(2018) 05 RAJ CK 0242

In the Rajasthan High Court

Case No : Civil Writs No. 1416, 3512 of 2018

Sudhir Heeralal Dhadda @APPELLANT@Hash Assistant Commissioner-I,

Date of Decision : 17-05-2018

Acts Referred:

Rajasthan Public Trust Act, 1959 — Section 2(6), 2(9), 2(11), 2(17), 18, 19, 20, 22, 23, 38, 40, 67, 69
Limitation Act, 1963 — Section 5
Rajasthan Public Trust Rules, 1962 — Section 22, 23
Code of Civil Procedure, 1908 — Order 22 Rule 3, Order 22 Rule 9(1), Order 22 Rule 9(3), Order 22 Rule 10, Order 1 Rule 10
Constitution of India, 1950 — Article 226, 227

Citation : (2018) 05 RAJ CK 0242

Hon'ble Judges : SANJEEV PRAKASH SHARMA, J

Bench : Single Bench

Advocate : Ajeet Bhandari, Jitendra Mishra, Ashok Mehta, Siddharth Jain

Final Decision : Dismissed

Judgement

1. Both the writ petitions were heard at the admission stage itself as the respondents had already put in appearance as caveators.

2. Counsel for the petitioners has argued the matter treating SB Civil Writ Petition No.1416/2018 as a lead case and therefore, the facts are being

noted as stated in the said writ petition which are common in both the writ petitions.

3. The controversy relates around The Rajasthan Public Trust Act, 1959 (hereinafter referred as the â??Act of 1959â??) and the provisions

contained therein. Therefore, before adverting to the facts of the case, it would be useful to note certain provisions relating to the Act of 1959 which

have been referred to by counsel for the parties.

4. Sections 2(6), 2(9), 2(11), 2(17), 20, 23, 38, 40, 67 and 69 of the Act of 1959 provide as under:-

2(6). ""Charitable endowment"" means all property given or endowed for the benefit of. or used as of right by, the community or any section thereof for

the support or maintenance of objects of utility to the said community or section; such as resthouses, pathshalas, schools and colleges, houses for

feeding the poor and institutions for the advancement of education, medical relief and public health or other objects of a like nature and includes the

institution concerned;

2(9). ""Person having interest"" or any expression signifying a person having interest in a public trust includes -

(a) in the case of a temple, a person who is entitled toattend or is in the habit of attending the performance of worship or service in the temple or who

is entitled to partaking or is in the habit of partaking in the distribution of gifts thereof.

(b) in the case of math, a disciple of the math or aperson of the religious persuasion to which the math belongs,

(c) in the case of society registered or deemed to beregistered under the Rajasthan Societies Registration Act, 1958(Rajasthan Act 28 of 1958) or

under any other analogous law in force in any part of the State, any member of such society, and

(d) in the case of any, other public trust, anybeneficiary,

2(11). ""Public trust"" means an express or constructive trust for either a public, religious or chartable purpose or both and includes a temple, a math,

dharmada or any other religious or charitable endowment or institution and a society formed either for a religious or charitable purpose or for both;

2(17). ""Trustee"" means a person in whom either alone or in association with other persons the trust property is vested and includes a manager;

20. Appeal- Any working trustee or person having interest in a public trust or in any property found to be trust property aggrieved by a finding of the

Assistant Commissioner under Sec. 19 may, within two months from the date of its publication on the notice board of the Assistant Commissioner, file

an appeal before the Commissioner to have such finding set aside or modified.

23. Changes- (1) Where any change occurs in any of the entries recorded in the register, the working trustee shall, within ninety days from the date of

the occurrence of such change, or, where any change is desired in such entries in the interest of the administration of such public trust, the working trustee may, report in the prescribed form and manner such change or proposed change to the Assistant Commissioner.

2. For the purpose of verifying the correctness of theentries in the register or ascertaining whether any change has occurred in any of the particulars

recorded in the register, the Assistant Commissioner may hold an inquiry.

3. If, after holding such inquiry as he may considernecessary under sub-section (2) either on receipt of a report under sub-section (1) or otherwise, the

Assistant Commissioner is satisfied that a change has occurred or is necessary in any of the entries recorded in the register in regard to the particular

public trust, he shall record a finding with the reasons therefore and the provisions of section 29 shall apply to such finding as they apply to a finding

under section 19.

4. The Assistant Commissioner shall cause the entriesin the register to be amended in accordance with the finding recorded under sub-section (3) or,

if an appeal has been filed therefrom, in accordance with decision of the Commissioner on such appeal and the provisions of section 21 and 22 shall

apply to such amended entries as they apply to the original entries. 38. Application for direction- 1. If the Assistant Commissioner, on the application

of any person having interest in a public trust or otherwise, is satisfied after making such inquiry as he thinks necessary that (a) the original object of

the public trust has failed.

(b) the trust property is not being properly managedor administered or

(c) the direction of the Court is necessary for theadministration of the public trust he may, after giving the working trustee an opportunity of being

heard, direct such working trustee or any other trustee or person having interest in the trust to apply to the court for directions, within such time not

exceeding thirty days as may be specified by the Assistant Commissioner.

2. If the working trustee or any other trustee or person having interest in the trust so directed fails to make an application as required, or if there is no

trustee of the public trust, or if, for any other person, the Assistant Commissioner considers it expedient to do so, he shall himself make an application

to the court.

40. - Powers of the Court on application under Sec. 38 or Sec. 39:

1. On receipt of an application made under or inpursuance of section 38 or section 39 the court shall make or cause to be made such inquiry into the

case as it deems necessary and pass such orders thereon as it may consider appropriate.

2. While exercising the powers under sub-section (1) the court shall, besides other powers, have power to make an order for (a) removing any trustee;

(b) appointing a new trustee;

(c) declaring what portion of the trust property or ofthe interest therein shall be allocated to any particular object of the trust;

(d) providing a scheme of management of the trustproperty;

(e) directing how the funds of a public trust whoseoriginal object has failed shall be spent, having due regard to the object for which the trust was

created; (f) issuing such other directions as the nature of the case may require.

3. Any order passed by the court under sub-section (2) shall be deemed to be a decree of such court and an appeal shall lie there from to the High

Court.

67. - Officers holding inquiries to have the power of Civil Court:

In holding inquiries under this Act the Commissioner or an Assistant Commissioner shall have the same powers as are vested in civil courts in respect

of the following matters under the Code of Civil Procedure, 1908 (Central Act v of 1908) in trying a suit:

(a) proof of facts by affidavits,

(b) summoning and enforcing the attendance of anypersons and examining him on oath.

(c) compelling the production of documents, and(d) issuing of commissions.

69. Civil Procedure Code to apply to proceedings before courts:

The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall, save in so far as they may be inconsistent with anything contained

in this Act, apply to all proceedings before the court under this Act.â??

5. That apart, Rules have been framed known as The Rajasthan Public Trust Rules, 1962 (hereinafter referred as the â??Rules of 1962â??) and

Rules 22 and 23 of the Rules of 1962 need to be noted before adverting to the facts of the case, which provide as under:-

22. Form and manner in which working trustee is to report changes :

(a) The working trustee shall within the prescribed period report the occurred change or proposed change of entries to the Assistant Commissioner in

Form 8. (b) The Assistant Commissioner shall, after necessary inquiry if any, shall cause the entries to be amended in accordance with the finding

recorded in the register in Form No. 4. Â

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 under section 13 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.

6. In the aforesaid background, the facts of this case, in brief, are that one Mr. Manak Raj Munot was the Settler Trustee of the Trust known as

â??Rajasthan Welfare Trustâ?? and a deed of Trust was executed by him on 29/03/1973 by corpus fund of Rs.1,000/only. Initially,Â Mr. Manak Raj

Munot and his wife Smt. Premlata and one Mr. Ramchandra Saxena were the trustee of this Trust and it got registered before the Sub-Registrar,

Jaipur City on 30/03/1973. The Trust had also been registered under the provisions of the Act of 1959 on 23/03/1974 with registration number 376.

7. It appears that the applications were filed under Section 38 of the Act of 1959 for conducting enquiry regarding management and affairs of the

Trust by the brother and sister of the Settler Trustee on one hand and by the Trustee and his wife on the other resulting in the matter transferring to

the Court of District Judge under Section 40 of the Act of 1959.

8. It is stated by the petitioners further thatÂ Mr. Manak Raj Munot filed Form No.8 on 05/06/2010 with regard to nonappointing his heirs and to

declare that his heirs were not able, devotee and sincere towards the Trust and that the power is surrendered as regards the heirs. Further, as per the

petitioners, the saidÂ Mr. Manak Raj Munot obtained a consent from petitioner no.2 i.e. Sunil Heeralal Dhadda and appointed him as Administrator

of the Trust and also submitted Form No.8 before the Assistant Commissioner, Devasthan on 05/06/2010 appointing him as Trustee. It is further case

of the petitioners that the Settler and Trustee obtained consent of petitioner no1-

Sudhir Heeralal Dhadda on 25/06/2010 for appointment asÂ ipso-

facto Settler Trustee and submitted Form No.8 for the same before the Assistant Registrar alongwith consent on 19/07/2010. It is stated that the

Settler Trustee also wrote a letter on 20/07/2010 to the Assistant Commissioner, Devasthan for appointing the petitioner no.1-Sudhir Heeralal Dhadda.

9. The Assistant Commissioner, Devasthan sought explanation with regard to Form No.8 from the Settler and Trustee vide his letter dated 19/08/2010.

It is stated thatÂ Mr. Manak Raj Munot submitted his reply and disclosed his intention vide his letter dated 04/10/2010 to handover management of

the Trust to the petitioners. It is further submitted that on account of such appointment, withdrawal applications were filed for withdrawing the suit

from the Court pending under Section 40 by Mr. Vijay Kumar Munot and Smt. Manu Jain Dhakad as well as by Mr. Balraj Munot and Smt. Manju

Surana. The applications were allowed and the suits were ordered to be withdrawn on 01/10/2010. The Form No.8 filed by the Settler and Trustee

was pending before the Assistant Commissioner, Devasthan and a case was registered bearing number 10/2011 under Section 23 of the Act of 1959

who after completion of enquiry as per Section 23 recorded a finding appointing the petitioners as Trustees and also entered their name as Trustees in

the Trust vide order dated 15/01/2013. The entries in this regard were also made in the Register.

10. Mr. Manak Raj Munot preferred an appeal bearing no.13/2013 against the order dated 15/01/2013 wherein he submitted that he had never

appointed the petitioners as Trustees and his letter of appointing the petitioners as his representatives had also been withdrawn. While the appeal was

pending,Â Mr. Manak Raj Munot expired on 05/03/2013 and his son Mr. Ajay Jain filed an application under Order 22 Rule 10 CPC on the basis of

an unregistered will executed by the Settler and Trustee on 18/07/2013 praying that his name be substituted in place ofÂ Mr. Manak Raj Munot.

Another application under Order 1 Rule 10 CPC was also filed by Mr. Ajay Jain. The Commissioner, Devasthan dismissed the application on

30/03/2015 and the appeal preferred by the Trustee through the SettlerÂ Mr. Manak Raj Munot i.e. appeal no.13/2013 was dismissed as having been

abated vide order dated 18/05/2015.

11. In the aforesaid background, the respondents No. 3 & 4 i.e. Mr. Balraj Munot

and Smt. Manju Surana preferred an appeal alongwith an

application under Section 5 of the Limitation Act before the Commissioner, Devasthan against the order dated 15/01/2013. On 24/05/2015, the

respondent no.3-Mr. Ajay Jain in SB Civil Writ Petition No.3512/2018 filed another appeal which is subject matter in SB Civil Writ Petition

No.3512/2018.

12. Vide order dated 26/12/2017, the Commissioner, Devasthan heard both the appeals and allowed them setting aside the order dated 15/01/2013 and

removed the names of the petitioners from the Trustees. The said two orders passed by the Commissioner, Devasthan have been independently

challenged in the present two writ petitions.

13. It may be noticed that the said appealsÂ preferred before the Commissioner, Devasthan were filed alongwith application under Section 5 of the

Limitation Act. The petitioners have thus challenged both the orders.

14. The main contention of the petitioners in both the writ petitions is that firstly under Section 20 of the Act of 1959, appeal can be filed against the

order of Assistant Commissioner, Devasthan within a period of two months from the date of publication of the changes on the notice board of the

Assistant Commissioner, Devasthan and the appeal was therefore, not maintainable. The said argument of the petitioners has been rejected by the

Commissioner, Devasthan in its order holding that the appeal is within limitation.

15. The submission of the petitioners secondly is that after dismissal of the appeal preferred byÂ Mr. Manak Raj Munot as having been abated, as

per Order 22 Rule 9(1) CPC, no fresh suit or appeal could have been brought on the same cause of action and thus, there was no right available to the

respondents No. 3 & 4 to prefer appeal.Â It is further contented that once the son of Mr. Manak Raj Munot moved application under Order 22 Rule

10 CPC, which came to be rejected, the order has become conclusive and final. Further, it is submitted that on facts too, the Commissioner,

Devasthan has erred in setting aside the order dated 15/01/2013 as the Settler and TrusteeÂ Mr. Manak Raj Munot had declared his intention after

filing Form No.8 that he had surrendered his power of appointing his heirs. After having submitted Form No.8 for petitioners to be joined as

Administrator or ipso-facto Trustee, the order could not have been passed to remove them as Trustees. It is submitted that once Form No.8 has been submitted, there was no power available with the Setter and TrusteeÂ Mr. Manak Raj Munot to withdraw the same. It is submitted that appointment

of Trustee was not on the acceptance of Form No.8 but a Trustee is appointed and Form No.8 is only a subsequent act of information relating to

appointment. Thus, the appointment was on that very day when the letter was written to the Assistant Commissioner, Devasthan and once the power

of appointment has already been exercised, the same cannot be withdrawn or allowed to be withdrawn. It is, therefore, submitted that the conduct of

Mr. Manak Raj Munot, who withdrew his intention and his earlier letters of appointment of petitioners as Administrator/Trustees, was without

jurisdiction and there was no power vested in him to withdraw the appointment of the petitioners and the Assistant Commissioner, Devasthan had

rightly not accepted the letters written byÂ Mr. Manak Raj Munot and had rightly accepted the petitioners to be the Trustees of the Rajasthan

Welfare Trust.

16. It is further submitted that once the appeal filed by Mr. Manak Raj Munot was dismissed as abated, the order passed by the Assistant

Commissioner, Devasthan had become conclusive as per Order 22 Rule 9(1) CPC which provides that no fresh suit shall be brought on the same

cause of action. As such, the respondents No.3 & 4 had no right to file an appeal against the order dated 15/01/2013 and the respondent No.2 had

erred in entertaining the appeals.

17. It is stated that Mr. Ajay Jain, who is son of lateÂ Mr. Manak Raj Munot, filed an application under Order 22 Rule 10 CPC and another

application under Order 1 Rule 10 CPC but both the applications were dismissed by the respondent no.2 whereafter separate appeal could not have

been filed by Mr. Ajay Jain and the Commissioner ought not to have allowed such appeal.

18. Learned counsel also submitted that an appeal against the order of Assistant Commissioner could be filed under Section 20 of the Act of 1959 only

within two months from the date of publication whereas the appeals preferred by respondent no.3 were filed on 22/04/2015 i.e. after delay of more

than two years. Without there being any application for condonation of delay, the objections raised by the petitioners were brushed aside wrongfully by

the respondent. It is submitted that the Assistant Commissioner (Devasthan) had conducted an enquiry after framing of issues which is reflected from

his order dated 15/01/2013 and the same has wrongfully been decided by the respondent no.2-Appellate Authority. Learned counsel submits that once

the petitoner was appointed as Manager, since Manager is also included in the definition of Trustee, the petitioner could not have been ousted from the

Trust.

19. Per-contra, respondents have supported the order passed by the Commissioner (Devasthan) and it is submitted that the Commissioner

(Devasthan) has found action of the Assistant Commissioner (Devasthan) while passing the order dated 15/01/2013 as collusive, illegal and contrary to

the provisions of the Act of 1959 as well as the provisions of the Trust Deed. It is submitted that remedy of filing writ petition before this Court would

not lie as there is a provision for filing of a Civil Suit as per Section 22 of the Act of 1959. It is submitted that it is a case of removal of the petitioners

from Form No.4. Hence, the petitioners should have filed a Civil Suit in this regard.

20. It was further submitted by learned counsel for the respondents that appointment of the petitioners as Executors and Administrators was only with

reference to the power whichÂ Mr. Manak Raj Munot himself possessed and it was very specifically mentioned in his letter dated 25/06/2010 as well

as in the entries of Form No. 8 dated 05/06/2010 that lateÂ Mr. Manak Raj Munot never appointed them as Trustees till lateÂ Mr. Manak Raj

Munot was alive and therefore, no other person could be appointed as Trustee in his place and it was only for the purpose of executing his instructions

that the petitioner was appointed by him as his representative. In the will,Â Mr. Manak Raj Munot has appointed Mr. Ajay Jain as a working Trustee.

The petitioners were not to be treated and had no status of Trustee of the Trust but have been wrongfully declared as Trustees by the Assistant

Commissioner (Devasthan). The Commissioner (Devasthan) has rightly set aside the order of the Assistant Commissioner (Devasthan) which is

contrary to the provisions of the Trust Deed as well as the Act of 1959. The Settler Trustee was supposed to be one and he had clarified the said

position to the Assistant Commissioner (Devasthan) vide his letter which has been quoted by the Appellate Authority. In the teeth of such letters and

the appeal preferred by the Settler TrusteeÂ Mr. Manak Raj Munot himself, the decision of the respondent No.2 cannot be doubted or held to be

perverse or unjustified.

21. It is submitted that for appointing a Trustee, the Board of Trustees would sit and a quorum is required to be fulfilled and minutes are required to be

recorded. The letter which is being treated as appointment by the petitioner is not even addressed to the Devasthan Department and merely declares

â??to whomsoever it may concern.â??

22. Learned counsel for the respondents has taken this CourtÂ to the letter to show that he was only assigned job on account ofÂ Mr. Manak Raj

Munot being of the old age of 85 years. The word used in the letter is â??auxiliary personâ?? which only means a person who is required to act on

behalf of the main person and was only an employee. He has also taken this Court to the letter issued to Mr. Sunil Dhadda which specifically mentions

him to work as Administrator and on a remuneration which could not be paid to him at the moment as the Trust is not in a position for paying any

remuneration. Thus, Mr. Sunil Dhadda was appointed on his consent to work without remuneration and as such was to be only treated as an

employee. With regard to the question of filing of appeal, learned counsel submits that all the persons who are interested are entitled to file appeal.

Immediately on dismissal of the appeal on account of abatement, the other interested persons had filed appeal which could not be said to be hit by

Order 22 Rule 9(3) CPC. Moreover, the appeals were preferred not only by Mr. Ajay Jain son ofÂ Mr. Manak Raj Munot but also by Mr. Balraj

Munot and Smt. Manju Surana who had not moved any application under Order 22 Rule 3 CPC but were interested persons. It is his submission that

the act of the appellants was only to grab powers of Trust which was refuted and opposed by the Settler Trustee. The Assistant Commissioner,

Devasthan without there being any authority, proceeded to conduct enquiry although there was no occasion to embark upon enquiry under Section 23

of the Act of 1959. The respondents No.3 and 4 were already Trustees in the Trust and were in know of the facts that at no point of time, the

appellants had been included as Trustees.

23. Having heard learned counsel for the parties and after taking into consideration the contents of the detailed order passed by the Commissioner,

Devasthan, this Court finds that the Trust was formed on 29/03/1973. The deed of Trust is in the form of indenture which reads as under:-

â??THIS Indenture made at JAIPUR, this 2t9h Â day of March, 1973 BETWEEN SHRI MANAK RAJ son of Late SHRI MADAN RAJ, Indian

Inhabitant of Jaipur, hereinafter called â??the Settlerâ? (Which expression shall mean and include, unless there is anything repugnant thereto or

inconsistent therewith, the said Shri Manak Raj, his heirs, executors and administrators) of the one part AND (1) Shri Manak Raj S/o Late Shri Madan

Raj of Jaipur (2) Mrs. Premlata- W/o Shri Manak Raj of Jaipur and (3) Shri Ramchandra Saxena S/o Late Shri Kamta Prasad of Bundi, all Indian

Inhabitants, hereinafter call the â??Trusteesâ? (Which expression shall, wherever it occurs in these presents mean and include, unless there be

anything in the context repugnant threto or inconsistent therewith, the Trustees or Trustee for the time being of these presents or the survivors or last

survivor of the Trustees their or his or her assigns and heirs executors administrators of such survivor and the Trustees for the time being of these

presents) of the other part.â??

24. The Trust was named as Rajasthan Welfare Trust and was with a charitable purpose. Paras 9, 14 and 15 of the Trust Deed provides as under:-

â??9. Whenever any Trustee shall resign, die or become insolvent or re to be discharged from or refuse or become unfit or incapable to act in the

Trusts and of powers in him reposed under these presents, then and in that case the surviving or continuing Trustees or Trustee for time being or the

executor or executors or administrators or administ of the last surviving or continuing Trustee or the Retiring Trustees by writing appoint any other

person or persons to be a Trustee or Trust in the place of the Trustee or Trustees so dying or becoming insolvent as aforesaid or refusing or becoming

unfit or incapable to act as aforesaid but so that the number of the Trustees for the time being shall not be less than three nor more than five.

14. There Shall be a quorum when two Trustees are present at any meeting and no business shall be transacted at any meeting of the Trustees unless

there is a quorum, the Trustees shall have power to pass resolutions by circular provided all the Trustees have signed the same.

15. Every question under these presents or any of the clauses hereof shall be determined by majority of the Trustees for the time being of these

presents and in the event of equality of votes the Chairman shall have a casting vote.â??

25. The contention of the petitioners with regard to the appeal to be preferred under Section 20 of the Act of 1959 within a period of two months and

that the appeals entertained by the appellate authority were delayed, does not have any force. Section 20 of the Act of 1959, which lays down

limitation, is only with regard to the order passed by the Assistant Commissioner under Section 19 of the Act of 1959 and not with regard to the order

passed by the Assistant Commissioner under Section 23 of the Act of 1959. While under Section 19 of the Act of 1959, the Assistant Commissioner

records his finding with regard to the enquiry conducted under Section 18 for registration of a trust, Section 23 of the Act of 1959 is with regard to the

order passed by the Assistant Commissioner for changes and thus, the limitation as provided under Section 20 of the Act of 1959 would have no

application for an appeal against the order passed under Section 23 of the Act of 1959. Thus, the argument that the appeals before the Commissioner

were belated does not hold good.

26. Secondly, it is also seen that an appeal against the order of Assistant Commissioner can be filed by any interested person and therefore,Â the

provisions of Order 22 Rule 9(1) CPC would not apply. The provisions of CPC would apply as per Section 69 of the Act of 1959 would strictly apply

only with regard to the proceedings held before the Court under the said Act. However, before the Commissioner or Assistant Commissioner, the

provisions of CPC would only apply with relation to four aspects as mentioned under Section 67 of the Act of 1959. In the circumstances, the

contention of learned counsel for the petitioners of application of Order 22 Rule 9(1) CPC would not apply to the appeal preferred before the

Commissioner against the order of Assistant Commissioner. It is also noted that not only the son Mr. Ajay Jain, who is also interested in the Trust, has

filed the appeal but Mr. Balraj Munot and Mrs. Manju Surana have also preferred separate appeals against the order of the Assistant Commissioner.

In the circumstances, the Commissioner is within his rights and powers to entertain the appeals which were preferred immediately after the appeal

preferred by the deceased Trustee Mr. Manak Raj Munot had been declared as abated.

27. As regards the facts, which have been noted by the Commissioner,

Devasthan in itsÂ lengthy order, suffice it to state that the Commissioner,

Devasthan has rightly found the Assistant Commissioner, Devasthan to have used excessive powers in declaring the petitioners as Trustees. Once

Mr. Manak Raj Munot had submitted letter to the Assistant Commissioner, Devasthan not to proceed on the Form No.8 and that he had no intention to

appoint the petitioners as Trustees, the Assistant Commissioner, Devasthan could not have on his own appoint or declare the petitioners as Trustees.

On perusal of the letters of Mr. Manak Raj Munot, the Settler Trustee, shows that he only intended the petitioners to work as employees of the Trust

and as his representative for performing the work of the Trust as he was old.

28. The submission of learned counsel for the petitioners that the petitioners had already been appointed as Trustees and therefore there was no

occasion to withdraw their names is without basis. An assumption cannot be made with regard to appointing of a Trustee. Either the Trustee has to be

appointed in terms of the provisions of the Trust Deed as quoted, or if the Court appoints a Trustee in terms of Section 40 of the Act of 1959. There is

no other provision under which the Assistant Commissioner, Devasthan could declare a person as Trustee of a Trust. The Commissioner, Devasthan

in the order impugned has rightly held that there was no such occasion and the observations made by the by the Commissioner, Devasthan of the

conduct of the Assistant Commissioner, Devasthan being dubious is made out and it would be appropriate for the Commissioner, Devasthan to take up

proceedings against such a person.

29. Learned counsel for the petitioners has relied upon the judgment rendered by the Supreme Court in the case of Bishan Das and others Vs. State

of Punjab and others: AIR 1961 SC 1570 to contend that a Trustee even of a Public Trust can be removed only by the procedure known to law. He

cannot be removed by an executive fiat. Even if the State proceeded on the footing that the Trust was a Public Trust, it should have taken appropriate

legal action for the removal of the trustee. However, the aforesaid judgment would have no application to the facts of the present case. The

petitioners have not been able to show that they were duly appointed as Trustees. Once it is held that, they were only appointed as

employees/representatives of Trustee, the question of their removal as Trustee does not arise.

30. Learned counsel for the petitioners also relied on the judgment rendered by the Supreme Court in the case of L. Janakirama Iyer Vs. P.M.

Nalakanta Iyer: 1962 AIR (SC) 633 to contend as under:-

â??18. Section 18 of the Trusts Act provides that when there are more trustees than one, all must join in the execution of the trust, except where the

instrument of trust otherwise provides. It is thus clear that all acts which the trustees intend to take for executing the trust must be taken by all of them

acting together. Therefore, there can be no doubt that if the validity of the alienations effected by the trustees falls to be considered only in the light of

Section 18 the fact that out of the three trustees only two have executed the sale deeds would by itself make the transactions invalid and would not

convey title to the alienees. This position is not in doubt.

20. As we have seen Section 48 contemplates that its provisions will not apply where the instrument of trust otherwise provides. In other words, if a

trust deed under which more trustees than one are appointed expressly provides that the execution of the trust may be carried out not by all but by one

or more then of course the matter would be governed by the special provision of the trust deed. The argument urged by the learned Attorney General

is that clause 23 of the trust deed in suit makes such a provision. Both the Courts below have rejected this plea but it is urged that the said conclusion

is based on a misconstruction of the relevant clause.â??

31. While the aforesaid proposition of law is respectfully accepted, the facts of the present case, as noted above, would show that there was no

appointment of the petitioners as Trustees either in terms of Trust Deed, as noted herein above, or in terms of the Public Trust Act. In view of the

findings of this Court that the Assistant Commissioner, Devasthan had no power available with him under Section 23 of the Act of 1959 to appoint the

petitioners as Trustees or declare them as Trustees and that there was no decision taken to appoint them as Trustees as per the Trust Deed by the

existing Trustees, the petitioners cannot claim themselves to be Trustees of the Rajasthan Welfare Trust.

32. In a recent judgment, though relating to CPC, the Apex Court in the case of Raj Kumar Bhatia Vs. Subhash Chander Bhatia : 2017(14) SCALE

355, has observed as under:-

â??The High Court has in the exercise of its jurisdiction under Article 227 of the

Constitution entered upon the merits of the case which was sought

to be set up by the appellant in the amendment. This is impermissible. Whether an amendment should be allowed is not dependent on whether the case

which is proposed to be set up will eventually succeed at the trial. In enquiring into merits, the High Court transgressed the limitations on its jurisdiction

under Article 227. In Sadhna Lodh v National Insurance Company, this Court has held that the supervisory jurisdiction conferred on the High Court

under Article 227 is confined only to see whether an inferior court or tribunal has proceeded within the parameters of its jurisdiction. In the exercise of

its jurisdiction under Article 227, the High Court does not act as an appellate court or tribunal and it is not open to it to review or reassess the evidence

upon which the inferior court or tribunal has passed an order.â??

33. Having noted above, this Court is also conscious of the fact that the writ jurisdiction of this Court under Articles 226 & 227 in relation to factual

aspects is very limited. It is not appropriate for a writ Court to embark upon a fissi enquiry. The order passed by the Commissioner does not suffer

from any illegality in law. Though different opinion can be inferred on the basis of the findings arrived at by the Commissioner in his appellate order.

34. Having noted the various provisions of the Act of 1959, this Court finds no reason to interfere with the detailed order passed by the Commissioner,

Devasthan impugned herein.

35. Consequently, both the writ petitions are dismissed.