner on 16.03.2018, report was made that service has been effected on 16.03.2018 itself.

The Assistant Commissioner found that even on the order-sheet dated 16.03.2018, the Presiding Officer did not put his signature. A categorically finding has been recorded that the notice sent under Section 18(2) was not received on 16.03.2018 and yet the presumption of service of notice was drawn

by drawing order sheet dated 16.03.2018 in the file of Assistant Commissioner.

The Appellate Authority has further found that the Assistant Commissioner, Devsthan Department, Jodhpur failed to comply with the Rules 20, 21 and 23 of the Rajasthan Public Trust Rules, 1962.

There has been further finding of fact recorded by the Appellate Authority that even the procedure prescribed under Rule 20 has not been properly complied with. The Commissioner further recorded a finding that as per Rule 21(3) of the Rajasthan Public Trust Rules, 1962, even the Trust property which has been situated in a City or more than one District, a copy of the notice is also required to be published in the daily news-paper having circulation in the same locality, where the property is situated but the Assistant Commissioner even did not follow the said procedure.

This Court finds that the Appellate Authority after considering the entire facts came to the conclusion that if notices were not properly served on the parties concerned and an incorrect reporting was done, the same cannot be termed as irregularity and it has to be treated as illegality.

The submissions of learned counsel for the petitioners that the private respondents had raised objections with regard to service only, this Court finds that the allegations have been leveled against the petitioners in the memo of appeal and substantial grounds have also been taken to question the order passed by the Assistant Commissioner treating the property as a personal property and treating the petitioners themselves to be as Trustee.

This Court finds that the order which has been passed by the Appellate Authority is a just order as the matter is remanded back to the Assistant Commissioner to hold proper enquiry after affording adequate opportunity to all the persons concerned.

This Court is further of the opinion that by the impugned order, no prejudice is caused to the petitioners, the order of remand, as such, does not affect rights of the petitioners. Moreover, all the parties are given opportunity to appear before the Assistant Commissioner.

This Court does not find any force in the writ petition and the same is dismissed.