
(2014) 09 RAJ CK 0033
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7436/2010

Jogeshwar Garg and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227 — Rajasthan Public Trusts Act, 1959 -
Section 17, 18, 18(2), 20, 22

Citation : (2014) 09 RAJ CK 0033

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : Rajesh Shah, for the Appellant; Rajesh Choudhary and Paramveer Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.?Petitioners have laid this writ petition challenging the order dated 30th of June 2010 (Annex. 7) passed by the Commissioner, Devasthan, Rajasthan, Udaipur, whereby the learned Commissioner while deciding appeal of the private respondents under Section 20 of the Rajasthan Public Trust Act 1959 (for short, "Act of 1959") remanded the matter back to learned Assistant Commissioner, Devasthan for reconstitution of broad-based public trust involving all communities/ethnic groups of village Kaniwara.

2. Succinctly stated, the facts of the case are that in village Kaniwara there is a temple of Lord Hanuman which is ancient and approximately 800 years old as per petitioners. The petitioners, while claiming hereditary Seva and Pooja right of the said temple, laid an application before the Assistant Commissioner, Devasthan under Section 17 of the Act of 1959 for registration of a public trust. In the application, petitioners No. 1 to 11 staked the claim for being appointed as lifetime trustees and first petitioner was named as Chairman of the trust with petitioners No. 2 to 5 as its other office bearers. On receipt of the application for registration of public trust, the learned Assistant Commissioner resorted to an

inquiry under Section 18(2) of the Act of 1959 and a public notice was issued. After completion of inquiry, vide order dated 3rd August 2009, public trust was registered and the petitioners No. 1 to 5 were declared office bearers of the public trust. As per the averments in the writ petition, the learned Assistant Commissioner before registration of public trust has undertaken the requisite exercise including the inquiry envisaged under Section 18 of the Act of 1959. In the form of supporting proof, the petitioners have also placed on record Annex. 3 Registration Certificate issued by the Registrar of Societies, Jalore bearing No. 106/Jalore/2008-09 in the name of Shree Kaniwara Hanumanji Seva Samiti, Kaniwara, Jalore. Be that as it may, the registration of the public trust caused indignation amongst some of the villagers including respondent No. 3 to 6 and that prompted the respondents to assail the order of the Assistant Commissioner before learned Commissioner, Devasthan, Udaipur by way of appeal under Section 20 of the Act of 1959. The learned Commissioner, Devasthan, on evaluation of the available materials and thorough examination of the impugned order of registration of public trust, found that temple is 50 to 60 years old constructed on Government land which is looked after by Garuda Samaj and land measuring 9.67 hectares with a well is presently recorded in the revenue records in the name of temple. It is also noticed by the learned Commissioner that building of temple, Dharamshalas and other constructions have been carried out by collecting funds from public at large. On scanning the available material, the learned appellate authority has also found that there is no evidence available on record to show that for creating assets of the temple including the construction of temple and development of the land appurtenant to it, petitioners have shown extra benevolence or generosity in the form of donation or special grant. In that background, while concurring with the conclusions of the Assistant Commissioner in the registration of the public trust, the learned appellate authority found that it is not in the interest of public trust to entrust its management to a few individuals belonging to one ethnic group, i.e. petitioners. Consequently, learned Commissioner in order to make the constitution of the trust democratic and transparent in the interest of public at large, remanded the matter back to the learned Assistant Commissioner for creating a broad-based public trust having representation of all the communities and ethnic groups of village Kaniwara.

3. The writ petition is contested by the respondents. On behalf of respondents No. 1 to 3 reply is submitted and order impugned is defended. Respondent No. 4 also submitted reply and defended the impugned order. The respondents have raised an objection about availability of alternative remedy of civil suit under Section 22 of the Act of 1959. The order passed by the learned Commissioner, Devasthan was also defended by urging that the learned Commissioner has rightly granted indulgence in remanding the matter for creation of a broad-based public trust. The respondent No. 4 also defended the order passed by the learned Commissioner on the ground that while registering the public trust the Assistant Commissioner, Devasthan has not issued public notice for proposed inquiry in accordance with Section 18 of the Act of 1959 as the same was not published at

a conspicuous place of the locality.

4. Mr. Rajesh Shah, learned counsel for the petitioners, has vehemently argued that the learned Assistant Commissioner has ordered registration of a public trust after making thorough inquiry under Section 18 of the Act of 1959 and therefore by remanding the matter back, the learned appellate authority has over-stepped its jurisdiction. Mr. Shah would contend that by exceeding its jurisdiction, the learned Commissioner has committed a serious jurisdictional error which warrants interference in exercise of writ jurisdiction. Assailing the impugned order, learned counsel for the petitioners submits that the learned Commissioner has not recorded cogent and convincing reasons for remanding the matter back to the Assistant Commissioner, more particularly when it has concurred with the findings and conclusions about registration of a public trust. Mr. Shah has argued that the petitioners are undertaking Seva and Pooja of the temple by way of inheritance and therefore inclusion of their names as trustees was a just decision which is upset by the learned appellate authority in clear negation of the intent of the Act of 1959.

5. Per contra, learned counsel for the respondents have submitted that the impugned order has spelt out cogent and convincing reasons for remanding the matter back which calls for no interference in exercise of writ jurisdiction of this Court. Learned counsel for the respondents in unison have urged that taking into account all pros and cons and faith and devotions of all the villagers for the deity and temple, the learned appellate authority has done substantial justice by remanding the matter back for constituting a broad-based public trust, which is a just decision and not liable to be interfered with. Learned counsel for the respondents would contend that impugned order has not at all occasioned failure of justice and on the contrary it depicts pragmatic approach of the appellate authority to make functioning of the public trust democratic and transparent in the interest of public at large. With these submissions, learned counsels for the respondents have submitted that the learned appellate authority has done substantial justice which is not liable to be made subject matter of judicial review in exercise of jurisdiction under Article 226 of the Constitution of India.

6. I have heard learned counsel for the parties and perused the impugned order and the materials available on record.

7. Upon examining the aims and objects of the Act of 1959, it is crystal clear that it is an Act to regulate and make better provision for the administration of public, religious and charitable trusts in the State of Rajasthan. The Act of 1959 is inspired by Bombay Public Trust Act, 1950. The author Shri K.N. Shah, while examining utility of that Act observed:

"There are instances of how Mahants, Pujaris, Bhatjis and Acharyas who have lived on the temple and its income for years and flourished fat on the earnings of the Holy shrines have the hardihood of asserting their proprietary rights over such shrines and attempting to devour and appropriate the deity and donations

to themselves. Through they may have for generations held out to and invited innumerable devotees for Darshan and hundreds of devotees may have openly come for Darshan, and worshipped the idol for years, and though donations, offerings and emoluments may have been begged, asked for, offered and received uninterruptedly, when it comes to registration of the Temple as a Public Trust and accounting for its income, they would not stop of claiming exclusive rights of ownership not only over the income but over idol, the deity of the temple too. They, the preservers of the deity and the spiritual heads, the supposed saviors of the souls of sinners & the sanctity of the holy shrine would go to any length to perjure themselves, if they could not establish their ownership over the endowment and its property, and derive the material benefit of getting its income. Such instances are not few. The richer the endowment, the greater the temptation to swallow the same. To such impious Pujaris, Managers and Mahants, nothing matters, considerations neither of this world nor the next, if they could only serve their selfish end. Such instances, justify the passing of and the utility of this Act."

8. The above observations of the author are very much significant even in the present social scenario more particularly in rural areas where literacy rate is considerably low and public awakening is far from satisfactory. In that back ground, if the impugned order is examined in its entirety, then in my consideration opinion, the learned Commissioner has exercised its discretion judiciously within the ambit of its jurisdiction under Section 20 of the Act of 1959. A bare reading of Section 20 of the Act of 1959 makes it crystal clear that locus of an individual to prefer appeal is very wide and appeal can be preferred by any person having interest in a public trust or in any property found to be public property.

9. The learned Commissioner, on analyzing the evidence and materials available on record, has recorded a finding of fact that building of temple, dharamshalas and other constructions were carried out by receiving donations from public at large and there is no semblance of proof that petitioners have shown their generosity to contribute special grant or donations for the development of the temple. That apart, the learned Commissioner has also found that all the petitioners are belonging to Garuda Samaj and some of them are siblings and therefore it is not in the interest of public trust to entrust its administration to these individuals. The Commissioner has also taken note of the fact that constitution of a public trust is required to be democratic and transparent in the larger public interest and consequently with this finding the learned appellate authority has remanded the matter back for constitution of a broad-based public trust. In my opinion, the learned appellate authority has examined all the pros and cons and has genuinely taken cognizance of the basic aims and objects of the Act of 1959 for remanding the matter back to the learned Assistant Commissioner, which cannot be categorized as infirm so as to upset the same in exercise of certiorari jurisdiction of this Court.

10. Reliance in this behalf can be profitably made to some authoritative legal precedents.

11. A Constitution Bench of Hon'ble Supreme Court, in case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , while examining powers of the appellate authority, observed as under:

16. It is true that the Appellate Authority should not lightly set aside the selection made by the primary Authority, that is to say, a selection made by a Sub-Divisional Officer or by a District Collector, should be given due weight in view of the fact that they have much greater opportunity to know local conditions and local business people than the Appellate Authority, even as the appeal courts are enjoined not to interfere lightly with findings of fact recorded by the original courts which had the opportunity of seeing witnesses depose in court, and their demeanour while deposing in court. But it is not correct to hold that because the Appellate Authority, in the opinion of the High Court, has not observed that caution, the choice made by it, is in excess of its power or without jurisdiction.

12. By relying on its earlier decision, the Court held:

"In the instant case, no such rules have been brought to our notice, which could be said to have been contravened by the Appellate Authority. Simply because it viewed a case in a particular light which may not be acceptable to another independent tribunal, is no ground for interference either under Art. 226 or Art. 227 of the Constitution."

13. The Court examined the true meaning of "mistake apparent on the face of record" and held as under:

19. That leads us to a consideration of the nature of the error which can be said to be an error apparent on the face of the record which would be one of the grounds to attract the supervisory jurisdiction of the High Court under Art. 226 of the Constitution. The ancient writ of certiorari which now in England is known as the order of certiorari, could be issued on very limited grounds. These grounds have been discussed by this Court in the cases of:

Parry and Co. Ltd. Vs. Commercial Employees' Association, Madras, , Veerappa Pillai Vs. Raman and Raman Ltd. and Others, , Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property, , T.C. Basappa Vs. T. Nagappa and Another, .

All these cases have been considered by this Court in the case of Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, at p.1121: (S) AIR 1955 SC 233 at p.243)(K). Venkatarama Ayyar J., speaking for the full Court, laid down four propositions bearing on the character and scope of the writ of certiorari as established upon the authorities. The third proposition out of those four, may be stated in the words of that learned Judge, as follows:

"The Court issuing a writ of certiorari acts in exercise of a supervisory and not

appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous."

While considering the fourth proposition whether the writ can be issued in the case of a decision which was erroneous in law, after considering the recent Authorities, the same learned Judge, in the course of his judgment, at p. 1123 (of SCR):(at p. 244 of AIR), has observed as follows:

"It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error: it must be one which must be manifest on the face of the record."

14. Hon"ble Supreme Court in case of Ashok Kumar and Others Vs. Sita Ram, examined the scope of judicial review under Article 226 vis-?-vis orders passed by the statutory authority vested with power to act quasi judicially. The Court held in this behalf as under:

"17. The question that remains to be considered is whether the High Court in exercise of writ jurisdiction was justified in setting aside the order of the Appellate Authority. The order passed by the Appellate Authority did not suffer from any serious illegality, nor can it be said to have taken a view of the matter which no reasonable person was likely to take. In that view of the matter there was no justification for the High Court to interfere with the order in exercise of its writ jurisdiction. In a matter like the present case where orders passed by the Statutory Authority vested with power to act quasi-judicially is challenged before the High Court, the role of the Court is supervisory and corrective. In exercise of such jurisdiction the High Court is not expected to interfere with the final order passed by the Statutory Authority unless the order suffers from manifest error and if it is allowed to stand it would amount to perpetuation of grave injustice. The Court should bear in mind that it is not acting as yet another Appellate Court in the matter. We are constrained to observe that in the present case the High Court has failed to keep the salutary principles in mind while deciding the case."

15. In Roshan Deen Vs. Preeti Lal, , speaking for the Court, Justice K.T. Thomas elucidated with clarity the scope of judicial review under Article 226 and 227 of the Constitution and observed that it is to advance justice and not to thwart it. The Court held:

"12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned single Judge in a case where judicial mind would be tempted to utilize all possible legal measures to impart justice to a man mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Article 226 and 227 of the Constitution is to advance justice and not to thwart it. (vide State of Uttar Pradesh v. District Judge, Unnao and Ors.). The very purpose of such constitutional powers being

conferred on the High Court is that no man should be subjected to injustice by violating the law. The look out of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law."

16. Thus, on examining the appellate order in its entirety on the touchstone of the judicial precedents (*supra*) laying down the parameters for judicial review under Article 226, I am unable to find any error much less an error apparent on the face of record in the impugned order warranting interference in exercise of extraordinary jurisdiction.

17. The upshot of above discussion is that the instant writ petition sans merit and the same is accordingly dismissed.

18. Costs are made easy.