
(2017) 04 RAJ CK 0233
In the Rajasthan High Court
Case No : 14399 of 2016

Sonana Khetlaji

APPELLANT

Vs

State of Rajasthan & Ors.

RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

Constitution of India, Article 14, Article 141, Article 1, Article 2 -
BSNL CDA Rules, 2006, — Rule 36, Rule 4(1)(a)

Citation : (2017) 04 RAJ CK 0233

Hon'ble Judges : Sangeet Lodha

Bench : SINGLE BENCH

Advocate : Sunil Beniwal, B.L.Choudhary, Manish Shishodia, ?Bharat Shrimali, Rajesh Choudhary

Judgement

1. By way of this writ petition, the petitioner has questioned the legality of proceedings initiated by the Assistant Commissioner, Devasthan, Jodhpur under Section 23 of Rajasthan Public Trust Act, 1959 (for short "the Act") on the application made by the respondent no.3 & 5 herein, for recording the changes occurred in the entries recorded in the register maintained by the Assistant Commissioner under Section 21 of the Act, in conformity with the Form No.8 produced under Rule 22 of the Rajasthan Public Trust Rules, 1962 (for short "the Rules")

2. The facts relevant are that Shri Sonana Khetlaji (Shri Kshetrapalji) Trust Committee ("the Trust"), is a public trust registered under the Act. The elections of the Trust were held on 9.7.15 wherein 15 working trustees were elected. Shri Jayendra Singh representing the Trust before this court was elected as President of the Trust. The members of the working committee convened a meeting wherein it was observed that the elected President Jayendra Singh is not convening the meeting and therefore, a notice should be given to him with request to convene the meeting of the Working Committee of Trust. Later, in a

meeting convened which was presided over by Ganpat Singh, respondent no.3 herein, by adopting a resolution, a No Confidence Motion was passed against the President and other office bearers of the Trust. Thereafter, yet another meeting convened on 18.7.16 elections of the office bearers of the Working Committee was held wherein the respondent no.3 was elected as President. After the election as aforesaid, the newly elected President and Secretary submitted the Form No.8 under Rule 22 of the Rules before the Assistant Commissioner, Devasthan, Jodhpur for recording changes in the constitution of the Working Committee. Pursuant thereto, the proceedings were initiated by the Assistant Commissioner, Devasthan, under Section 23 of the Act. The petitioner filed objections to the Form No.8 filed as aforesaid, which is pending consideration before the Assistant Commissioner, Devasthan. According to the petitioner, the proceedings initiated by the Assistant Commissioner, Devasthan, under Section 23 of the Act is without jurisdiction. Hence, this petition.

3. Learned counsel appearing for the petitioner contended that under Section 23 of the Act, the Assistant Commissioner is empowered only to record the changes occurred. Learned counsel submitted that while exercising power under Rule 23, the Assistant Commissioner is not empowered to adjudicate the election dispute. Learned counsel submitted that the elections of office bearers of the Working Committee of the Trust were held as per the bye-laws in June, 2015 and thereafter, the meetings of Working Committee are being convened regularly. Learned counsel submitted that the acts of the respondent no.3 in convening the meeting, passing the No Confidence Motion and holding fresh election contrary to the provisions of bye-laws of the Trust are illegal and void and therefore, the Form No.8 filed by the respondent no.3, cannot be taken cognizance of by the Assistant Commissioner, Devasthan. Drawing the attention of the court to the provisions of Section 38 of the Act, learned counsel submitted if the Trust property is not being properly managed or administered, it is open for the Assistant Commissioner to make appropriate inquiry on the application being filed in this regard by any person having interest in the public trust and on being satisfied about the same, may direct the working trustee or any other trustee or person having interest in the trust to apply to the court for directions and thus, the matter which can be a subject matter of inquiry under Section 38 of the Act, no proceedings could have been initiated by the Assistant Commissioner, Devasthan under Section 23 of the Act.

4. On the other hand, learned counsel appearing for the respondents no. 3 to 10 contended that by filing the Form No.8, the newly elected office bearers of the Working Committee of the Trust, have not complained regarding the Trust property being not properly managed or administered rather, they have submitted the necessary information in the prescribed Form as per the mandate of Section 23 of the Act for recording necessary changes in the register maintained by the Assistant Commissioner, Devasthan under Section 21 of the Act. Learned counsel submitted that as per the provisions of Section 23, it is open for the Assistant Commissioner to make an inquiry to satisfy himself as to

whether the change has occurred or is necessary in any of the entries recorded in the register in regard to the particular public trust. Learned counsel submitted that obviously, before taking a decision in terms of provisions of Section 23, the Assistant Commissioner has to consider the objections raised on behalf of the petitioner after giving an opportunity of hearing and thus, instead of joining the issues raised before the Assistant Commissioner, Devasthan, the writ petition filed by the petitioner invoking the extra ordinary jurisdiction of this court, deserves to be dismissed.

5. I have considered the rival submissions and perused the material on record.

6. It is to be noticed that as per provisions of Section 18 of the Act, on receipt of an application made under Section 17 of the Act for registration of a public trust, the inquiry is conducted by the Assistant Commissioner, Devasthan in the manner prescribed and thereafter, on completion of inquiry, the findings are recorded as per the mandate of provisions of Section 19. The working trustee or the person having interest in a public trust or in any property found to be trust property, aggrieved by the finding recorded in terms of provisions of Section 19, are entitled to file appeal before the Commissioner, Devasthan under Section 20 of the Act. On the basis of the findings recorded under Section 19 of the Act subject to the decision of the Commissioner on appeal, if any filed, the entries are recorded in the register maintained under Section 16 of the Act which are caused to be publish on the notice board of the office of Assistant Commissioner, Devasthan and at the conspicuous place in the city, town or village where the principal office or principal place of business the public trust is situate. By virtue of provisions of sub-section (2) of Section 21 , the entries so made are subject to provisions of the Act and subject to any change recorded under any provisions of the Act or rule made thereunder shall be final and conclusive.

7. Indisputably, as per the mandate of provisions of Section 23, where any changes occurs in any of the entries recorded in the register, the working trustee within 90 days from the date of occurrence of the change or where any change is desired in such entries in the interest of administration of such public trust, the working trustee are under an obligation to report in prescribed form and the manner such changes or the changes proposed to the Assistant Commissioner, who in its turn, after holding such inquiry, as may consider necessary, on being satisfied that a change has occurred, shall record the finding with the reasons therefor and the provisions of Section 19 thereafter shall apply to such finding. Suffice it to say that Section 23 empowers the Assistant Commissioner to record the changes occurred in the particulars of a trust registered under the Act from time to time after due inquiry.

8. Admittedly, in the instant case, the respondent have furnished the information regarding change in the constitution of the Working Committee of the public trust in the prescribed form so that the necessary particulars in this regard may be recorded in the register maintained by the Assistant Commissioner in terms of provisions of Section 16 of the Act. Obviously, the objections to the information

furnished by the alleged new office bearers of the Working Committee for recording the changes in the register maintained, raised on behalf of the petitioner has to be considered and decided by the Assistant Commissioner while holding inquiry in terms of provisions of Section 23 of the Act. But in any case, the proceeding initiated by the Assistant Commissioner, Devasthan on the basis of the information furnished by the respondents herein in the prescribed form regarding the changes in the constitution of the Working Committee, cannot be said to be without jurisdiction.

9. It is pertinent to note that for giving effect to the provisions of Section 16 of the Act by way of Rule 16 of the Rules, the Form of the Register of Public Trust is prescribed as Form I attached to the Rules, which inter alia contains the entries regarding the name of the Trustee and Managers with their addresses and therefore, the inquiry initiated by the Assistant Commissioner, Devasthan for changes sought to be recorded in the register maintained cannot be said to be beyond the scope of provisions of Section 23 of the Act.

10. Coming to Section 38 of the Act, relied upon by the counsel appearing for the petitioner suffice it to say that the said provision deals with the application filed by any person having interest in the public trust or otherwise complaining inter alia that the original object of the public trust has failed or that the trust property is not properly managed or administered or the direction of the court is necessary for administration of the public trust, but, the matter with regard to the changes in constitution of the Working Committee of public trust to be recorded in the register maintained by the Assistant Commissioner, Devasthan, in no manner could be the subject matter of inquiry under Section 38 of the Act. In this view of the matter, the contention raised by the petitioner on the strength of provisions of Section 38 of the Act, is absolutely devoid of any merit.

11. In the result, the writ petition fails, it is hereby dismissed. However, on the facts and circumstances of the case, it is directed that the Assistant Commissioner, Devasthan shall consider and dispose of the objections raised by the petitioner after giving an opportunity of hearing to the parties, by passing a speaking order. No order as to costs.