
(2009) 02 RAJ CK 0111
In the Rajasthan High Court

Smt. Girdhar Kaur

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 13, 18, 18(1)(i), 18(1)(viii), 2(11)

Citation : (2009) 02 RAJ CK 0111

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—To declare a building, popularly known as "Raghuvirshala" in Bharatpur, as a public trust property or not, is the moot issue involved in the present case. The battle is between the petitioner, who claims herself to be the daughter of Bakshiji Raghuvir Singh ji—a courtier and a person, who constructed the said building, and the department of Devsthan. The petitioner has challenged the letters written by Commissioner Devsthan, dated 6-2-79 and 2-7-80, and the judgment dated 8-3-83 passed by Assistant Commissioner Devsthan and has prayed that the respondents be directed not to interfere with the ownership and possession of the said property.

2. This case has a rather convoluted history: according to the petitioner, in 1920 her father had constructed a building near Bharatpur Railway station. The said building was constructed for the use of his family and the building was popularly known as "Raghuvirshala". Since, her father did not have any son, he bequeathed the said building to her at her marriage. After her father's death, she is the owner of and in possession of the said building. She rented out parts of the building. But on 18-12-1962, the Assistant Commissioner, Devsthan, suo-motto started proceedings u/s 18 of the Rajasthan Public Trust Act, 1959 (the Act" for short). He issued notices to the parties. Vide order dated 6-1-1965, he declared "Raghuvirshala" as "Dharamshala" and declared it to be a public property. Since, the manager of the property was not following the directions

issued by Assistant Commissioner, the matter was referred to the District Judge, Bharatpur u/s 38 of the Act. The petitioner challenged the proceedings pending before the District Judge Bharatpur as well as the order dated 6-1-65 before this Court. A Division Bench of this Court, vide order dated 1-7-1968, quashed and set aside the order dated 6-1-65 and the proceedings pending before the District Judge Bharatpur. However, the Assistant Commissioner was granted the liberty to re-start the proceedings u/s 18(2) of the Act and was directed to grant an opportunity of hearing to the petitioner. Consequently, the Assistant Commissioner started the enquiry de-novo. After hearing both the parties, vide judgment dated 23-2-1977, the Assistant Commissioner held that the building is not a public property. It is, in fact, a private property. Therefore, it cannot be registered under the Act. Admittedly, this judgment has not been challenged before any appellate authority. Thus, according to the petitioner, this judgment has achieved finality.

But notwithstanding the finality of the judgment dated 23-2- 1977, the tenants of the building and others filed certain complaints before the Commissioner, Devsthan. They requested that the case be re-enquired into. Considering the complaints, vide orders dated 6- 2-1979 and 2-7-1980, the Commissioner invoked his powers under Sections 7, 24 read with 18 of the Act read with Rule 23 of Rajasthan Public Trust Rules, 1962 ("the Rules" for short). He directed the Assistant Commissioner to re-enquire into the nature of the building. Consequently, the case was re-opened. Vide judgment dated 8-3- 1983, the building was declared to be public property, and thus liable to be registered as a public trust. Since, the petitioner is aggrieved by the letters dated 6-2-1979 and 2-7-1980 and by the order dated 8-3- 1983, she has filed the present writ petition before this Court. Vide judgment dated 4-6-1999, this Court had dismissed the writ petition. Therefore, the petitioner had filed a Special Appeal, registered as DB Special Appeal No. 832/2000, before the Division Bench of this Court. Vide order dated 13-5-2008, the learned Division Bench, set aside the order dated 4-6-1999 and directed the Single Bench to consider the fact that the judgment dated 23-2-1977 was never challenged and to examine the consequence of the said judgment. It is, in this background, that this case has re-appeared before this Court.

3. Mr. Rajesh Moondia, the learned Counsel for the petitioner, has vehemently argued that after recording the evidence and after hearing both the parties, vide order dated 23-2-1977, the Assistant Commissioner had emphatically declared that the building was not a public property, but was the private property of the petitioner. Since, the said judgment was never challenged, it has achieved finality. Thus, the Commissioner was not justified in reopening the case vide orders dated 6-2-1979 and 2-7-1980.

Secondly, u/s 7 of the Act, the Commissioner has power "to supervise the administration". But he does not have the power to direct that a case, once decided by quasi-judicial authority like the Assistant Commissioner, should be re-

opened. Therefore, the Commissioner could not have invoked the power u/s 7 of the Act.

Thirdly, Section 24 of the Act and Rule 23 of the Rules confer a power only on the Assistant Commissioner to re-open a case under certain circumstances. Therefore, the Commissioner does not have the power to re-open a case.

Fourthly, although the letter dated 2-7-1980 refers to Section 18, but Section 18 deals with registration of a trust u/s 17 of the Act. Section 17 of the Act deals with registration of a public trust and Section 18 of the Act contains procedure to be undergone before a public trust can be registered. Thus, a limited power has been granted under Sections 17 and 18 of the Act i.e. the power of registration. The power does not extend to declaring a property as a public property or a private property. Such a declaration can be made only by a Civil Court and not by an Assistant Commissioner of Devsthan Department. Therefore, the entire proceedings, began in the year 1977 till today, are ultra-vires the jurisdiction of the respondents. Hence, the proceedings are void ab-initio.

4. On the other hand, Mr. Anant Bhandari, learned Counsel for the State, has straneously argued that merely because the judgment dated 23-2-1977 was not challenged, the said judgment does not achieve finality. For, the Act permits the Commissioner to re-open a case, even after a judgment has been pronounced by the Assistant Commissioner. According to the learned Counsel, Section 7 of the act bestows powers upon the Commissioner. These powers includes the power of superintendence, administration as well as to carry out the provisions of the Act. The purpose of the Act was to regulate and make proper provision for the administration of public, religious and charitable trusts in the State of Rajasthan. Thus, the aim and object of the Act is to protect public property from misappropriation and criminal breach of trust committed by the trustees.

Secondly, according to learned Counsel, a co-joint reading of Sections 7, 24 and 18 of the Act and Rule 23 of the Rules make it abundantly clear that Devsthan Commissioner has sufficient power to re-open a case. Hence, notwithstanding, the judgment dated 23-2- 1977, the commissioner was justified in issuing the letter dated 2-7- 1980 and in directing the Assistant Commissioner to re-open the case.

Thirdly, the judgment dated 23-2-1977 is not beyond reproach. While passing the said judgment, the learned Assistant Commissioner had noticed only those points which were in favour of the petitioner. He has purposefully and intentionally discarded the evidence which was readily available on record. The testimonies of petitioner's mother as well as independent witnesses were recorded, Stone inscription attached to the building was available, yet these glaring pieces of evidence were totally ignored by the Assistant Commissioner. Thus, the Commissioner was legally justified in directing the re-opening of the case.

Fourthly, moreover, while holding enquiry u/s 18, the Assistant Commissioner

was legally required to assess and decide the points mentioned in Section 18 of the Act. However, while passing the judgment dated 23-2-1977, the learned Assistant Commissioner did not deliberate on those issues. Therefore, the said judgment suffers from twin virus of non-application of mind and colourable exercise of power.

Fifthly, once the Commissioner had received complaints, once the Commissioner was convinced that the Assistant Commissioner had passed an illegal order on 23-2-1977, the Commissioner was justified in invoking his powers under Sections 7, 18 and 24 of the Act and Rule 23 of the Rules. Therefore, the learned Counsel has supported the letters dated 6-2-1979 and 2-7-1980. So far as the judgment dated 8-3-1983 is concerned, the learned Counsel has justified the said judgment on the ground that both the parties were heard, all issues were deliberated upon and evidence has been discussed. Hence, learned Counsel supported the impugned judgment dated 8-3-1983.

5. In rejoinder, Mr. Rajesh Moondia has contended that the impugned judgment dated 8-3-1983 was passed without availability of original record and evidence. The evidence which was produced before learned Assistant Commissioner and which has been produced even before this Court are in the form of photostat or typed copies of testimonies, which were recorded somewhere in the year 1964 or 1971. Moreover, the access of Assistant Commissioner to the Stone Inscription is unclear. Thus, the impugned judgment is based on the evidence which is inadmissible. In the absence of proper evidence, the conclusion drawn by Assistant Commissioner is unsustainable.

6. Since the impugned judgment refers to certain letters dealing with the grant of land for construction of Dharamshala by Bakshi Raghuvir Singh ji, since the impugned judgment refers to the testimonies which were recorded in the year 1964, 1965 and 1971, since the impugned judgment is based on those testimonies, this Court felt it necessary that the original record of those testimonies and copy of stone inscription be looked into by this Court. After all, even a quasi-judicial functionary cannot decide a case on the basis of evidence which is inadmissible. Therefore, the learned Counsel for the state was directed to call for the relevant original record.

7. Heard learned Counsel for the parties, perused the impugned letters dated 6-2-79 and 2-7-80, and the judgment dated 8-3-83, and examined the record which has been produced by the State.

8. Although this Court had been directed to decide the consequences of the judgment dated 23-2-1977, in order to do complete justice to the parties, it is essential that relevant provisions of law be discussed, factual position of the case be examined and the issue raised by the learned Division Bench can be decided only thereafter.

9. Legal issue before this Court is whether a decision passed by Assistant Commissioner, if not challenged, achieves finality or not? Whether the

Commissioner has ample power to re-open the case, especially when the order of Assistant Commissioner has not been challenged?

10. In order to answer these two legal issues, we would have to initially look into the very purpose for enacting the Rajasthan Public Trust Act, 1959. The very purpose of the Act is to protect and promote public religious and charitable trust in the State of Rajasthan. Properties which were created for religious and charitable purposes should not be mismanaged, or misutilised, or converted for one's personal use. If the property is permitted to be mismanaged or to be converted to one's personal use, the very reason for the creation of the property would be defeated. In order to prevent such misutilisation, ample powers have been given to the Commissioner and the Assistant Commissioner under the Act. Section 7 of the Act reads as under:

7. Devasthan Commissioner.

(1) The State Government shall, by notification in the Official Gazette, appoint an officer to be called the Devasthan Commissioner who, in addition to other duties and functions imposed on him by or under the provisions of this Act or any other law for the time being in force shall, subject to the general and special orders of the State Government superintend the administration and carry out the provisions of this Act throughout the territories to which this Act extends.

(2) The Commissioner shall be a corporation sole by the name of "the Devasthan Commissioner of the State of Rajasthan", shall as such have perpetual succession and a common seal and may sue and be sued in his corporate name.

11. One of the functions of the Devasthan Commissioner is to carry out the provisions of the Act and to superintend the administration. This part of Section 7 contains residuary power, which is vast in its nature. Section 24 of the Act reads as under:

24. Further inquiry by Assistant Commissioner.- If, at any time after the entries or amended entries are made in the register u/s 21 or Section 23, it appears to the Assistant Commissioner that any particular relating to any public trust, which was not the subject matter of the inquiry u/s 18 or Sub-section (2) of Section 23, as the case may be, has remained to be inquired into, the Assistant Commissioner may make further inquiry in the prescribed manner, record his findings and make or amend entries in the register in accordance with the decision arrived at, and the provisions of Sections 19, 20, 21, 22 and 23 shall, so far as may be, apply to the inquiry, the recording of findings and the making or amending of the entries in the register under this Section.

Rule 23 of the Rules reads as under:

23. Further inquiry by Assistant Commissioner.- If as provided in Section 24 it appears to the Assistant Commissioner that a "particular" relating to any public trust which was not the subject matter of the inquiry u/s 18 or Sub-section (2) of Section 23 has remained to be enquired into, he may conduct further inquiry in

the same manner as provided for in the rules for making first inquiry under Sub-section (1) of Section 18 and record his findings and make or amend entries in the register in accordance with the decision arrived at.

12. A perusal of these two provisions clearly reveals that the power to hold the enquiry is bestowed only on the Assistant Commissioner and not on the Commissioner Devsthan. However, there is no provision in this Act which prohibits Devsthan Commissioner from directing that the matter be re-opened, even after the Assistant Commissioner has given a finding after holding an enquiry. In fact, since the supervisory power has been granted to the Devsthan Commissioner, and since he has been bestowed with the responsibility of carrying out the provisions of the Act, the Commissioner certainly would be justified in directing a re-opening of a case where he is satisfied that the provisions of the Act have not been followed in letter and spirit. Thus, the order dated 23-2-1977 cannot be held to achieve finality merely because it was not challenged.

13. While assessing the validity of letters dated 6-2-79 and 2-7-80, it is revealed that cogent reasons have been given by the Commissioner for re-opening of a case. According to letter dated 6-2-79, the case is being re-opened because repeatedly complaints are being filed for declaring the property as public property. According to letter dated 2-7-80, the Commissioner was of the opinion that the Assistant Commissioner, while passing the order dated 23-2-77, has not complied with the requirements of Section 18 of the Act and has overlooked the provisions of Sections 2(3), 2(9), 2(11) and 13 of the Act. Since the Assistant Commissioner has not completely exercised the jurisdiction that was vested in him, and had not observed the requirements of Section 18, therefore, the Commissioner was satisfied that the case needs to be re-opened. Section 18 of the Act reads as under:

18. Inquiry for registration.

(1) On receipt of an application u/s 17 or upon an application made by any person having interest in a public trust or on his own motion, the Assistant Commissioner shall make an inquiry in the prescribed manner for the purpose of ascertaining-

- (i) whether a trust exists and whether such trust is a public trust;
- (ii) whether any property is the property of such trust;
- (iii) whether the whole or any substantial portion of the subject matter of the trust is situate within his jurisdiction;
- (iv) the names and addresses of the working trustees and the manager of such trust;
- (v) the mode of succession to the office of the trustee of such trust;
- (vi) the origin, nature and object of such trust;

(vii) the amount of gross average annual income and expenditure of such trust; and

(viii) the correctness or otherwise of any other particulars furnished under Sub-section (4) of Section

(2) The Assistant Commissioner shall give in the prescribed manner public notice of the inquiry proposed to be made under Sub-section (1) and invite all persons having interest in the public trust under inquiry to prefer within sixty days objections, if any, in respect of such trust.

14. This section casts a mandatory duty upon the Assistant Commissioner to enquire into different facets of the case which have been enumerated in Section 1 (i) to 1 (viii) of the Act. A bare perusal of the judgment dated 23-2-77 clearly reveals that the Assistant Commissioner did not deal with the points enumerated in Section 18 (1) (i) to (viii) of the Act. Thus, obviously, the Commissioner was justified in directing that the case should be re-opened as the judgment dated 23-2-77 was not in accordance with law.

15. Once the case was re-opened, the Assistant Commissioner was duty bound to discuss all the aspects of the case including the points laid down in Section 18 of the Act.

16. The first and foremost issue, that was before the Commissioner, to be decided is the intention of Bakshi ji Raghuvir Singh when he constructed the building.

17. In the record produced by the State a copy of the letter dated 14-4-1915 written by Raghuvir Singh seeking grant of land between Kishanshala and Diggi for construction of Dharamshala exists. Although this letter is only a typed copy of the original, but the same reads as under:

Copy of letter No. 3280 of 1915 dt. 14-4-1915 from Rao Bahadur Dhau Bakshi Raghubir Singh, Miscellaneous Member State Council, Bharatpur to the Revenue Member, State Council, Bharatpur available on file 9 of Revenue Member's Office of Former Bharatpur State - Department I of Sambat 1971 - entitled: Grant of land to R.B. Dhau Bakhshi Rahubir Singh Sahab, between Kishan Shala and Diggi for the construction of a Dharamshala.

Sir,

I have the honour to request you to kindly have the plot of ground between Kishanshala and Diggi handed over to me as the passenger at an early date as the same is required for construction of a Dharamsala by myself.

I have the honour to be,

Sir,

yours most obedient servant,

Sd/- Illegible,
for Miscellaneous Member,
State Council,
Bharatpur.

18. In the record, a letter dated 20-7-1970 exists, which was written by Raghuvir Singh himself to the Revenue, wherein he has clearly stated that he wishes to build "a Dharamshala" near Railway station, Bharatpur. For the purpose of such construction 14000 "Man" stones (4000 "man" white stone and 10000 "man" red stone) will be required for the building. Therefore he requested permission for importing 14000 "man" stone free of royalty. The said letter was acted upon.

19. Thus, clearly the intention of Raghuvir Singh was to construct "a Dharamshala" and not to construct a private residential house. Since a building for the purpose of charity was under construction, therefore, not only the land was granted, but even the stones were supplied free of royalty. These letters not only prove the intention of Raghuvir Singh, but also reveal the action taken by the erstwhile State of Bharatpur on the basis of requests made exclusively by Raghuvir Singh or made on his behalf. The intention of Raghuvir Singh is further fortified by certain testimonies which were recorded before the SDO in the year 1971 and photostat and typed copies of which are available in the record. Since these documents are more than thirty years old, since they are available in the government records, there is no reason to doubt their authenticity, validity and legality.

20. Bhagwat Prasad in his testimony clearly stated that Raghuvir Singh constructed "a Dharamshala" for the benefit of travelers. Similarly, Mathura Prasad has corroborated this testimony. Likewise, Yadunath Singh, who happens to be a relative of Raghuvir Singh, also stated that the building was constructed for the purpose of "Dharamshala". Furthermore, the said purpose was written in the Stone-inscription installed at the Dharamshala itself. He further claims that he was present in the marriage of the petitioner. At the marriage, Raghuvir Singh did not give any property to the petitioner by way of "Kanya-dan". Since these testimonies have not been shattered in the cross examination, there is no reason for disbelieving the testimonies of these independent witnesses. Therefore, the intention of Raghuvir Singh was clearly to construct "a Dharamshala" for the benefit of public at large. Surprisingly, these testimonies have not been noticed by the Assistant Commissioner while passing the judgment dated 23-2-77. Although these testimonies were available before him, he seems to have ignored the entire testimonies. However, these pieces of evidence are not only germane to the controversy involved, but also clearly spell out the intention of the builder of the building.

21. Since purpose of the Act is to protect public building from misuse and misappropriation, clearly the Commissioner was justified in directing the re-

opening of the case. Thus, there is nothing illegal or perverse in the letters dated 6-2-79 and 2-7-80. A bare perusal of the judgment dated 8-3-83 clearly reveals that a meticulous discussion was made of entire evidence which was available on record. Hence the said judgment is also legal and valid.

22. Under the facts and circumstances of this case, this writ petition is devoid of any merit. It is, hereby, dismissed. There shall be no order as to costs.