

Mohan Raj Vs. the Assistant Commissioner

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Court : Rajasthan

Decided On : Feb-01-1980

Reported in : 1980WLN(UC)255

Judge : G.M. Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 524/74

Appellant : Mohan Raj

Respondent : The Assistant Commissioner

Advocate for Pet/Ap. : Mr. Parekh

Disposition : Petition allowed

Judgement :

G.M. Lodha, J.

1. Petitioner Mohan Raj claims himself to be owner of a plot of land situated in the bazar of village Knot, Tehsil Pali. He also claims possession. It is alleged that when ht started construction of a Pakka shop on the above land, non-petitioner no. 2 alleging himself to be a trustee of the temple Padamnathji and its properties filed an application to non-petitioner no. 1, Assistant Commissioner, Devasthan, Pali (SDO Pali), It was alleged by the petitioner that the land belongs to the temple of Padamnathji and the petitioner by making such construction wants to deprive the

temple from the right to possess this land. The non-petitioner no. 1 on this application passed an order for maintenance of status quo on the said plot and serving notice on the petitioner. The petitioner contested the right of the non-petitioner no. 1 to pass any order and also the factual allegations but all the objections of the petitioner were rejected by non-petitioner no. 1 and the ad-interim stay order dated 11-1-74 was extended and allowed to continue by order 1-2-74.

2. The petitioner has filed this writ application praying that the orders of non-petitioner no. 1 dated 11-1-74 and 1-2-74 and notice dated 11-1-74 should be quashed as they were patently without jurisdiction.

3. Mr. Parekh, learned Counsel for the petitioner submitted that the Assistant Commissioner of Devasthan, whose powers were being exercised by SDO had no Jurisdiction in any law either the Rajasthan Public Trust Act or otherwise, to take cognizance of this dispute, which was purely of a civil nature and either adjudicate or to pass a stay order. It was submitted that the impugned orders were patently without jurisdiction, and without any authority under any law.

4. Mr. V.N. Modi, the learned Counsel for the respondent No. 2 fairly and frankly submitted that though he has tried to study the entire Scheme and provisions of the Rajasthan Public Trust Act. It is not possible to point out any such provision where any authority or power has been given to the assistant Devasthan Commissioner to pass said orders.

5. I have considered the submission of the learned Counsel for the parties. It appears that the impugned orders for staying the construction. Which was being undertaken by the petitioner are patently without jurisdiction Under the provisions of the Rajasthan Public Trusts Act, the Assistant Devasthan Commissioner is not empowered to pass any such orders. The dispute essentially is in the nature of a civil dispute, about the title and possession of immovable property. Such a dispute can only be adjudicated by a competent civil court. I am, therefore, of the opinion that the impugned orders cannot be sustained.

6. The writ petition is, therefore accepted. The impugned orders dated 11-3-74 and 1-2-74 and the notice are quashed. The non-petitioner no. 1, Assistant

Commissioner, Devasthan Pali is restrained from passing any further orders in this dispute between the parties for adjudicating their title to the property. Of course, it will be open to the respondent to challenge the right of the opposite party and assert its own right if any in a civil court or any other court if so advised.

7. The writ application, therefore, succeeds as indicated above with out any order as to costs.

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