

Parag Kumar @ Pitambarji and Ors Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Nov-26-2015

Appellant : Parag Kumar @ Pitambarji and Ors

Respondent : State and Ors

Judgement :

[1].IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Parag Kumar & ORS.versus State & ORS.S.B.Civil Writ Petition No.11190 of 2015
Date of Order ::: November 26, 2015 PRESENT HON'BLE Mr.JUSTICE
P.K.LOHRA Mr.Anand Purohit, Senior Advocate, assisted by Mr.C.D.Upadhyay,
for petitioneRs.Mr.Rajesh Choudhary, Dy.

Govt.

Counsel, for respondent No.1 to 3.

Mr.Tribhuvan Gupta and Mr.Usman Ghani, for respondent No.4.

***** BY THE COURT: PetitioneRs.the alleged trustees of respondent No.4 Public Trust, registered under the Rajasthan Public Trusts Act, 1959 (for short, Act of 1959).have laid this writ petition craving therein undermentioned reliefs: a.

To direct the respondent No.3 herein to decide the application preferred by the petitioners under the provisions of section 38 as expeditiously as possible more particularly within a period of four weeks from the date of direction issued by this Honble Court; b.

To declare that in the light of the consent decree dated 3-8-2014 Annex.No.3 passed by the Civil Court at Vadodara in Special Civil Suit No.316 of 2012 and [2].resolution passed by the respondent no.2 Trust being Resolution Nos.1 and 2 of 2014, the observations and adjudication recorded by the Civil Court while passing the consent decree dated 3-8-2014 would contemplate an inquiry within the meaning of section 23 of the Rajasthan Public Trusts Act, 1959 and may further be pleased to direct the Assistant Commissioner to incorporate the names of newly appointed trustees in the trust register as expeditiously as possible; c.

PENDING THE HEARING AND FINAL DISPOSAL OF THIS PETITION MAY BE PLEASED to restrain the Board of Trustees of the respondent no.4 trust herein from taking any policy decision and/or any other action till the application seeking restraining orders/directions under the provisions of section 40 of the Rajasthan Public Trusts Act, 1959 is decided by the competent civil court; d.

To grant any other appropriate and just relief In the writ petition, it is inter-alia averred that the affairs of the Trust are managed by family and decedents of original religious head Shri Vallabhacharyaji.

It is further averred that presently the trust is headed by its President Mr.Brijesh Kumar alias Vrajesh Kumar and some of the petitioners are his siblings and some family membeRs.It is also submitted in the writ petition that a dispute cropped up between Mr.Brijesh Kumar alias Vrajesh Kumar and petitioners No.1 & 2 vis--vis management and administration of various other temples owned by the family [3].and for which a civil suit was laid at Vadodara in the State of Gujarat which was finally decided.

The suit was decided in terms of compromise arrived at between the rival parties to settle the dispute perpetually, however, it appears that despite settlement of dispute by way of compromise the sense of discord and acrimony between

Mr.Brijesh Kumar alias Vrajesh Kumar and the petitioners is subsisting and that has prompted the petitioners to lay an application under Section 38 of the Act of 1959 before the second respondent Commissioner, Devasthan Department, Udaipur.

In the writ petition, it was inter-alia pleaded that despite laying petition under Section 38 of the Act of 1959 no effective proceedings are undertaken by the Commissioner Devasthan, therefore, requisite directions be issued in this behalf.

After issuance of notice by this Court, the second respondent Commissioner, Devasthan, Udaipur transferred the petition to Assistant Commissioner, i.e.third respondent, for deciding it in accordance with law.

The said order was made by second respondent Commissioner in adherence of the provisions under Section 38 of the Act of 1959.

[4].It appears that now Assistant Commissioner has taken up the matter and has issued the process.

It is also apprised by Mr.Tribuvan Gupta, learned counsel for the fourth respondent, that notices have been issued to Mr.Brijesh Kumar alias Vrajesh Kumar by the Assistant Commissioner indicating date of hearing as 3rd of December 2015, on which date he is required to submit his reply/explanation.

Mr.Anand Purohit, learned Senior counsel for the petitioners.has argued that the matter is pending since August 2015 and till date no effective proceedings have been undertaken by the respondent Assistant Commissioner, therefore, requisite directions be issued for deciding the application of the petitioners expeditiously in the interest of justice.

Learned Deputy Government, Mr.Choudhary, submits that the competent authority is already seized with the matter and requisite directions on petitioners application shall be issued after examining the matter within four corners of Section 38 of the Act of 1959.

Mr.Gupta has also reiterated the same submission and has further urged that as a matter of fact there is no delay on the part of the competent authority in considering the petition of the [5].petitioners.Having heard learned counsel for the parties, in my opinion, the issues falling within the four corners of sub- sec.(1) of Section 38 of the Act of 1959 are of vital importance and therefore such matters are required to be thrashed out in priority, otherwise it may defeat the very purpose of formation of a public trust.

The complete text of Section 38 reads as under: Sec.

38 - Application for directions: 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 managed or administered or (c) the direction of the Court is necessary for the administration 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.

[6].While entertaining application under Section 38 of the Act of 1959, the Assistant Commissioner is required to make an enquiry for recording its satisfaction about the fact whether original object of the public trust has failed; the trust property is not being properly managed or administered, or the direction of the Court is necessary for the administration of the public trust.

In case Assistant Commissioner is satisfied after making inquiry about existence of any one or all of these conditions, it may direct the 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.

As per definition of the Court under the Act of 1959, Court means the District Court concerned within whose jurisdiction the public trust and its properties are situated.

The fact remains that the jurisdiction under Section 38 is to be exercised on availability of contingencies incorporated in sub-sec.(1) of Section 38 of the Act of 1959.

In the considered opinion of this Court, the petition submitted by the petitioners deserves consideration with promptitude and accordingly the Assistant Commissioner, Devasthan Department, Udaipur is directed to make necessary inquiry as envisaged under Section 38 of the Act [7].of 1959, as expeditiously as possible, and pass appropriate order in this behalf strictly in accordance with law at the earliest, preferably within a period of six weeks from today.

The petition is accordingly disposed of.

(P.K.LOHRA).J.

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