

(1987) 12 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil First Appeal No. 91 of 1976

State of Rajasthan and Another	Vs	APPELLANT
Shiv Dayal and Others		RESPONDENT

Date of Decision : 10-12-1987

Acts Referred:

Rajasthan Public Trusts Act, 1959 — Section 18, 19, 22

Citation : (1988) 1 WLN 362

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This is an appeal against the judgment and decree dated 27-9-1985 passed by the Additional District Judge, Udaipur where by the plaintiff-respondents suit was decreed as under:

The plaintiff suit is hereby decreed to this extent that it is hereby declared that the entry made of the registration of the disputed temple to be the public trust by the Assistant Registrar, and the confirmation order of that entry made by the Devasthan Commissioner in the decision of its appeal dated 20-9-1967 that the entry of registration of the disputed temple be made as public trust is premature and cannot bind the plaintiff unless the enquiry on all clauses (i) to (viii) of Sub-Section (1) of Section 18 is conducted by the Assistant Commissioner and finding on all the points is given by the said Assistant Commissioner u/s 19 of the Rajasthan Public Trusts Act.

2. A few material facts may be noticed. The plaintiffs filed the suit u/s 22 of the Rajasthan Public Trusts Act 1959 (for short the "Act") for declaration that the entry in respect of the temple in question made u/s 21 of the Act as public trust be declared invalid and the same be set aside and the finding recorded regarding the temple in question to be the public trust be also set aside. The plaintiffs alleged that the temple of Maha Kaleshwar and the houses adjoining to this

temple situated in Ward No. 22 in Mohalla Amba Mata were built by the ancestors of the plaintiffs. The property was not dedicated and the plaintiffs are bearing expenditure of the temple and the idol is the family deity. It was alleged that the Assistant Commissioner gave notice to the plaintiff u/s 18(2) of the Act for registration of the trust. The plaintiffs submitted the reply stating that it is a private trust. However, the Assistant Commissioner gave the finding on 1-7-1966 that it is a public trust and directed its registration and for issuance of certificate of registration in the name of Mahant Narayandut Nath a working trustee. The finding was upheld in appeal by the Devasthan Commissioner by his order dated 20-9-1967 upholding the registration of the temple as public trust. The Commissioner further directed the Assistant Commissioner to hold enquiry on matters mentioned in clauses (iv) to (viii) of Sub-section (1) of Section 18. The plaintiffs challenged the finding of the Devasthan Authorities and further took pleas regarding the invalidity of the action taken by the Devasthan Authorities.

3. The suit was resisted by the Devasthan Authorities, various plea were taken. It was inter alia pleaded that the temple in question is a public temple, the assets of which are more than Rs. 30,000/- & the finding arrived at is a valid one. On the basis of the pleadings of the parties as many as 12 issues were framed. On the request of the parties the learned Judge proceeded to decide issues No. 3, 4, 6, 8, 9, 10 and 11 being the legal issues and recording of evidence on issues No. 1 and 2 was dispensed with. Issue No. 5 was already decided on 13-12-1974 in pursuance of which the Government was made a party and notice was given to the Government. So far as the present appeal is concerned two issues are relevant as submissions have been made with respect to these two issues. These issues are No. 10 and 11 which on translation are as under:

10. Whether the plaintiffs suit is barred by time?

11. Whether on the basis of the facts mentioned in sub-para H,I,J of para 7 of the plaint, finding have not been given on all the points mentioned in Section 18 of the Act and that without recording findings on all the points, this declaration is invalid that the temple falls in the definition of public trust and on this very basis the entry u/s 21 is illegal?

4. The learned Judge decided both the issues in favour of the plaintiff, it was found that the suit is within limitation and as regards the finding on issue No. 11 the learned Judge found that the Assistant Commissioner was required to give finding not only regarding clause (i) of Section 18 that the disputed temple is a public trust but he should have recorded his finding on all the matters mentioned in Section 18 and unless that is done, a single finding given by the Assistant Commissioner that the disputed temple is a public trust, is illegal and no entry u/s 21 for the registration of the said public trust could have been made unless he has given the finding on all the clauses (i) to (viii) of Sub-section (1) of Section 18.

5. It was found that the order of the Assistant Commissioner as well as of the

Devasthan Commissioner regarding making of entry of registration of the public trust is premature and illegal at that stage and it was observed that this can only be done by the Assistant Commissioner after completing the formalities of Section 18 & 19 of the Rajasthan Public Trust Act. Dissatisfied with the judgment and decree, the present appeal has been filed.

6. I have heard Shri L.M. Lodha, learned Additional Government Advocate for the appellant.

7. The plaintiff-respondents have not put in appearance despite service of summons.

8. Mr. L.M. Lodha, learned Additional Government Advocate strenuously urged that the finding, of the temple and its propertier being a public trust s not in any way rendered illegal and the learned Additional District Judge was wrong in observing that the finding was premature, hence was an 11 gal one. He submitted that first a finding as to be arrived on the matter mentioned in clause (i) of Sub-section, (1) of Section 18. Having found that the trust is public trust, further enquiry has to be made in respect of the matters enumerated in clauses (ii) to (viii) of Sub-section(1) of Section 18. The Devasthan Commissioner was perfectly justified in directing the Assistant Commissioner to hold enquiries on matter enumerated in clauses (iv) to (viii) as enquiry had already been conducted on matters mentioned in clauses (i) to (iii) and findings were recorded on these three points by the Assistant Commissioner. He submitted that further enquiry is provided u/s 24 of the Act and if the matter is examined in the light of Section 24 of the Act, it would be clear that such a direction as has been given by the Devasthan Commissioner is permissible under the provisions of Section 18 & 19 and consequent entires can be made u/s 21 in the light of the findings recorded u/s 19. His main emphasis is that fresh enquiry is not required to be made on matters falling under clauses (i) to (iii) u/s 18 what is required is that only findings are to be recorded on all the matters and entries are to be made in accordance with the findings recorded under Section, 19. The observation of the learned trial Judge that single findings is illegal, is wrong. According to Mr. Lodha the finding is not in any way vitiated, although findings are required to be recorded on other matters on which findings have not been recorded by the Assistant Commissioner. As regards making of entries in the register, he faintly submitted that the entries could be made in the register after recording the findings u/s 19 on completion of enquiry u/s 18.

9. I have carefully considered the above submissions of the learned Additional Government Advocate.

10. For the proper appreciation of the controversy it is necessary to read Sections 18, 19, 21, 22 & 24.

18. Inquiry for the 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 in his own motion, the Assistant Commissioner shall make an enquiry 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 trustee 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 or any other particulars furnished under Sub-section (4) of the Section 17.

(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.

19. Findings of the Assistant Commissioner--On completion of the inquiry provided for u/s 18, the Assistant Commissioner shall record his findings with the reasons therefore, as to the matters mentioned in the said section.

21. Entries in the register--(1) The Assistant Commissioner shall cause entries to be made in the register in accordance with the findings recorded by him u/s 19, or, if an appeal has been filed u/s 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;

(2) The entries so made shall, subject to the other provisions of this Act and subject to any change recorded under provisions of the Act or a rule made thereunder, be final and conclusive.

22. Civil suit against entries made u/s 21--(1) Any working trustee or person having interest in any property found to be trust property aggrieved by any entry made u/s 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 civil court to have such entry cancelled or modified.

(2) In every such suit the civil court shall give notice to the State Government

through the Assistant Commissioner and the State Government, if it so desires shall be made a party to the suit;

(3) On the final decision of the suit, the Assistant Commissioner shall if necessary, correct the entries made in the register in accordance with such decision.

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 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

11. A bare perusal of sections 18 and 19 would show that on the matters mentioned in the eight clauses of Sub-section (1) of Section 18, enquiry has to be conducted These matters have to be ascertained The enquiry has to be conducted in the manner provided under Sub-section (2) of Section 18. A public notice of the enquiry is required to be given and notice is also required to be given to all persons having interest in trust under enquiry. The language of Section 19 makes it abundantly clear that after completion of the enquiry u/s 18, the Assistant Commissioner is required to record his findings with the reasons therefore as to the matters mentioned in Section 18 Section 21 thereafter clearly provides for causing the entries to be made in the register in accordance with the findings recorded u/s 19 Section 21 further provided that the entries shall further be published on the notice board of the office of the Assistant Commissioner and also at a conspicuous place in the city where the public trust is situated. The suit u/s 22 can be filed within 6 months from the date of publication of the entries made u/s 21 on the notice board of the office of the Assistant Commissioner for cancellation or modification of the entries. Thus the making of entries furnishes action and the period of limitation shall commence from the date of publication of entries on the notice board of the office of the Assistant Commissioner and entries are required to be made in the register in accordance with the findings recorded u/s 19 & Section 19 contemplates recording of findings on all the matters mentioned in Section 18. In the provisions of Sections 18, 19, 21 and 22 are read together, the legislative intent would appear to be that at consolidated enquiry on all the matters mentioned in Section 18 has to be made and findings with the reasons, on all the matters are required to be recorded by the Assistant Commissioner on completion of, the enquiry u/s 18. The provisions do not contemplate piece-meal enquiry and making of piece-meal enquiries u/s 21, which appears to be the scheme of these provisions. To my mind recording of findings on certain matters and making entries on the basis of such findings is

not permissible and the recording of findings on some matters cannot be postponed. After enquiry on all the matters findings have to be arrived at on them. Only thereafter entries can be caused to be made in the register under-section 21.

12. The provisions of Sections 18, 19, 21 and 22 are analogous to the provisions of Sections 5, 6, 7 and 8 of the Madhya Pradesh Public Trusts Act 1951 which read as under:

5. Inquiry for registration - (1) On receipt of an application u/s 4 or upon an application made by any person having interest in a public trust or on his own motion, the Registrar shall make an inquiry in the prescribed manner for the purpose of ascertaining

(i) Whether, the 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 situated within his jurisdiction?

(iv) the names and addresses of the trustee 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 the expenditure of such trust; and

(viii) the correctness or otherwise of any other particulars furnished under Sub-section (5) of Section 4.

(2) The Registrar shall give in the prescribed manner public notice of the inquiry proposed to be made under Sub-section (2) and invite all persons interested in the public trust under inquiry to prefer objections, if any, in respect of such trust.

6. Findings of the Registrar--On completion of the inquiry provided for u/s 5, the Registrar shall record his findings with reasons therefore as to the matters mentioned in the said section.

7. Registrar to make entries in the Registrar--(1) the Registrar shall cause entries to be made in the register in accordance with the findings recorded by him u/s 6 and shall publish on the notice board of his office the entries made in the register;

(2) The entries so made shall, subject to the provisions of this Act and subject to any change recorded under any provision of this Act or a rule made there under, be final and conclusive.

8. Civil suit against the finding of the Registrar--(1) Any working trustee or person having interest in a public trust or any property found to be trust property aggrieved by any finding of the Registrar u/s 6 may, within six months from the

date of the publication of notice under Sub-section (1) of Section 7, institute a suit in a civil court to have such finding set aside or modified.

(2) In every such suit, the civil court shall give notice to the State Government through the Registrar, and the State Government, if it so desires, shall be made a party to the suit;

(3) On the final decision of the suit, the Registrar shall if necessary, correct the entries made in the Register in accordance with such decision.

13. The Madhya Pradesh High Court had occasions to consider this question which is in controversy before me. The Madhya Pradesh High Court has taken a consistent view. Reference may be made to a Division Bench decision of Madhya Pradesh High Court in *Rewaram and Ors. v The Registrar Public Trusts Narsimhapur* ILR 1962 (MP) 38. In that decision the orders of the Registrar of Public Trusts were under challenge where he found the temple to be of public trust. A contention was advanced that the Registrar made no enquiry as required u/s 6 of the Act and findings otherwise were manifestly erroneous. Their Lordships observed that the whole scheme of the Act as also the nature and extent of enquiry to be made in it before assuming jurisdiction for registration of any public trust under it had already been examined and indicated by this court on two occasions (vide MP 521 of 1954 decided on 18-10-1955 and MP 495 of 54 decided on 6-4-1956). We may usefully quote the observations made on the third occasion in the case of *Smt. Sunderbala v. The Deputy Commissioner, Hoshangabad and Ors.*

It seems from a plain reading of this Section that the Registrar is required not only to find whether the trust is a public trust but also to record his finding on all the matters mentioned above. The Registrar in this case has done nothing of the kind. He has just recorded a single finding that there is a public trust, and that therefore these persons should have applied for its registration, and that not having done so they are liable to punishment. We think that on its face the procedure adopted by the Registrar and his delegate, the Sub-Divisional Officer, was clearly against the directions of the Act. It was incumbent on either of them, if not both to have issued a public notice to all persons interested in the trust to have held an inquiry into all the matters mentioned u/s 5, and to have recorded findings thereon. We may say that the provisions of Sections 5 and 6 cannot be read as merely directory and that they must be regarded as mandatory because of certain remedies which are open to an aggrieved party after these findings are given.

14. It was held that in the light of the aforesaid observations it would be manifestly clear that the Registrar has acted in clear violation of the prescribed method of action rendering his order unsustainable. In that case single finding was arrived at regarding public trust and no enquiry was conducted in all the matters mentioned in Section 5 and no findings were recorded on all the matters u/s 5.

15. The submissions of Mr. Lodha may now be examined in the light of the above discussion. From the above discussion it would appear that the findings on all the matters enumerated in various clauses of Section 8(1) are to be recorded with reasons on completion of enquiry u/s 18 and entries are to be made u/s 21 in the register only thereafter. Admittedly findings on all the matters were not recorded after completion of enquiry u/s 18 so no entries could have been made in the register registering the trust in question as a public trust. With regarding the submission that the finding has been considered to be illegal by the learned Additional District Judge, it may be stated that from a perusal of the finding on issue No. 11 it would appear that the learned Additional District Judge has not set-aside the findings as such. What has been said by him is that the finding is premature in the sense the finding on other issues have not been recorded and in this sense he has considered it to be illegal. The merits of the findings have not at all been gone into. What appears to be the consideration and purport view of the Additional District Judge is that the Assistant Commissioner should record the findings on all the matters together including the matters No. 1, 2 and 3. The finding is, therefore, bad only in this respect that it is on limited matters. The learned Judge has not directed fresh enquiry on the matters on which findings have already been recorded. What he has said is simply this that after enquiry u/s 18, findings on all the matters have to be recorded. In respect of the submission that has been made before me by Mr. Lodha, the position has been clarified as above. Whatever enquiry has been conducted that enquiry has not been done away with. Similarly whatever finding has been given, the finding as such has not been set aside. The requirement of law is that on all the matters enquiry has to be conducted and findings have to be recorded. This should be done by the Assistant Commissioner. That appears to be the intent and purport of the order of the learned Additional District Judge. It is only after recording of findings on all the matters, the stage of making of entries would arise u/s 21. Thus, in my opinion the finding on issue No. 11 recorded by the learned Additional District Judge does not call for any interference.

16. It is next urged by Shri L.M. Lodha, the learned Additional Government Advocate that the learned Additional District Judge erred in holding the suit within limitation. I have perused the finding of the learned Additional District Judge on issue No. 10. I am in agreement with the view taken by him. The period of six months would run after the decision of the appeal on 20th September, 1967. The suit was initially instituted in the Court of Civil Judge, Udaipur on 7-3-1968 but the same was returned on 28-8-1973 and the same was filed in the court of District Judge on the same date. It was urged that after the order was passed in appeal by the District Judge against the order of the Civil Judge, the plaintiffs ought to have taken back the plaint immediately. From the endorsement made on the plaintiff appears that against the order of the Civil Judge dated 25-10-1971 appeal was preferred and the District Judge passed the order for the return of the plaint on 2-6-1973 and the plaint was actually returned on 28-8-1973. No negligence has been shown on the part of the

plaintiff in not obtaining the plaint. The record must have gone from the Appellate Court to the trial court it is only there after that the plaint could be obtained from the trial court. Besides that the burden of this issue was on the defendant. The limitation would run from the date of publication of the notice of the making of the entries on the notice board. On what date the publication was made on the notice board has not come on record so it cannot be found that the suit was barred by time as provided u/s 22 of the Act.

17. No other point survives for consideration.

18. In the result this appeal has no force, so it is hereby dismissed with no order as to costs.