

(1988) 01 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Revision Petition No. 599 of 1982

Sita Ram Das

APPELLANT

Vs

Shri Chaturbhuj Nathji Mandir

RESPONDENT

Date of Decision : 20-01-1988

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 26, 73

Citation : (1988) 2 WLN 548

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—This revision is directed against the order 15th October, 1982 passed by the District Judge, Tonk, dismissing the appeal filed by the petitioner against the order dated 13th July, 1982 passed by the Munsiff & Judicial Magistrate Tonk on an application submitted by non-petitioner No. 1 under Order 39 Rule 1 & 2 CPC for grant of temporary injunction in a suit filed by the non-petitioner No. 1 against the petitioner and non-petitioner No. 2.

2. Shri Chaturbhuj Nath Mandir Trust, plaintiff non-petitioner No. 1 is a public trust registered under the provisions of the Rajasthan Public Trust Act, 1959 (here in after referred to as "the Act"). The petitioner was the President of the said trust. The case of the plaintiff non-petitioner is that on 26th May, 1978 the petitioner resigned as the President of the said trust and the said resignation of the petitioner was accepted on 10th July, 1978 The case of the plaintiff-non-petitioner is further that after the acceptance of his resignation the petitioner continues to describe himself as the President of the trust and non-petitioner No. 2 as the Secretary of the trust. The plaintiff-non-petitioner, therefore, filed a suit for a permanent injunction restraining the petitioner and non-petitioner No. 2, not to use the registration No. 344 of the trust in any way and not to describe themselves as the President and the Secretary of the trust in any written material and not to collect any donation on the basis of the registered number

and the name of the trust. The plaintiff-non-petitioner also moved an application under Order 39 Rule 1 and 2 CPC for grant of a temporary injunction in this regard. The said application for grant of temporary injunction was resisted by the petitioner and non-petitioner and non-petitioner No. 2. It was submitted on their behalf that the suit is not maintainable without giving notice to the Commissioner of Devsthan in view of Sub-section (1) of Section 72 of the Act and further that in view of the provisions contained in Section 73 of the Act, the Civil Court has no jurisdiction to entertain the suit. The petitioner and non-petitioner No. 2 also contested the application for grant of temporary injunction on merits, and submitted that the petitioner had never resigned from the office of the President of the Trust.

3. The Munsif by his order dated 13th July, 1982 rejected the objection raised by the petitioner and non-petitioner No. 2 on the basis of the provisions contained in Section 72(1) of the Act on the ground that the said provisions are not applicable to the suit which is for grant of a permanent injunction. The Munsif also rejected the objection with regard to the jurisdiction of the Civil Court raised by the petitioner and non-petitioner No. 2 u/s 73 of the Act and held that the said provisions were not attracted to the suit. On merits the Munsif found that the plaintiff-non-petitioner No. 1 had succeeded in establishing a prima facie case in its favour that the petitioner had resigned from the office of the President of the trust on 26th May, 1978 and the said resignation was accepted on 10th July, 1978. As regards the balance of convenience and irreparable injury, also the Munsif found in favour of plaintiff-non-petitioner No. 1 and, therefore, he issued a temporary injunction restraining the petitioner and non-petitioner No. 2 from using the name of the trust or registration No. 344 of the Trust in any manner and not to describe themselves as the President and the Secretary of the trust.

4. Feeling aggrieved by the said order of the Munsif the petitioner filed an appeal which was decided by the District Judge, Tonk by his order dated 15th October, 1982. Before the District Judge the main contention that was urged on behalf of the petitioner was with regard to the jurisdiction of the Civil Court to entertain the suit filed by the plaintiff-non-petitioner No. 1. The District Judge, after examining the provisions of the Act, held that the suit for permanent injunction filed by the plaintiff non-petitioner No. 1 could be entertained by the Civil Court. The District Judge also agreed with the Munsif that a prima facie case has been established by the plaintiff-non-petitioner No. 1 to show that the petitioner had resigned from the office of the President of the Trust and the said resignation had been accepted by the trustees. On the question of balance of convenience and irreparable injury also the District Judge held in favour of the plaintiff non-petitioner No. 1 and, therefore, the District Judge by his order dated 15th October, 1982 dismissed the appeal of the petitioner. Hence this revision.

5. The main question which needs to be considered in this case is as to whether the Civil Court has jurisdiction to entertain the suit filed by plaintiff-non-petitioner No. 1. The provision which bars the jurisdiction of the civil courts is

contained in Section 73 of the Act which reads as under:

73. Bar of jurisdiction.-Save as expressly provided in this Act, no civil court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act or in respect of which the decision or order of such officer or authority has been made final and conclusive.

The District Judge, in his judgment has, by mistake, referred to Section 29 of the Act. The said section how ever, has no application because it only bars suits filed for the purpose of enforcing of a right on behalf of a public trust which is required to be registered under the Act but has not been so registered. In the present case, it is not disputed that the plaintiff-non-petitioner No. 1 is a trust which is registered under the Act.

6. A perusal of Section 73 shows that jurisdiction of the civil courts has been taken away in respect of matters which are required to be decided or dealt with by an officer or authority under the Act or in respect of which the decision or order of such officer or authority has been made final and conclusive. The aforesaid provisions contained in Section 73 of the Act are in the same terms as Section 80 of the Bombay Public Trust Act, 1950. The said provisions of Section 30 have been considered by a Full Bench of the Bombay High Court in Keki Pestonji Jamadar and Another Vs. Kohodadad Merwan Irani and Others, and it has been held that:

The decision whether the trial of a question is barred depends u/s 80 on whether that question is to be decided by the Deputy or Asstt. Charity Commissioner. If the question is outside the pale of the inquiry envisaged by Section 19, the civil courts would have jurisdiction to decide or deal with the question.

The question of ouster u/s 80 has to be decided by applying an objective test: Is the particular question one which by or under the Act is to be decided or dealt with by Deputy or Assistant Charity Commissioner and is his decision made final and conclusive by the Act?

7. Similarly it can be said that the ouster of the jurisdiction of the Civil Courts u/s 73 of the Act would depend on the answer to the question whether the matter raised before the Civil Court is required to be decided or dealt with by the authorities under the Act, namely the Commissioner or Asstt. Commissioner of Devasthan and is that decision made final or conclusive by the Act. For the purpose of deciding the said question, it is necessary to take note of the provisions of the Act.

8. In Section 17 of the Act provision is. made for registration of public trusts and an obligation has been cast on the working trustee to submit an application for registration before the Asstt. Commissioner having jurisdiction for the registration of such public trust and it also prescribes the particulars which should be furnished in the said application. Section 18 empowers the Asstt.

Commissioner to make an inquiry in respect of matter specified therein for the purpose for registration of the trust. Section 19 lays down that on completion of the inquiry provided for u/s 18 the Asstt. Commissioner shall record his findings with the reasons therefore as to the matters mentioned in the said section. u/s 20 a right of appeal has been conferred against the finding of the Asstt. Commissioner recorded u/s 19. The said appeal is to be heard by the Commissioner. Sub-section (1) of Section 21 provides for making the entries in the register in accordance with findings recorded by the Asstt. Commissioner u/s 19 or if appeal is filed u/s 20, in accordance with the decision of the Commissioner on such appeal. Sub-section (2) of Section 21 prescribes that the entries so made shall, subject to other provisions of the Act and subject to any change recorded under the provisions of the Act or a rule made thereunder, be final and conclusive. Section 22 enables the working trustee or person having interest in the public trust or in any property found to be trust property who is aggrieved by any entry made u/s 21, to institute a suit in Civil Court to have such entry to be cancelled or modified. The suit must be instituted within six months from the date of the publication of entry on the notice board of the office of the Asstt. Commissioner under Sub-section (1) of Section 21. In Sub-section (3) of Section 22 it is laid down that on the final decision of the suit the Asstt. Commissioner shall, if necessary, correct the entries made in the register in accordance with the said decision. Section 23 deals with changes in any of the entries recorded in the register. Sub-section (1) of the said section requires the working trustee to report to the Asstt. Commissioner within 90 days from the date of occurrence of any change in any of the entries and also to report to the Assistant Commissioner about any change which is desired in the entries. In Sub-section (2) of Section 23 provision is made for holding of inquiry by the Assistant Commissioner in this regard. In Sub-section (3) it is provided that if, after holding such enquiry as he may consider necessary, the Asstt. Commissioner is satisfied that the change has occurred or is necessary in any of the entries recorded in the register in regard to a particular public trust he shall record a finding with the reasons therefore and that the provisions of Sections 20 would apply to such a finding as they apply to a finding u/s 19. In Sub-section (4) of Section 23 it is laid down that the Asstt. Commissioner shall cause the entries in the register to be amended in accordance with the finding recorded under subsection (3) or, if an appeal has been filed there from, in accordance with the decision of the Commissioner in such appeal and that the provisions of Sections 21 & 22 shall apply to such amended entries as they apply to the original entries. In Section 26 it is further provided that any court of competent jurisdiction deciding any question relating to any public trust which by or under the provisions of the Act, it is not expressly or impliedly barred from deciding, shall cause a copy of such decision to be sent to the Assistant Commissioner having jurisdiction and the Asstt. Commissioner shall cause an entry in the register to be made or amended in regard to such public trust in accordance with such decision and that the amendments so made shall not be altered except in cases where such decision has been varied in appeal or revision by a court of competent

jurisdiction and that subject to such alteration the amendments shall be final and conclusive.

9. The aforesaid provisions contained in Sections 17 to 23 indicate that at the time of the registration of a public trust under the Act the Asstt. Commissioner is required to record his findings after holding an inquiry in respect of the matters prescribed in Section 18 and a right of appeal has conferred against the findings recorded by the Asstt. Commissioner and entries in the register have to be made in accordance with the findings recorded by the Asstt. Commissioner or the decision of the Commissioner in an appeal. Although the entries in the register are made final and conclusive under Sub-section (2) of Section 21 of the Act, but the said finality and conclusiveness of the entries is subject to the provisions of Section 22 which enable the working trustee or person having interest in the public trust or in any property found to be public trust property, who is aggrieved by any entry made u/s 21 to institute a Civil Suit in a Civil Court to be cancelled or modified. The aforesaid provisions are also applicable in a case where a change occurs in any of the entries recorded in the register or where any entries in the interest of the public trust. In view of Section 26 the entries in the register are also subject to alteration in accordance with the decision of the court of competent jurisdiction deciding any question relating of any public trust which by or under the provisions of the Act, it is not expressly or impliedly barred from deciding. This would show that in the matter of making of entries and making changes in the entries made in the register, certain powers have been conferred on the Asstt. Commissioner and the Commissioner of Devasthan under the Act but any entry made in pursuance of the order passed by the Asstt. Commissioner or Commissioner is subject to the decision of a Civil Court in a suit u/s 23 as well as in a suit covered by Section 26. It cannot, therefore be said that the orders passed by the Asstt. Commissioner or Commissioner are final and conclusive. The bar to the jurisdiction of Civil Courts u/s 73 would, therefore, not be attracted on the ground that it relates to matter in respect of which the decision or order of any officer or authority under the Act has been made final and conclusive.

10. The next question which needs to be considered is as to whether this is a matter covered by the first part of Section 73, namely, does it relate to a question which is by or under the Act required to be decided or dealt with by any officer or authority under the Act? Here the case of the plaintiff-non-petitioner is that the petitioner has ceased to be the President of the trust since he has resigned and his resignation has been accepted by the trustees. u/s 17 it is necessary to furnish the names and addresses of the working trustee and the Manager of the trust and u/s 18 the Asstt. Commissioner has to make an inquiry for the purpose of ascertaining the names and the addresses of the working trustee and the manager of the trust. It is not clear as to whether President of the Trust, the petitioner was a working trustee or the manager of the Trust and, therefore, his name was entered as such in the register u/s 21 of the Act. Even if it be assumed that the name of the petitioner has been entered in the register u/

s 21 the resignation of the petitioner from the said office would require a change in the entry with regard to the name of the petitioner. The said change of entry in the register would have to be corrected in accordance with the provisions contained in Section 23 of the Act and for that purpose the Asstt. Commissioner, would be competent to hold an inquiry with regard to the said change. But the said inquiry is confined to making of a change in the entries in the register. The suit that has been filed by the plaintiff-non-petitioner No. 1 is, how ever, not for making a change in any entry in the register but is for restraining the petitioner and non-petitioner No. 2 from describing themselves as President and Secretary of the Trust and using the name of the Trust or the registration Number of the Trust and for collecting donations on that basis. These are matters which are not required to be decided or dealt with by any officer or authority.

11. It, may be that as a consequence to the decision of the Civil Court in the suit it may be necessary to make a change in the entries in the Register. But that would be done in view of Section 26 of the Act because there is no provision in the Act which expressly or impliedly bars the jurisdiction of the Civil Court to decide the matters raised in the suit filed by non-petitioner No. 1. It must, therefore, be concluded that the District Judge, Tonk has not committed any error in holding that the provisions of the Act do not bar the jurisdiction of the Civil Courts to entertain the suit.

12. In so far as the other matters, namely, prima facie case, balance of convenience and irreparable injury it may be observed that both the courts below have found in favour of the plaintiff non-petitioner No. 1 and no ground is made out for interference with these findings in revision.

13. In the result I find no substance in this revision and it is accordingly dismissed. There will be no order as to costs.