
(2014) 03 RAJ CK 0096

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 13963 & 13964 of 2012 and 10015 of 2013

Mahant Dilipdas

APPELLANT

Vs

Murti Mandir Bidawatji

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 21 Rule 37
Rajasthan Public Trusts Act, 1959 — Section 17, 18, 19, 2(17), 2(18)

Citation : (2014) 3 CDR 1478 : (2014) 4 RLW 3673

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Anuroop Singhi, Advocate for the Appellant; Mahendra Goyal and A.K. Pareek, Advocate for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.—All the three writ petitions being inter-connected with each other and being in respect of the properties belonging to the Trust named Shri Vijay Raghunathji (Bidawatji), they were ordered to be heard together and are being decided finally by way of this common order. The Civil Writ Petition being No. 13963 of 2012 and the Civil Writ Petition No. 13964 of 2012 arise out of the common order dated 17/07/2012 passed by the Commissioner, Devasthan Vibhag, whereas the Civil Writ Petition being No.10015/2013 arises out of the orders dated 23/05/2013 & 30/05/2013 passed by the Civil Judge (Junior Division) and Judicial Magistrate, Laxmanghar, Sikar (hereinafter referred to as "the Executing Court") in Execution Case No. 1 of 2005.

2. The short facts, giving rise to the present petitions, are that the trust named, Shri Vijay Raghunathji (Bidawatji) (hereinafter referred to as "the said trust"), was registered as the public trust under the Rajasthan Public Trusts Act, 1959 (hereinafter referred to as "the said Act") on 30/01/1989, of which Late Shri Moti Ram Dasji was the sole trustee. As per the case of the petitioner-Mahant Dilip

Das, the said sole trustee Shri Moti Ram Dasji expired on 09/05/2009 and after his death, the petitioner was nominated as his successor on 20/05/2009, after performing the customary ceremony of laying down the Chaddar. Since the petitioner was minor at that time, he submitted an application through his guardian-Chhagan Lal Shastri in the prescribed form No. 8 u/s 23 of the said Act read with Rule 22 of the Rajasthan Public Trust Rules, 1962 (hereinafter referred as "the said Rules"), on 22/01/2010, for recording the said change in the register maintained at the office of the Assistant Commissioner, Devasthan Vibhag. The said application was registered as the case No. 7/2009. In the said case, the respondents of CWP Nos. 13963 of 2012 and 13964 of 2012 (who shall be referred as "the respondents" for the sake of convenience) filed the objections contending inter-alia that Shri Chhagan Lal Shastri could not have acted as the guardian of the petitioner, in absence of any order of the competent Court. The respondents also filed a separate application being the case No. 8 of 2009 in the prescribed form No. 8, before the Assistant Commissioner, Devasthan Vibhag, praying to record their names as the trustees of the said trust, after the death of the working trustee Shri Motiramdasji. The said case being No. 8 of 2009 was resisted by the petitioner by filing the objections. It appears that both the cases i.e. 7/09 and 8/09 were consolidated by the Assistant Commissioner on 29/12/2009, and the evidence was also recorded in the said proceedings.

3. However, on 23/11/2010, a joint application of compromise was filed in the Court of Assistant Commissioner, which application was signed by the respondent Nos. 1, 2 and 4 to 7, as also by the respondent No. 3-Chhagan Lal Shastri as the guardian of the petitioner, agreeing to accept the application No. 8 of 2009 filed by the respondents, and not pressing for the application No. 7 of 2009 filed on behalf of the petitioner. The Assistant Commissioner, on the basis of the said application of compromise, passed the order dated 10/12/2010 directing to record the names of the respondents in the register. It was directed to show the respondent Nos. 1-Mahant Mahaveer Dasji as the President trustee, the respondent No. 2-Pawan Kumar Sharma as the working trustee, the respondent No. 3-Chhagan Lal Shastri as the treasurer, and the respondent Nos. 4 to 7 as the trustees of the said trust. Being aggrieved by the said order passed by the Assistant Commissioner, the petitioner claiming himself to be the successor of Mahant Moti Ramdasji, through his guardian Shri Ramjilal S/o. Sita Ram and Shri Vishvnath S/o. Shri Sitaram filed two appeals being No. 30 of 2011 and 57 of 2011 before the Commissioner, Devasthan Vibhag. Both the said appeals came to be dismissed by the Commissioner vide the impugned order dated 17/07/2012. Being aggrieved by the said order, the petitioner has filed the two writ petitions being No. 13963 of 2012 and 13964 of 2012. In the said two petitions, the Court, while issuing notices to the respondents on 3/10/2012 had directed to maintain the status quo with regard to the properties of the disputed trust.

4. So far as S.B. Civil Writ Petition No. 10015 of 2013 is concerned, it appears

that a suit was filed by the said trust against one Purshottam Sharma, the respondent No. 2 in the petition, seeking possession of the disputed shop. The said, suit was decreed by the concerned Court. According to the petitioner, he came to know about the execution proceedings pending before the Executing Court, in respect of the said decree passed in the suit, when the notice was published in the Local Daily Newspaper dated 09/02/2013, and therefore the petitioner moved the application before the Executing Court on 11/02/2013 for impleading him as the party-decree holder under Order I, Rule 10 of CPC, contending inter-alia that he was the successor of late Shri Motiramdasji and that the judgment debtor Purshottam Das had already handed over the possession of the said shop to Mahant Moti Ram Dasji during his life time on 09/05/2009, and thereafter the possession of the said suit shop was with the petitioner. The Executing Court vide the impugned order dated 23rd May, 2013 dismissed the said application of the petitioner, and further issued the notice to the judgment-debtor under Order XXI, Rule 37 of CPC. On the petitioner having filed the review application, the Executing Court dismissed the same vide the order dated 30/05/2013. Being aggrieved by the said orders, the petitioner has preferred the writ petition being No. 10015 of 2013.

5. It has been sought to be submitted by the learned counsel Mr. Anuroop Singhi for the petitioner in all the three petitions that the order passed by the Assistant Commissioner on 10/12/2010 and order passed by the Commissioner on 17/07/2012 were ex facie illegal and de hors the provisions contained in the said Act. According to him, the proceedings u/s 23 of the said Act could be initiated by the working trustee only and that none of the respondents being the working trustee of the trust, they could not have filed the application u/s 23 of the said Act. According to him, the Assistant Commissioner had passed the order on the basis of the so called compromise application signed by the respondents, without making any enquiry, and without following the provisions contained in Sections 18 and 19 of the said Act, and therefore, the said order passed by the Assistant Commissioner as well as the order passed by the Commissioner confirming the order of Assistant Commissioner deserve to be set aside. He further submitted that the respondent No. 3-Chhagan Lal Shastri, who had filed the application on behalf of the petitioner as his guardian had colluded with the other respondents, as he was made the treasurer as per the compromise application submitted before the Assistant Commissioner. He also submitted that the respondents had committed fraud in submitting such compromise application, inasmuch as on one hand the respondent Nos. 1 and 2 and 4 to 7 had objected against the respondent No. 3 acting as the guardian of the petitioner in case No. 7 of 2009 and on the other hand they had accepted the said Chhaganlal as the guardian of the petitioner for the purpose of compromise. Taking the Court to the provisions contained in Section 41 of the said Act, he submitted that the Mahant Motiram Dasji being the working trustee of the said trust, after his death the application was required to be filed by the person having interest in the public trust to the Assistant Commissioner having the jurisdiction, for permission to apply to the

Court for the appointment of a new working trustee. According to him, the petitioner has already moved such application u/s 41 before the concerned authority which is pending for consideration. As regards the writ petition being No. 10015 of 2013, Mr. Singhi submitted that after the death of the sole trustee Mahant Moti Ram Dasji, the petitioner had become the successor and the trustee of the said trust, and that the respondent-judgment-debtor having handed over the possession of the suit shop to the said Motiramdasji during his life time and the petitioner being in possession of the said shop as the trustee of the said trust, he was the necessary party in the execution proceedings.

6. However, the learned counsel Mr. Mahendra Goyal for the respondent Nos. 4 to 7 vehemently submitted that there being concurrent findings of facts recorded by the Assistant Commissioner, and the Commissioner, Devasthan Vibhag, this Court should not interfere with the impugned orders, which even otherwise are just and proper. Mr. Goyal taking the Court to the Scheme of the said Act submitted that Chapter V of the said Act deals with the registration of a public trust and u/s 18 thereof, the Assistant Commissioner is enjoined with the duty to make inquiries for the purpose of registration, and that after the registration of the trust, if any change occurs in any of the entries recorded in the register, the procedure contained in Section 23 of the said Act is required to be followed. He also submitted that though the working trustee is required to submit the report in the prescribed form with regard to the change occurred in the entries recorded in the register, the Assistant Commissioner even suo-motu can proceed with the inquiry as to who are the trustees of the trust as per the provisions contained in Section 23 of the said Act. According to Mr. Goyal, Sections 41 to 43 deal with the appointment of new working trustee and not of the trustee or trustees of the trust. He further submitted that in a situation, where there are two rival claims after the death of the sole trustee, the provisions contained in Section 23 would be applicable and not in Section 41 of the said Act. In any case, runs the submissions of Mr. Goyal, the petitioner having not taken up the contention about the applicability of Section 41, either before the authorities below or in the present proceedings, he should not be permitted to raise such contentions, more particularly when the petitioner, does not fall within the definition of the "person having interest" in the public interest, as contained in Section 2(9) of the said Act. In short, according to Mr. Goyal, it is not obligatory to resort to the provisions contained in Section 41, in all cases where the working trustee dies, and the Assistant Commissioner is empowered to appoint trustees after making necessary inquiries. So far as civil writ petition No. 10015/2013 is concerned, he submitted that the Executing Court having rightly held that the petitioner was neither necessary nor proper party, the petition deserves to be dismissed.

7. In order to appreciate the rival contentions raised by the learned counsels for the parties, it would be necessary to deal with certain provisions contained in the said Act. As per the definition contained in clause 2(9) of the said Act, the "person having interest" or any expression signifying a person having interest in a public trust includes, in case of a temple, a person who is entitled to attend or

is in the habit of attending the 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. The definition of "trustee" is contained in Section 2(17), according to which, "trustee" means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager. As per the definition of "working trustee" contained in Section 2(18), "working trustee" means any person who, for the time being, either alone or in association with some other person or persons administers the trust property of any public trust and includes the manager of a public trust. Chapter V of the said Act deals with the registration of the public trust. As per Section 17, within two years from the date on which a public trust is created, the working trustee thereof has to apply to the Assistant Commissioner having jurisdiction for the registration of such public trust in the prescribed form containing the requisite particulars. On receipt of such application u/s 17, or upon the application made by any person having interest in a public trust, or on his own motion, the Assistant Commissioner is enjoined with the duty to make an enquiry in the prescribed manner, as contemplated in Section 18 of the said Act. On the completion of such enquiry u/s 18, the Assistant Commissioner is obliged to record his findings with reasons therefore as to the matters mentioned in Section 18. Section 20 thereof deals with the appeal before the Commissioner against the findings recorded by the Assistant Commissioner u/s 19. The Assistant Commissioner is further required to cause the entries to be made in the register in accordance with the findings recorded by him u/s 19, or if the appeal has been filed u/s 20, in accordance with the decision of the Commissioner on such appeal, and further is required to publish the entries made in the register; as per Section 21. Such entries made u/s 21 could be cancelled or modified in the suit filed in the civil Court as per Section 22. It further appears that if any change occurs in any of the entries recorded in the register, the working trustee within 90 days of the occurrence of such change, or if any change is desired in such entries in the interest of administration of such public trust, the working trustee may report in the prescribed form and in the prescribed manner, such change or proposed change to the Assistant Commissioner as per Section 23 of the said Act. The said Section 23 reads as under:--

"23. Changes.--(1) Where any change occurs in any of the entries recorded in the register, the working trustee shall, within ninety days from the date of the occurrence of such change, or, where any change is desired in such entries in the interest of the administration of such public trust, the working trustee may, report in the prescribed form and manner such change or proposed change to the Assistant Commissioner.

(2). For the purpose of verifying the correctness of the entries in the register or ascertaining whether any change has occurred in any of the particulars recorded in the register, the Assistant Commissioner may hold an inquiry.

(3). If, after holding such inquiry as he may consider necessary under sub-

section (2) either on receipt of a report under sub-section (1) or otherwise, the Assistant Commissioner is satisfied that a change has occurred or is necessary in any of the entries recorded in the register in regard to the particular public trust, he shall record a finding with the reasons therefore and the provisions of section 29 shall apply to such finding as they apply to a finding u/s 19.

(4). The Assistant Commissioner shall cause the entries in the register to be amended in accordance with the finding recorded under sub-section (3) or, if an appeal has been filed therefrom, in accordance with the decision of the Commissioner on such appeal and the provision of section 21 and 22 shall apply to such amended entries as they apply to the original entries."

8. At this juncture, it will be also necessary to reproduce Section 41 of the said Act, which deals with the application for appointment of new working trustee. Section 41 reads as under:--

"41. Application for appointment of new working trustee.--(1). If the present working trustee of a public trust - (a) disclaims or dies, (b) is for a continuous period of six months absent from India without the leave of the Commissioner or an Assistant Commissioner or other officer authorized by the State Government in this behalf or leaves India for the purpose of residing abroad, (c) is declared an insolvent, (d) desires to be discharged from the trust, (e) refuses to act as a trustee, (f) becomes unfit or physically incapable to act in the trust or accepts as position which is inconsistent with the trust, or (g) is not available to administer the trust, such working trustee or any person having interest in the public trust, as the case may be, may apply to Assistant Commissioner having jurisdiction for permission to apply to the Court for the appointment of a new working trustee.

(2) The Assistant Commissioner, after making such inquiry as he considers necessary and, where the application has not been made by the working trustee himself, after giving him a reasonable opportunity of being heard, direct such working trustee or any other trustee or person having interest in the trust to apply to the Court for the appointment of a new working trustee, and, where the person so directed fails to make such an application or for any other reason the Assistant Commissioner considers it expedient so to do, he himself make the application."

9. In the light of the afore-stated provisions of the said Act, if the facts of the present case are appreciated, it appears that there are certain undisputed facts. It is not disputed that the late, Shri Motiram Das Ji was the sole and working trustee of the said trust, and that he expired on 09.05.2009. It is not disputed that the petitioner as well as the respondents had made two separate applications u/s 23 of the said Act in the prescribed form No. 8, for recording the change claiming themselves to be the trustees of the said trust, after the death of the working trustee, Shri Motiram Dasji. It is also not disputed that the respondent No. 3 Chhaganlal Shastri had submitted the application u/s 23 on

behalf of the petitioner Mahant Dilipdas Ji, as his guardian, the petitioner being minor at the relevant time. It is also not disputed that the other respondents had objected against the said Shri Chaganlal Shastri acting as the guardian of the petitioner Dilipdas Ji. It is also not disputed that both the applications being No. 7/2009 and 8/2009 filed by the petitioner and the respondents, (except the respondent No. 3), respectively were consolidated by the Assistant Commissioner. It is also not disputed that a compromise application signed by the respondent No. 3 on behalf of the petitioner, and signed by the other respondents was submitted before the Assistant Commissioner in the said cases, and the Assistant Commissioner on the basis of the said compromise and without making any enquiry, had passed the impugned order dated 10.12.2010, accepting the case No. 8/2009 filed by the respondents, and dismissing the case No. 7/2009 of the petitioner, in exercise of his powers u/s 23 of the said Act.

10. Now from the bare perusal of the provisions contained in Section 23, it appears that if any change occurs in any of the entries recorded in the register, the working trustee is required to report about such change in the prescribed form and the manner within 90 days of the occurrence of such change to the Assistant Commissioner. If any change is desired in such entries in the interest of administration of the public trust, then also the working trustee is required to report about such proposed change to the Assistant Commissioner. Further, for the purpose of verifying the correctness of the entries in the register or for ascertaining whether any change has occurred in any of the particulars recorded in the register, the Assistant Commissioner is required to hold an enquiry and after having been satisfied about such change or proposed change, he has to record the findings with the reasons therefor. Hence, it clearly emerges that it is the working trustee alone, who can set into motion the proceedings for recording the change or the proposed change in the entries recorded in the register before the Assistant Commissioner, and that no other person or the trustee if he is not working trustee, could make such application u/s 23. In the instant case, one application was made by the petitioner in the prescribed form No. 8 u/s 23, through the respondent No. 3 Chhaganlal Shastri, acting as the guardian of the petitioner, for recording the name of the petitioner Dilipdas Ji as the successor of Mahant Shri Motiramdasji, and the other application in the prescribed form No. 8 was made by the respondents (except the respondent No. 3) for recording their names as the trustees of the said trust on the death of Shri Motiramdasji. Neither the petitioner nor any of the respondents being the working trustee of the said trust, in the opinion of the Court, both the applications filed by them u/s 23 were misconceived, and therefore, not maintainable in the eye of law.

11. As stated hereinabove, the working trustee means any person who for the time being either alone or in association with the some other persons administers the trust property and includes the manager of the public trust. Undisputedly neither the petitioner nor any of the respondents was appointed as the working trustee after the death of Motiramdasji. None of them was even the trustee of the said trust. In the opinion of the Court, therefore, after the death of sole

working trustee Shri Motiramdasji, the only course open for the parties, was to apply for the appointment of new working trustee u/s 41 of the said Act. As transpiring from Section 41, if the present working trustee of the public trust dies, any person having interest in the public trust can apply to the Assistant Commissioner having jurisdiction for the permission to apply to the Court for the appointment of a new working trustee, and the Assistant Commissioner after following the procedure u/s 41(2), may direct such person to apply to the Court for appointment of new working trustee. In view of the said provisions contained in Section 41, it is the Court, and not the Assistant Commissioner, who could appoint the new working trustee. Therefore, the Court has no hesitation in holding that the declaration of the respondent No. 2 Pawan Kumar Sharma as the working trustee of the said trust, made by the Assistant Commissioner in the impugned order dated 10.12.2010 on the basis of the compromise arrived at between the respondents, was absolutely without any authority of law and illegal. The order dated 17.07.2012 passed by the Commissioner, confirming such order passed by the Assistant Commissioner also therefore, was without any application of mind, and liable to be set-aside.

12. Though, it has been sought to be submitted by the learned counsel Mr. Mahendra Goyal for the respondents that the Assistant Commissioner could hold suo motu inquiry as to who shall be the trustees of the public trust in view of Section 23, the said submission cannot be accepted for the simple reason that the Assistant Commissioner could hold the inquiry in respect of the change or proposed change in the entries made in the register as contemplated u/s 18, and the said Section 18 does not empower the Commissioner to make inquiry in respect of the matter as to who shall be the trustees or the working trustee of the public trust. The inquiry u/s 18 is confined only with regard to the matters enumerated therein, including the correctness or otherwise of the particulars furnished under sub-section 4 of Section 17. The Assistant Commissioner could not have declared the respondents as the trustees and that too without holding any inquiry.

13. In that view of the matter, the Court is of the opinion that the Assistant Commissioner has travelled beyond his authority, and has passed an illegal order declaring respondents as the trustees and directing to record their names as the trustees and working trustee. The Commissioner also having confirmed the said order of the Assistant Commissioner, both the orders passed by the Assistant Commissioner and the Commissioner respectively deserve to be quashed and set-aside, and the Civil Writ Petition Nos. 13963/2012 and 13964/2012 Reserve to be allowed.

14. So far as the S.B. Civil Writ Petition being No. 10015/2013 is concerned, it appears that the executing Court has passed the impugned order dated 23.05.2013 rejecting the application of the petitioner to be impleaded as the party in the execution proceedings on the ground that the Assistant Commissioner, Devsthan Vibhag had declared the respondent Mahant Shri

Mahaveer Dasji as the President, and the respondent Shri Pawan Kumar Sharma as the working trustee of the said trust. Since the said order passed by the Assistant Commissioner has been set aside as stated hereinabove, the impugned order passed by the executing Court also deserves to be set-aside. The executing Court is therefore required to be directed to decide the application of the petitioner under Order I Rule 10 of CPC afresh in accordance with law.

15. For the reasons stated above, the impugned order dated 10.12.2010 passed by the Assistant Commissioner and the order dated 17.07.2012 passed by the Commissioner are set-aside. The S.B. Civil Writ Petition No. 13963/2012 and 13964/2012 are allowed accordingly. The impugned orders dated 23.05.2013 and 30.05.2013 passed by the executing Court in execution proceedings No. 1/2005 are also set-aside. The executing Court is directed to decide the application of the petitioner under Order I Rule 10 of CPC afresh and in accordance with law. The writ petition being No. 10015/2013 also stands allowed accordingly.