

(2015) 04 RAJ CK 0224

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4053 of 2015 and Civil Misc. Stay Application No. 3647 of 2015

Shankarlal Sharma and Others

APPELLANT

Vs

Assistant Commissioner (II), Devasthan Department and Others

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 18, 18(2), 19, 20, 21

Citation : (2015) 3 CDR 1229

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Anoop Dhand, for the Appellant

Final Decision : Disposed off

Judgement

Mohammad Rafiq, J—This writ petition has been filed by the petitioners, Shankarlal Sharma and Nemi Chand, who claim to be successors of late Shri Banshidhar. The dispute is about Temple of Murti Mandir Shri Gyan Gopalji, Situated at Village Laxmangarh, District Sikar. According to the petitioners, their ancestors as well as Respondents No. 2 to 4 and 7 were the Pujaris of the aforesaid temple and doing the worship and other puja since time immemorial. They were being made payment of annuity in perpetuity under Clause 7 of the Second Schedule to the Rajasthan Land Reforms and Resumption of Jagir Act, 1952. Reference in this connection is made to Patta given by Rao Raja Laxmangarh Singh. Reference is also made to the certificate of payment of annuity in perpetuity referred to supra issued by Jagir Commissioner, Rajasthan Jaipur dated 20.06.1964. Certificate of annuity dated 30.09.1966 issued by the Commissioner, Department of Devasthan, Udaipur (Annexure-3) has also been produced on record. The petitioners are aggrieved by order passed by Assistant Commission (II), Devasthan Department, Jaipur dated 03.12.2012 on application filed by Respondents No. 2 to 4 and 7. Assistant Commissioner by the aforesaid

order has registered Mandir Shri Gyan Goplaaji Trust, Laxmangarh, District Sikar, of which private respondents are shown as office bearers. The petitioners challenged aforesaid order before the Commissioner, Devasthan Department, Rajasthan, Udaipur Camp, Jaipur. The Commissioner vide judgment dated 20.01.2015 dismissed the appeal and thereby affirmed the order passed by the Assistant Commissioner.

2. Mr. Anoop Dhand, learned counsel for the petitioners has submitted that the Assistant Commissioner has committed manifest illegality inasmuch as no notices of proceedings was served upon the petitioners. Neither it was fixed at a conspicuous place in the township of Laxmangarh, nor it was published in newspaper having wide circulation. Notice was published in newspaper "Aas Pass" which is not having wide circulation in Laxmangarh. Report of the Tehsildar concerned has not been properly considered by the Assistant Commissioner in true perspective. In fact, the Tehsildar concerned in its report has submitted that there is dispute between the parties with regard to rights of Seva Puja and receiving annuity. The Commissioner has overlooked all these illegalities, despite the petitioners pointing out them. The private respondents have ill intention of alienating the lands of the temple. The temple is having three other properties elsewhere, which were granted to it by erstwhile ruler of Laxmangarh. Learned counsel for the petitioners, in support of his arguments, has relied upon judgment of this Court in Mahant Ram Kishore Das vs. State of Rajasthan & Ors., 2001 (1) RLR 605.

3. As per scheme of the Rajasthan Public Trust Act, 1959 (for short "the Act"), both the orders passed by the Assistant Commissioner and the Commissioner have been given finality under Section 21(2), but that very provision has made it "subject to other provisions of this Act". Section 22 of the Act provides that any working trustee or person having interest in a public trust or in any property found to be trust property, aggrieved by any entry made under section 21 may, within six months from the date of the publication thereof on the notice board of the office of the Assistant Commissioner under sub-section (1) of section 21, institute a suit in a civil court to have such entry cancelled or modified. This provision has to be thus read conjointly with Section 21 of the Act, which provides that the Assistant Commissioner shall cause entries to be made in the register in accordance with the finding recorded by him under section 19 or, if an appeal has been filed under Sec. 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. When the petitioners have filed appeal, unless that appeal is decided, the order passed by the Assistant Commissioner does not attain finality. Therefore, the period of six months, which is referred in Section 22 of the Act, shall have to be, in the present case counted from the date of passing of order by the Commissioner, because it is this order, which has given finality to order passed by the Assistant Commissioner.

4. The judgment of this Court in Mahant Ram Kishore Das (supra) cited by the learned counsel for the petitioners is distinguishable from the facts of the present case. The dispute in that case was whether the Assistant Commissioner acted arbitrarily in not issuing notice under Section 18(2) of the Act. The finding recorded by the Court was that the Assistant Commissioner issued notice under Section 70 of the Act solely on the basis of inspection report of the Inspector Devasthan, without making inquiry as laid down in Section 18 of the Act. The Assistant Commissioner did not issue notice in prescribed manner of the inquiry proposed to be made under sub-section (1) of Section 18 of the Act whereas in the present case, notice is shown to have been affixed at conspicuous place and also published in local newspaper. Thus, it cannot be said that there is total absence of notice. Although, the basic dispute would still remain whether the temple could be registered as trust or not and service of notice to this effect has been properly made or not.

5. In view of the contentions raised by learned counsel for the petitioners, appropriate remedy for the petitioners would be to assail orders passed by Assistant Commissioner (II), Devasthan Department, Jaipur and the Commissioner, Devasthan Department, Rajasthan, Udaipur Camp, Jaipur by questioning the same by filing suit challenging the entries made pursuant thereto to.

6. At this stage, learned counsel for the petitioners has submitted that after the Assistant Commissioner has passed the order, the private respondents have started alienating the properties of the temple inasmuch as they have executed lease deed in favour of certain other persons regarding agriculture land of the temple and therefore, properties of the temple need to be saved from being alienated.

7. That aspect of the matter can also be looked into by the Civil Court by passing appropriate interim order, which obviously would be under obligation to protect all the properties of the temple, as those properties cannot be treated as private properties. In view of above, writ petition is disposed of with liberty to the petitioners to file suit, in which they would also be entitled to pray for appropriate interim protection for the properties of the temple. However, it is made clear that the observations made by the Assistant Commissioner and the Commissioner, Devasthan Department in their orders, would not come in the way of the Civil Court concerned while deciding the suit independently.

Stay application also stands disposed of.