

(2015) 10 RAJ CK 0049
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11813/2015

Sri Achalgachh Jain Shwetambar Trust and Others	APPELLANT
Vs	
Commissioner (Devasthan), Udaipur and Others	RESPONDENT

Date of Decision : 16-10-2015

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 20, 23

Citation : (2015) 10 RAJ CK 0049

Hon'ble Judges : Pratap Krishna Lohra, J.

Bench : Single Bench

Advocate : Mahesh Bora, Sr. Advocate assisted by Om Mehta, for the Appellant

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J.—Petitioners have filed this writ petition to challenge the impugned order dated 26.08.2015 passed by the Assistant Commissioner, Devasthan, Jodhpur (second respondent) whereby second respondent has rejected Form No. 8 submitted by the petitioners as well as the third respondent for recording necessary changes occurred in any of the entries recorded in the register under Section 23 of the Rajasthan Public Trust Act, 1959 (for short "the Act of 1959") pertaining to petitioner-Trust which is a registered Public Trust under the Act of 1959. While rejecting Form No. 8 of both the rival fractions, the second respondent has also ordered for conducting election of Public Trust within seven days in terms of the Constitution of Trust.

2. While assailing the impugned order of the second respondent on various counts, petitioners have also urged that the same is without jurisdiction and contrary to mandate of Section 23 of the Act of 1959. As per the version of the petitioners, under section 23 of the Act of 1959, the jurisdiction of Assistant Commissioner, Devasthan is confined to making inquiry for recording its satisfaction that a change has occurred or is necessary in any of the entries recorded in the register in this regard to the particular Public Trust and shall record its finding with the reasons therefor. After completing this exercise, the

Assistant Commissioner shall cause the entries in the register to be amended in accordance with the findings recorded pursuant to the inquiry. In substance, while questioning the jurisdiction of the second respondent, the petitioners have prayed for undermentioned reliefs:-

"It is, therefore, humbly prayed that this writ petition may kindly be allowed and by issuing an appropriate writ, order or direction:

1] the impugned directions passed by the learned Assistant Commissioner in the order dated 26th August 2015 and the committee constituted while making aforesaid impugned directions may kindly be declared to be illegal, void and the same may kindly be quashed and set aside by this Hon"ble Court,

2] The actions and decisions taken by said committee in the guise of impugned directions may kindly be held to be nullity and void and the same may kindly be set aside;

3] The existing Board of Trustees elected on 16th September 2013 may be held to be entitled to continue for their elected term of 5 years;

4] The costs of this writ petition may kindly be awarded in favour of the petitioners.

5] Any other writ, order or direction which your Lordship may deem just and proper in the facts and circumstances of the case, may also kindly be issued in favour of the petitioners."

3. On behalf of third respondent, interim reply is submitted wherein a preliminary objection is also raised. In the preliminary objection, it is submitted that against the impugned order passed by the second respondent, the petitioners have already availed a statutory remedy by preferring appeal under Section 20 of the Act of 1959 and the said appeal is pending consideration before the Commissioner, Devasthan, Rajasthan, Udaipur (first respondent). Therefore, with this plea, the third respondent has urged that petitioners cannot be permitted to avail two remedies simultaneously against the same impugned order. A reference is also made in the preliminary objection about dismissal of earlier CWP No. 8820/2015 filed by the petitioners before this Court on 24.08.2015. The answering respondents have also stoutly defended the impugned order passed by the second respondent. In the reply many insinuations are hurled against the petitioner and his family members in managing the affairs of the Trust. It is also submitted that most of the members of the trust are having valid cause of grievance against functioning of the trust and, therefore, in that background, considering the will of majority of members, the second respondent has exercised its discretion for conducting the election which is not liable to be interfered with. An attempt is also sought to be made that present writ petition has been filed by the petitioners by realizing that there is no merit in their appeal preferred before the first respondent and to stall the valid process of election of public trust which has not been conducted since long.

4. Mr. Mahesh Bora, learned Senior Advocate assisted by Mr. Om Mehta submits that impugned order passed by the learned Assistant Commissioner, Devasthan is wholly without jurisdiction and, therefore, the said order cannot be sustained. Mr. Bora would contend that while exercising its power under Section 23 of the Act of 1959, the Assistant Commissioner, Devasthan is clothed with the jurisdiction to make necessary inquiry for facilitating changes in the entries of Register of the Public Trust and no order can be passed while making such inquiry for conducting election of public trust. Lastly, Mr. Bora submits that in the appeal preferred by the petitioners before the first respondent, stay application is also filed and final arguments have been heard but it is posted for judgment on 09.11.2015 and by that time, if elections of the public trust are conducted, whole purpose of the appeal would be frustrated. It is in that background, learned counsel has vehemently argued that interference with the impugned order in this writ petition is desirable. In support of his contention, learned counsel has placed reliance on the order passed by learned Single Judge of this Court dated 07.05.2014 in CWP No. 12032/2013 wherein while dismissing application for vacation of interim order, the Court has dilated on the jurisdiction of the Assistant Commissioner under Section 23 of the Act of 1959.

5. Per contra, learned Senior Counsels appearing for the respondent No. 3 Mr. P.P. Choudhary and Mr. R.K. Thanvi have urged that the writ petition itself is not maintainable for the reason that the petitioners have already availed the alternative remedy of appeal under Section 20 of the Act of 1956. Elaborating their submissions, learned counsels would contend that the impugned order itself is subject matter of appeal and the appellate authority while adjudicating on the appeal of the petitioners can pass necessary directions and, therefore, at this stage, it would be against the judicial propriety to interfere with the impugned order. Lastly, it is submitted by learned counsels that a litigant cannot be permitted to avail two remedies simultaneously against one impugned action and, therefore, on this count alone, the petition merits rejection.

6. I have heard learned counsel for the parties and perused the materials available on record.

7. Upon perusal of the averments contained in the writ petition and reply thereof, there remains no quarrel that there is a serious acrimony between the rival fractions. The Public Trust which is registered in the name of "Sri Achalgachh Jain Shwetambar Trust" is essentially founded on the basic tenets of Jainism propounded by Lord Mahavira. If we examine the philosophy of Jain Religion then it would ipso facto reveal that Ahimsa, Tolerance, Forgiveness and Sacrifice are the basic tenets of Jainism. The lust for power, over-ambitiousness and intolerance are anathema to the basic objects of Jainism. All the members of the petitioner-trust are subscribing the ideas of jainology but still they are entangled in a legal battle for a very trivial issue at the costs of sacrificing the basic tenets of Jainism.

8. The Jain theory of causation holds that a cause and its effect are always

identical in nature and hence a conscious and immaterial entity like God cannot create a material entity like the universe. Further, according to the Jain concept of divinity, any soul who destroys its karms and desires, achieves liberation. A soul who destroys all its passions and desires has no desire to interfere in the working of the universe. Moral rewards and sufferings are not the work of a divine being, but a result of an innate moral order in the cosmos; a self-regulating mechanism whereby the individual reaps the fruits of his own actions through the workings of the karmas.

9. The allegations and counter-allegations and internal bickerings amongst members has vitiated the atmosphere within a peace loving community resulting in serious acrimony and perpetuation of unnecessary litigation. That being the situation, this is a second inning of litigation at the behest of petitioners before this Court. Be that as it may, I refrain from examining the allegations and counter-allegations levelled by both the fractions as I consider that by highlighting these insinuations, the result would be counter productive and not congenial for smooth functioning of the public trust which was founded with the solemn object of developing brotherhood amongst community members and spreading preachings of Lord Mahavira.

10. The crucial issue which has cropped up in the instant petition is essentially concerning the powers of the Assistant Commissioner under Section 23 of the Act of 1959. It is an admitted fact that Form No. 8 submitted by both the fractions did not find favour from the learned Assistant Commissioner and the forms were rejected but while doing so, the learned Assistant Commissioner has also ordered for holding of the election of the public trust which is the genesis of this litigation. If the afflictions of the petitioners are examined in conjunction with the appeal preferred by them under Section 20 of the Act of 1959 then it would ipso facto reveal that in the appeal, same grounds are urged by the petitioners to assail the impugned order. Further during the course of arguments, it is also brought to my notice that first respondent - Commissioner, Devasthan has heard final arguments in the appeal and judgment is reserved in the matter. A quasi-judicial authority which is clothed with the appellate powers has already heard the matter finally and posted it for pronouncement of judgment cannot be lost sight and, therefore, it would not be appropriate for this Court to exercise certiorari jurisdiction for examining the legality and propriety of the impugned order. It is needless to observe here that the appellate authority while examining the legality and propriety of the impugned order is expected to act in accordance with law and to dilate on the jurisdiction of the Assistant Commissioner under Section 23 of the Act of 1959. As the subject-matter of challenge before the appellate authority is the direction issued by the Assistant Commissioner, Devasthan for conducting election of the petitioner-Trust, any decision rendered by the appellate authority would have definite ramification on the on-going election of the public trust conducted in the interregnum. There cannot be two opinions that a litigant cannot be allowed to avail two remedies simultaneously and more particularly when it has already availed a statutory remedy against the

impugned order. An aggrieved party cannot be allowed to invoke extraordinary jurisdiction of this Court for the same relief which it has claimed before the appellate authority and such litigation deserves to be discouraged for maintaining sanctity and propriety of adjudicatory process enshrined under the relevant statute. I may hasten to add here that any order passed by this Court either way may prejudice cause of any of the parties which are pitted against each other in the appeal pending before the first respondent.

11. Therefore, after analysing the overall scenario, I am not persuaded to examine the legality and propriety of the impugned order passed by the Assistant Commissioner, Devasthan and consequently no interference with the impugned order in this petition is warranted.

12. The upshot of the above discussion is that instant petition fails and the same is hereby dismissed.