

(2006) 01 RAJ CK 0102
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2189 of 2001

Jayanti Lal and Another

APPELLANT

Vs

Commissioner, Devasthan Department and Others

RESPONDENT

Date of Decision : 03-01-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 44, 92, 93
Rajasthan Public Trusts Act, 1959 — Section 33, 38, 38(1), 38(2), 39

Citation : (2006) 1 RLW 422

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Advocate : Lekh Raj Mehta and M.R. Mehta, for the Appellant; R.R. Kanwar, A.G.A., Manish Shishodia and Parikshit Nayak, for the Respondent

Judgement

Dinesh Maheshwari, J.—The petitioners, Jayanti Lal and Hansmukh Lal, have submitted this writ petition against the order dated 23.5.2001 (Annex.6) passed by the Commissioner, Devasthan Department, Rajasthan, Udaipur particularly questioning the interpretation put by the learned commissioner on the provisions of Sections 38 and 39 of the Rajasthan Public Trusts act, 1959 ("the Act" hereinafter).

2. A brief reference to the background facts would suffice. According to the petitioners, there exists an ancient Teerth of Shri Andeshwar Parshvanath at Kushalgarh about 50 kilometers from Banswara. The idol dates back to 12th or 13th Century and the temple exists at the said place of almost a century. A Public Trust in the name of "Shri Atishay Kshetra Shri Andeshwarji Bees Panthi Jain Mandir, Kushalgarh" was got registered under the provisions of the act on 20.7.1966; and at the time of registration, 11 Trustees were named as the initial Trustees with Shri Seth Nathmal as the working trustee. According to the petitioners, the mode of succession for the position of trustees was indicated as; "By Digambar Jain Panchan Bees Panthi, Kushalgarh". The trustees were managing the temple and its properties under the supervision of Shri Digambar

Jain Panchan Bees Panthi, Kushalgarh which is the Supreme Body of the persons belonging to Bees Panthi Digambar Jain Samaj at Kushalgarh. Every year, on Kartik Sudi 13th, 14th and 15th, the members of Samaj assemble in a "Mela", decisions are taken by the Samaj wherein the trustees of the Trust also participate. In the meeting dated 19.1.1994, a Committee of 31 members, including the respondent No. 3 Kantilal, was appointed by the Samaj for managing its affairs, chiefly of looking after the temple. The Committee was appointed for three years and as the working trustee Seth Nathmal was not physically fit, his son petitioner No. 1 Jayanti Lal was appointed as Chairman of the Samaj with petitioner No. 2 Hansmukh Lal as the Secretary. According to the petitioners, they ipso facto became respectively the working trustee and the Secretary of the Trust. The petitioners have also alleged that in the meeting dated 18.12.1996, the Samaj authorised Seth Nathmal to appoint trustees and consequently he appointed 21 trustees on 18.6.1977.

3. The petitioners have averred that on 23.11.1996, the respondents No. 3 and 4 filed an application u/s 38 of the act seeking directions to apply to the Court regarding the Trust and the said application was contested. By the order dated 17.6.1999, the Assistant Commissioner, Devasthan Department recorded the finding that no case of misuse of the property of Trust has come to light and no action against the objects of the trust nor any instance of mismanagement of temple was found. However, some mistakes relating to accounts were found and, therefore, u/s 33 of the Act, special audit was ordered. According to the petitioners, they produced the accounts duly audited for ten years. Objections were filed by respondents and as such clarification was also submitted. The Assistant Commissioner, Devasthan Department, appointed Chartered Accountants to conduct special audit and upon submission of their report, the Assistant Commissioner, closed the proceedings on the application by the order dated 16.2.2000 (Annex.2).

4. The respondents No. 3 and 4 filed a writ petition before this Court and simultaneously they moved an application before the Commissioner, Devasthan Department u/s 39 of the Act. The Commissioner, by the order dated 20.4.2001 (Annex.3), allowed the application of respondents No. 3 and 4 and set aside the order dated 16.2.2000 passed by the Assistant Commissioner and granted permission to the Respondents No. 3 and 4 to move an application to the District Court u/s 38(b)(c) of the Act for seeking directions in relation to the Trust.

5. Feeling aggrieved by the order dated 20.4.2001, the petitioners preferred S.B. Civil Writ Petition No. 1714/2001 before this Court which came to be disposed on 8.5.2001. A photostat, of the certified copy of order dated 8.5.2001 (Annex.4) shows that this Court considered the submissions of the petitioners against the order of the Commissioner, Devasthan Department that u/s 39 of the Act, in case the Commissioner allows the application, he would direct the Assistant Commissioner to make a reference to the concerned District Court; and the Commissioner has no jurisdiction to direct any of the parties to directly approach

the District Court. This Court, however, found that the extraordinary jurisdiction cannot be invoked unless there is substantial failure of justice and passed the following order:

It is true that the provisions of Section 39 envisage such direction to Assistant Commissioner, Devasthan. However, it is admitted that in pursuance of that direction respondents have already made application before the District Judge, Banswara in which the petitioners are appearing and have lodged a caveat. The making of reference to District Judge is not a subject of dispute at this stage.

Keeping in view of the paramount consideration, that exercise of extraordinary jurisdiction ought not be invoked unless there is substantial failure of justice. I am not inclined to entertain this petition at this stage. The defect, if any, in the order is curable by making a simple application before the Devasthan Commissioner or even now directing the Assistant Commissioner to move an appropriate application to the District Court.

In these circumstances, this petition is disposed of with the observation that the petitioners may move the Devasthan Commissioner for making the necessary modification in his order. On such application being made, Devasthan Commissioner will pass the appropriate order.

6. The petitioners moved an application on 14.5.2001 (Annex.5) in pursuance of the order passed by this Court before the Commissioner, Devasthan Department, and it was prayed that the order dated 20.4.2001 may be modified and in place of the applicants Kanti Lal and Hansmukh Lal, the Assistant Commissioner may be directed to move the application to the District Court.

7. After notice to the respondent No. 3 and 4 and after hearing the parties, the Commissioner, Devasthan Department has proceeded to pass the impugned order dated 23.5.2001 (Annex.6) rejecting the application filed by the petitioner, inter alia, on the ground that u/s 39 of the Act, such a direction could be given to the applicants and it was not necessary that only the Assistant Commissioner should move the application in pursuance of the order passed u/s 39 of the Act.

8. Aggrieved by the order dated 23.5.2001, the petitioners have submitted this writ petition contending that the interpretation put by the learned commissioner that even a private party could be permitted u/s 39 of the Act to move the District Court is erroneous.

9. The respondents have filed reply to the writ petition submitting, inter alia, that the petitioners indulged in financial mismanagement and were not entitled for any relief in extraordinary writ jurisdiction, the averments regarding meetings appointments of trustees have been denied. In relation to the grounds taken by the petitioners, it has been averred that a close reading of Sections 38 and 39 of the Act such Public Trusts and Section 38 in clear and unambiguous terms confers locus upon any person having direct interest in the public trust to file application for permission to seek directions against the Trust on the grounds

contained therein. Section 39 provides for a remedy in case of failure on the part of Assistant Commissioner to grant relief; and, according to the respondents, applying the well settled rules of construction, if any person files an application u/s 38, he has a remedy to apply before the Commissioner and naturally, therefore, such a person is conferred a right to move the Court if so directed by the Commissioner. The order dated 20.4.2001 was absolutely just and proper and that is why the same was not set aside by the Court.

10. Learned Counsel for the petitioners has pointedly submitted that a bare look at the provisions of Sections 38 and 39 of the Act is sufficient to show that the order passed by the learned Commissioner is squarely contrary to the requirements of law. Per contra, making submissions on behalf of the contesting respondents, learned Counsel referred to the provisions of Sections 38 and 39 of the Act and contended that they have to be read together, and it was not correct to contend that only the Assistant Commissioner could move the Court as that would be contrary to the very purpose of Sections 38 and 39.

11. Having regard to the facts, circumstances and the questions involved in this writ petition, other disputes of facts sought to be raised by the parties about the management of the Trust need not be and are not gone into as the subject matter of this writ petition remains confined only to the legality and propriety of the order dated 23.5.2001 (Annex.6) passed by the Commissioner, Devasthan Department.

12. Having gone through the record of the case and having examined the provisions of law applicable to the case, this Court is clearly of the opinion that the interpretation put by the learned Commissioner, Devasthan Department upon Sections 38 and 39 of the Act remains squarely contrary to the plain provisions of the Statute and cannot be sustained. Sections 38 and 39 of the Act read as under,--

38. Application for directions.--(1) If the Assistant Commissioner, on the application of any person having interest in a public trust or otherwise is satisfied after making such inquiry as he thinks necessary 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 of being heard, direct such working trustee or any other trustee of person having interest, in the Trust to apply to the Court for directions within such time not exceeding thirty days as may be specified by the Assistant Commissioner.

(2) If the working trustee or any other trustee or person having interest in the Trust so directed fails to make an application as required, or if there is no trustee

funsZ" k izkIr djus ds fy;s og Lo;a U;k;ky; esa vkosnu i= izLrqr djs A

?2? mi&/kkjk ?1? ds vUrxZr vk;qDr ds vkns" kksa ds v/khu jgrs gq,] /kkjk 38 ds vUrxZr lgk;d vk;qDr }kjk ikfjr leLr vkKk;sa vfUre gksxhA?

14. Reverting to the orders made in this case, it is found that by the order dated 20.4.2001, the learned Commissioner, Devasthan Department proceeded to set aside the order dated 16.2.2000 passed by the Assistant Commissioner, Devasthan Department (whereby the Assistant Commissioner dropped the proceedings on the application of the respondents finding no reason to proceed against the Trust or the Trustees) and passed the following order:

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15. The order aforesaid was subjected to challenge in Writ Petition No. 1714/2001 wherein by the order dated 8.5.2001 (Annex.4), although this Court declined to interfere, yet so far the directions given by the Commissioner permitting the respondents to move application to the District Court were concerned, observed that the provisions of Section 39 envisage such direction to Assistant Commissioner. It was further observed that the defect was curable by making an application before the Commissioner; and the petitioners were left free to move the Commissioner for making necessary modification in his order. It is not in dispute that the petitioners did make the application as contemplated by the order dated 8.5.2001 and thereupon the learned Commissioner proceeded to pass the impugned order.

16. The learned Commissioner has observed that the wordings of the Section 39 of the Act of "require him to apply to the Court himself for directions" refer to the party in question; and he learned Commissioner has posed a question that if the intention of Section 39 was for issuance of such directions to the Assistant Commissioner only to move the Court, then how u/s 38, the Assistant Commissioner could issue such directions to the Trust or any interested person to move the Court? Having examined the scheme of the relevant provisions, this Court is satisfied that such observations are not correct and the question posed is entirely inapt.

17. The scheme of Section 38 of the Act makes it clear that on an application made by any person having interest in the Public Trust, the Assistant Commissioner, after holding such inquiry as necessary, if reaches to a satisfaction that the objects of the trust have failed or the property of the trust was not being

managed or administered properly, or that for the management of the Trust, directions from the Court were necessary, then after hearing the working trustee, the Assistant Commissioner could direct any relevant person to move application before the Court and if such person fails to apply, or for any other reason the Assistant Commissioner thinks it proper, then the Assistant Commissioner himself may move the application to the Court.

18. Provisions of Section 39 come into operation when the Assistant Commissioner either rejects an application made u/s 38(1) of the act or fails or refuses to apply u/s 38(2). In such eventualities, on an application made within 90 days of such denial of refusal or failure, or otherwise noticing of the facts, the Commissioner may, after giving an opportunity of hearing to the working trustee, set aside the order of the Assistant Commissioner and require him to apply to the Court "himself for directions. Simple bare reading of Section 39 is sufficient to Commissioner; and the directions would be to him (the Assistant Commissioner) to apply to the Court himself.

19. Even if there is any scope of contending an ambiguity in the phraseology of the last lines of Section 39(1) of the Act as to whom such directions from the Commissioner would issue, such a doubt could immediately be quelled on a look at the Hindi Version of the provisions, wherefrom it is apparent that such directions from the Commissioner would be issued to the Assistant Commissioner only and the word "himself" definitely refers to the Assistant Commissioner alone and not to the party concerned as assumed by the learned Commissioner.

20. In this context, it is significant to notice that in the Hindi version of these provisions of Sections 38 and 39, instead of literal translation, meaningful expressions have been used; and alongwith the pronouns "him" and "himself, the expression has been put in first person, directly referring to Assistant Commissioner. In the last phrase in Section 38, "himself refers to the Assistant Commissioner and, therefore, in the Hindi version, the words lgk;d vk;qDr have been placed in parenthesis to make the meaning absolutely clear. The last phrase of Section 39 in the English text and its Hindi version, when put in juxtaposition read as under:

English text Hindi version

.....set aside the order of the Assistant Commissioner, if any, and require him to apply to the Court himself for directions ----- lgk;d vk;qDr dh vkKk] ;fn dksbZ gks] fujLr dj ldsxk vkSj lgk;d vk;qDr ls vis{kk dj ldsxk fd funs"k izkIr djus ds fy;s og Lo;a U;k;ky; esa vkosnu i= izLrqr djs

21. Although the original English text of Section 39 in its last phrase does not use the expression "Assistant Commissioner" twice over, yet it has been so used in the Hindi version to make the meaning clear. In fact, continuity of the sentence in English text made it possible to convey the meaning by simply using the words "him" and "himself without repeating the words "Assistant Commissioner". It is a matter of simple construction of sentences and it remains

rather strange that the Commissioner of Devasthan Department has chosen to put a non-existent meaning upon a simple English sentence.

22. As a fundamental rule of interpretation, when the language of the statute is clear and admits of no ambiguity, the plain grammatical meaning is required to be taken and applied, the language of Section 39 is absolutely clear and admit of no ambiguity and no other interpretation could have been given to these provisions. In fact, meaning of these provisions was made clear by this Court while passing the order dated 8.5.2001 itself; and it sounds further strange that the learned Commissioner, devasthan Department on a hypothetical proposition proceeded to misinterpret the plain provisions of statute and also proceeded to attribute different meaning to the same provisions even contrary to the clear observations made by this Court as quoted hereinabove.

23. The question posed by the learned Commissioner with reference to the requirements of Section 38 is also not apposite. The provisions of Section 39 come into operation only in the eventualities of rejection, refusal or failure u/s 38 of the ct on the part of the Assistant Commissioner; and then the Commissioner proceeds either on an application or on the facts otherwise coming to his knowledge. Having placed the basic powers and so also the responsibilities with the Assistant Commissioner; and having entrusted broader supervisory powers to the Commissioner, the legislature seems to have thought it fit that when the Commissioner would be issuing such directions for applying to the Court, those directions would be issued to the Assistant Commissioner alone. Such scheme of the provisions is in conformity with their object also. These provisions are contained in Chapter VIII of the Act dealing with "Powers of Officer in relation to Public Trusts". These powers have their genesis in the principles emanating from Sections 92 and 93 of the CPC (CPC). It shall be worthwhile to notice that in relation to the public charities and endowments, the dispute concerning their management or administration is not recognized by law as an adversary litigation concerning two or more parties for vindication of their personal rights; but it concerns the "public", and has a public element in it. Therefore, such litigations, by their very nature, are dependent upon the cause being taken up either by the public authorities or by permission of the court. The scheme of Sections 92 and 93, CPC having been embodied in Chapter VIII of the Act, by virtue of Section 44, such provisions of the CPC have been made non-applicable. However, the basic object behind such kind of provisions in the statute is required to be taken into account that the dispute directly having public element in it, the legislature has not left it to be made a hunting ground for the parties to settle their personal scores in the name of dispute concerning public trusts. The requisite directions in relation to a Trust are sought from the Court by the Assistant Commissioner or by the persons authorized by him; and when the Commissioner interferes upon refusal or failure of the Assistant Commissioner, then the Commissioner directs the Assistant Commissioner to apply to the Court. It is definitely expected of the Commissioner Devasthan to imbibe and conform to the scheme of provisions of law he is supposed to deal with. Further dilatation on the object of the provisions

of Sections 38 and 39 of the Rajasthan Public Trusts Act does not appear necessary in the present case and the matter is left at that only. However, the manner in which the learned Commissioner has passed the impugned order, contrary to the plain language of statute; contrary to the object of the provisions of law; and even contrary to the order passed by this Court, cannot be appreciated.

24. The learned Commissioner was much swayed by the fact that this Court did not annul the order dated 20.4.2001 nor ordered stay over the proceedings before the District Court. Such considerations fall short of the rational consideration of the subject matter of the case as enjoined upon the Devasthan Commissioner by the statute and by the orders of this Court.

25. As a result of the discussion aforesaid, the impugned order dated 23.5.2001 cannot be sustained and deserves to be set aside. This Court while admitting this writ petition on 4.6.2001 ordered stay over further proceedings before the District Court and the order was corrected on 8.6.2001 with clarification that the stay was over Misc. case No. 11/2001 and so also the injunction Application No. 6/2001. In this view of the matter, in order to avoid any doubt or dispute henceforth, the interim order passed by this Court also deserves to be made absolute till the matter is decided by the Commissioner Devasthan afresh. It is made clear that this Court has not considered any aspect on the merits of the case which is required to be considered at the appropriate level by the appropriate authority.

26. Consequently, this writ petition succeeds to the extent indicated above; the impugned order dated 23.5.2001 (Annex.6) is quashed and set aside and the matter stands remitted to the Commissioner, Devasthan Department, Rajasthan, Udaipur to pass appropriate orders on the application made by the petitioners in accordance with law keeping in view the observations made hereinabove and the observations made in the earlier order dated 8.5.2001. Pending the decision by the Commissioner, the interim order passed by this Court of stay over proceedings before the District Court, Banswara shall remain in force. Parties shall appear before the Commissioner, Devasthan Department, Rajasthan, Udaipur on 13.2.2006. There shall be no order as to costs of this writ petition.