

Jaipur Shahar Hindu Vikas Samiti ... vs State Of Rajasthan Tr.Chief Sec.& Ors on 17 April, 2014

Equivalent citations: 2014 AIR SCW 3142, 2014 (5) SCC 530, AIR 2014 SC (SUPP) 1949, (2014) 2 WLC(SC)CVL 125, (2014) 5 SCALE 200

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Bench: N.V. Ramana, Ranjan Gogoi, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4593-4594 OF 2014
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NOS. 28021-28022 OF 2010

JAIPUR SHAHAR HINDU VIKAS SAMITI ... APPELLANT

VERSUS

STATE OF RAJASTHAN & ORS. ... RESPONDENTS

JUDGMENT

N.V. RAMANA, J.

Leave granted.

2. The present Civil Appeals arise out of the common order dated 4th May, 2010 passed by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur. The facts as culled out from the impugned order dated 4th May, 2010 are – The appellant herein filed a Public Interest Litigation i.e. D.B. (Civil) Writ Petition No. 2321/2006 alleging misappropriation of property of Galta Peeth/Thikana (3rd respondent herein); whether Mahanth appointed vide order dated 09.06.1943 was to administer the properties during his life time or there was a right of succession. D.B. (Civil) Writ Petition No. 5111 of 2004 was also filed by one Mahanth Ram Saran Das as a Public Interest Litigation, whereas D.B. (Civil) Writ Petition No. 6607 of 2004 was filed by Mahant Shri Ramodaracharya challenging the notifications dated 17.09.2004 whereby Chapter 10 of the Rajasthan Public Trust Act, 1959 was made applicable to the Trust and notification dated 18.09.2004 whereby a Committee under Section 53 of the Act was appointed in respect of the Trust. D.B. (Civil) Writ Petition No. 5650 of 2007 was filed by the Mandir Thikana Shri Galtaji. Though

D.B. (Civil) W.P. No. 6607 of 2004 and D.B. (Civil) W.P. No. 5650 of 2007 were filed before the learned single Judge, as all the issues revolve around Galta Peeth and properties of Thikana Galta, the writ petitions before the learned single Judge were called and a common order was passed by the High Court.

3. For better appreciation of facts, the relief sought in D.B. (Civil) W.P. No. 2321 of 2006, which is a Public Interest Litigation, the order which is impugned in the Civil Appeal @ SLP(C) No. 28021 of 2010 is extracted below:

(i) by an appropriate writ, order or direction in the nature whereof, this Hon'ble Court may be pleased to declare that the Galta Peeth / Thikana, its temples and properties are public properties and not private or individual properties and it may be dealt with in the manner public properties are dealt with;

and

(ii) by an appropriate writ, order or direction in the nature whereof, the Hon'ble Court may be pleased to restrain respondent No. 4 Shri Avadhesh Kumar or any of the other legal representative of late Shri Ramodaracharya as well as respondent No. 5 Shri Raghavacharya in any manner using, managing or interfering in the temples and properties of the Galta Peeth/Thikana and its accompanying temples;

(iii) by an appropriate writ, order or direction in the nature whereof, the State Government should be directed to take over control and management of the temples and properties of the Galta Peeth/Thikana and appoint a Board to manage the properties and temples of the Galta Peeth in line with the Vaishno Devi Shrine or Tirupati Balaji Temple or in any other manner which this Hon'ble Court may deem fit and proper; and

(iv) by further appropriate writ, order or direction in the nature whereof, the Hon'ble Court may be pleased to direct the State Government to submit a list of the properties of the Galta Peeth to the Hon'ble Court as well as the list of properties which had been sold by the former Mahant Shri Ramodaracharya or his family members including Shri Avadhesh Kumar and others.

4. The High Court, after taking into consideration the material placed before it, disposed of all the four writ petitions by a common order.

5. The High Court has framed two issues in the Public Interest Litigation. It summarized the first issue as to whether the properties of Galta Peeth have to be treated as public properties or private properties and whether the Mahant has right to alienate them?

The second issue is whether there is any right of succession to the Galta Peeth and its properties as per order dated 09-06-1943 appointing Mahant; and whether the Mahant was to administer the properties during his life time?

6. The High Court considered the provisions of Section 24 of the Rajasthan Public Trust Act, 1959 (hereinafter referred to as 'the Act') and also the objections filed by the petitioner in W.P. (Civil) No. 5111 of 2004 which was filed by one Mahant Ram Saran Das. The Advocate General brought to the notice of the High Court that the issue of succession of Mahant and also the issue of properties of Galta Peeth/Thikana are pending before the Assistant Commissioner, Devasthan Department, in Complaint Nos. 1 of 2004, 1 of 2006 and 1 of 2007. Respondent No. 4 in that writ petition consented for the disposal and adjudication of these issues by the Assistant Commissioner. Accordingly, the High Court, passed common order in the writ petitions in the following terms:

“We have considered rival submissions made by the learned counsel for the parties and perused the record.

The issues raised in two Public Interest Litigations have been narrated while dealing with the arguments of learned counsel for the petitioners. The first issue is regarding nature of appointment of Mahant in the year 1943. As to whether the post of Mahant will go in succession to the legal heirs in view of the fact that late Mahant Ramodaracharya is no more. The other issue is that as to whether the property of Galta Peeth/Thikana is public property or property belonging to individual.

According to us, both the issues are pending consideration before the Assistant Commissioner, Devasthan Department as it has been admitted by the learned counsel for the respondent No. 6 (Avdesh Kumar), who is presently holding the post of Mahant. In view of aforesaid, Public Interest Litigations can be disposed of as one and the same issue cannot be decided in Public Interest Litigation, when statutory enquiry under Section 24 of the Act of 1959 is pending for consideration before the Assistant Commissioner, Devasthan Department.

In view of aforesaid, we are of the opinion that the issues raised before us would be decided by the Assistant Commissioner, Devasthan Department after hearing all the parties and in this regard, the petitioners in the writ petition No. 2321/2006 would be at liberty to participate in the hearing by making a proper application and would further be at liberty to substantiate their grounds by submitting necessary documents.

... .. Learned counsel Shri S.R. Bajwa appearing for Respondent No. 6 in Writ Petition No. 5111 of 2014 further submits that they have no objection if the issue of succession of Mahant so as the issue as to whether the property of Galta Peeth/Thikana is individual property or public property is decided by the Assistant Commissioner and further if the petitioner in the Writ Petition No. 2312/2006 makes an application and participate in the hearing, they have no objection.

... .. We expect from the Assistant Commissioner, Devasthan Department that he will look into the matter entirely and thereupon record his finding by a speaking order while deciding both the issues. It goes without saying that whatever is the outcome of the order passed by the Assistant Commissioner, Devasthan Department, the consequences will follow.

With the aforesaid observation, both the writ petitions by way of Public Interest Litigation are disposed of.”

7. The High Court has dismissed D.B. (Civil) W.P. No. 5650 of 2007 filed by Mandir Thikana Shri Galtaji, as withdrawn basing on the submission of the learned counsel that in the light of the order passed in Public Interest Litigations, petitioner may be permitted to withdraw the writ petition with a liberty to take pleas before the Assistant Commissioner, Devasthanam Department.

8. D.B. (Civil) W.P. No. 6607 of 2004 was dismissed as withdrawn basing on the submission made by the counsel for the petitioner that the term of the Committee concerned was only five years and which has come to an end in the year 2009, and hence the writ petition may be rendered infructuous and the petitioners be given liberty to raise other issues about the notification which was issued under Chapter 10, if need so arises.

The High Court observed that – “It is agreed by all the parties that till the matter is decided by the Assistant Commissioner, Devasthan Department, they will maintain status quo in respect of the office of Mahant as well as regarding property of Galta Peeth/Thikana.”

9. Aggrieved by the order passed in D.B. (Civil) W.P. No. 2321 of 2006, Civil Appeal @ SLP(C) No. 28021 of 2010 was filed and whereas against the order passed in D.B. (Civil) W.P. No. of 6607 of 2004 which was filed by the father of the 4th respondent herein, wherein the appellant herein was not a party, has sought leave of the Court and preferred Civil Appeal @ SLP(C) No. 28022 of 2010 on the ground that the High Court without going into the merits, rendered the matter infructuous and which resulted in miscarriage of justice and irreparable injury to the public interest. Accordingly, these two appeals are placed before us, which arise out of a common order of the High Court.

10. We have heard the counsels at length. It is mainly contended by the learned counsel appearing for the appellant that the writ petitions were disposed of by the High Court without considering any of their contentions and particularly the reliefs sought in writ petitions, namely (i) a declaration to the effect that Galta Peeth/Thikana, its temples and properties are public properties; (ii) a restraint order against legal representatives of deceased Ramodaracharya, including Respondent No. 4 (the present Mahant) from interfering with the management of the Galta Peeth;

(iii) a direction to the State Government to take over the management of the Galta Peeth; and (iv) call for a list of its properties and the properties sold by the deceased Ramodaracharya and his family members.

11. He further contended that even though, the above reliefs were prayed for, but the High Court, without considering the public interest involved, in a casual manner, has disposed of the writ petition. The High Court has failed to take into consideration the material aspect in D.B. (Civil) W.P. No. 6607 of 2004 filed by the father of Respondent No. 4 and without going into the merits, simply rendered the matter infructuous. The reason given by the High Court for its disposal is that the term of five years of the Committee of Management appointed by the Government has come to an end

and hence the matter has become infructuous and no cause survives. In fact, by an interim order of the Court, the Committee was prevented from discharging its duties and it did not function for a period of five years. In view of Section 53 of the Act, the Managing Committee shall function till such time permanent arrangement is made for the management of the Trust in question or in the alternative, the State Government may be directed to appoint another Managing Committee comprising independent persons.

12. Another contention advanced by the counsel was that the reliefs sought in the writ petition cannot be considered by the Assistant Commissioner in view of the fact that the Assistant Commissioner does not have such jurisdiction to decide the issues raised.

13. To substantiate his contention, the learned counsel submitted that as per the provisions of the Act, it is the Court within the meaning of sub-section (6) of Section 2 of the Act, which has to appoint the members of the Trust. But, the 4th respondent, himself, nominated the members of the Trust and usurped the office of the Trust without any authority of law. Under Section 41 of the Public Trust Act, he has to apply to the concerned Court and under Section 43 it is the power of the Court to appoint the trustees with regard to the custom or usage and, as per the provisions of Section 53(1) of the Act a committee of management has to be appointed in place of the Respondent No.4 by the State to protect the properties of the Galta Peeth and the Respondent No.4 cannot appoint his own trustees and the State Government has to appoint the working trustee in accordance with the Act.

14. During the pendency of the reconstitution of the Committee of Management under Section 53 of the Act, a direction to the State Government was sought to appoint a Managing Committee of independent persons to protect the interests of the trust. He contended that the order of the High Court disposing of the writ petition was unmindful and has resulted in serious miscarriage of justice and irreparable injury to public interest. Under Section 53 of the Act, the Government is bound to appoint another Committee or re-appoint the erstwhile members of the Committee. The High Court has created a vacuum not contemplated by the Act, which is against public interest.

15. In support of his contentions, learned senior counsel for the appellant has relied upon the decisions of this Court in Seth Badri Prasad Vs. Seth Nagarmal & Ors. (1959) Supp. 1 SCR 769; Shehla Burney (Dr.) Vs. Syed Ali Moosa Raza & Ors. (2011) 6 SCC 529; Rural Litigation and Entitlement Kendra Vs. State of U.P. (1989) Supp 1 SCC 504; Padma Vs. Hiralal Motilal Desarda & Ors. (2002) 7 SCC 564 and Bangalore Medical Trust Vs. B.S. Muddappa & Ors. (1991) 4 SCC 54.

16. In addition to the oral submissions, learned senior counsel for the appellant has also placed before us detailed written submissions and chronology of events from 15th century onwards about the formation of the trust to till date and had taken us through various provisions of the Act and also placed the pedigree of the Mahants starting from the founder Mahant and submitted that submission based on statutory provision can be raised at any stage.

17. Respondent No. 4 filed an interlocutory application raising preliminary objections about the maintainability of these appeals and narrated the earlier litigation. While the D.B. (Civil) W.P. No.

2321 of 2006 was pending, the High Court, by an interim order dated 4th May, 2007, restrained the Respondent No. 4 herein to deal with the properties of the Galta Peeth as a working trustee. Aggrieved thereby, Respondent No. 4 filed a Special Leave Petition before this Court. Consequently it became Civil Appeal No. 3746 of 2009.

18. During the pendency of Civil Appeal No. 3746 of 2009, the Writ Petitions before the High Court were disposed of on 4-5-2010 holding that since the issues raised are already pending consideration before the Assistant Commissioner, Devasthan Department the parties may raise their grievances before him. Accordingly, Civil Appeal No. 3746 of 2009 filed against interim order of the High Court, was also dismissed by this Court on 08.07.2013 as having become infructuous.

19. It is contended by the learned counsel for the Respondent No. 4 that the appellant has misused the pendency of Civil Appeal No. 3746 of 2009. Taking advantage of the pendency of Civil Appeal No. 3746 of 2009, the appellant has filed the present appeals. The appellant moved an application before this Court for dismissal of Civil Appeal No. 3746 of 2009 as it has become infructuous in view of the impugned order of the High Court. But, deliberately and intentionally the appellant did not move any application for formal dismissal in the present appeals, though they too have become infructuous.

20. Relying upon the order of the Division Bench of the High Court, it is contended that after the disposal of the writ petition, as per the directions of the High Court, the appellant herein has impleaded himself and filed objections before the Assistant Commissioner in the statutory appeal. Taking into consideration the provisions of Sections 21, 38 and 41 of the Act, the Assistant Commissioner rejected the same by three separate speaking orders dated 28th March, 2013. Against those orders, the appellant has already filed appeals before the Commissioner, which are pending for consideration. Hence these Civil Appeals are not maintainable.

21. Apart from preliminary objections, learned counsel appearing for the respondents addressed on the main issues also and relied upon different provisions of the Act. The counsel brought to our notice that in fact as early as on 19-5-1928 itself a list of properties of Galta Peeth was drawn up, including some of the private properties of the Mahant i.e. residential house etc. Thereafter, a series of legal proceedings have taken place between the Government, private parties and the Galta Peeth and their rights are crystallized in the respective litigations. According to him, the appellants have again raked up the issue in the guise of Public Interest Litigation, which was already subject matter of dispute in the earlier round of litigation.

22. It is also stated by the counsel that after the Act has come into force, the Mahant submitted a list of properties on 25-10-1962 to the Jagir Commissioner wrongly showing some of his personal properties as trust properties and this list of properties was the same as submitted in 1928. It is also prayed before us that on 31st December, 1962 the Mahant made an application for registration of the Mandir Thikana Shri Galtaji as public trust under the Act and made it clear that the mode of succession to the office of Trustee will be by way of 'custom and usage'. The said trust was registered by the Assistant Commissioner on 26th April, 1963. It is also contended that in the list of trust properties which were also submitted along with the application, and which list became final, the

property in question has not been shown as trust property and the said list has never been questioned.

23. Relying upon several documents as well as counter affidavit and provisions of the Act, it is contended that in view of the fact that the issues are pending before the competent authority, subsequent orders passed by the Assistant Commissioner against which appeals are pending before the Commissioner, there is no need for this Court to entertain these appeals and they have to be dismissed as the appellant cannot litigate simultaneously before the appellate authority and this Court. It is also contended that there is no allegation against Avadesh Kumar (Respondent No.4) who is the present Mahant and in view of the pendency of the appeals before the Commissioner, the appellant cannot come before this Court and misuse the forum in the guise of Public Interest Litigation.

24. To substantiate his arguments, learned counsel relied on the Judgments of this Court in Guruvayoor Devaswom Managing Committee & Anr. Vs. C.K. Rajan & Ors. (2003) 7 SCC 546 and Church of North India Vs. Lavajibhai Ratanjibhai & Ors. (2005) 10 SCC 760. A counter affidavit has been filed by the Assistant Commissioner of behalf of the State of Rajasthan stating that the appellant is trying to confuse the issues and supported the judgment of the High Court in all respects and further stated that the present appeals are not maintainable

25. In view of the extensive arguments submitted on behalf of either side, the following issues fall for consideration before this Court:

1. Whether the High Court was right in relegating the parties to the Assistant Commissioner without going into the merits and legal issues involved in the case?
2. Whether the Assistant Commissioner has got the authority and jurisdiction under the Act to deal with complicated issues involved in the matter?
3. Whether the appellant herein is aggrieved by the order passed in Writ Petition (C) No. 6607 of 2004, wherein the writ petition was dismissed as infructuous?

26. Before we deal with the above issues, it is necessary to examine the relevant provisions of the Rajasthan Public Trust Act, 1959 which came into force w.e.f. 1st July, 1962.

Chapter 5 of the Act covers Sections 16 to 29 and it deals with Registration process of a public trust. As per Section 16, the Assistant Commissioner shall be in charge of the registration and he maintains a register. Section 17 explains the procedure for registration of public trusts which reads thus:

Sec. 17 - Registration of public trust:

1. Within three months from the date of the application of this section to a public trust or from the date on which a public trust is created whichever is later, the

working trustee thereof shall apply to a Assistant Commissioner having jurisdiction for the registration of such public trust.

2. The Assistant Commissioner may, for reasons to be recorded in writing, extend the period prescribed by Sub-Sec. (1) for the making of an application for registration by not more than two years.

3. Each such application shall be accompanied by such fee if any, not exceeding five rupees, and to be utilised for such purpose, as may be prescribed.

4. The application shall be in such form as may be prescribed and shall contain the following particulars, namely: -

i) the origin (so far as known), nature and object of the public trust and the designation by which the public trust is or shall be known;

ii) the place where the principal office or the principal place of business of the public trust is situated;

iii) the name and addresses of the working trustee and the manager;

iv) the mode of succession to the office of the trustee;

v) the list of the movable and immovable trust property and such description and particulars as may be sufficient for the identification thereof;

vi) the approximate value of the movable and immovable property;

vii) the gross average annual income derived from movable and immovable property and from other source, if any, based on the actual gross annual income during the three years immediately preceding the date on which the application is made or of the period which has elapsed since the creation of the trust, whichever period is shorter, and, in the case of a newly created public trust the estimated gross annual income from all such sources;

viii) the amount of the average annual expenditure in connection with such public trust estimated on the expenditure incurred within the case of a newly created public trust, the estimated annual expenditure in connection with such public trust;

ix) the address to which and communication to the working trustee or manager in connection with the public trust may be sent;

x) such other particulars as may be prescribed; Provided that the rules made may provide that in the case of any or all public trusts it shall not be necessary to give the

particulars of the trust property of such value and kind as may be specified therein.

5. Every application made under sub-section (1) shall be signed and verified in accordance with the manner laid down in the code of Civil Procedure, 1908 (Central Act v if 1908) for signing and verifying plaints. It shall be accompanied by a copy of the instrument of trust (if such instrument has been executed and is in existence) and, where the trust property includes immovable property entered in a record of rights, a copy of the relevant entries relating to such property in such record of rights shall also be enclosed.

6. No Assistant Commissioner shall proceed with any application for the registration of a public trust in respect of which an application for registration has been filed previously before any other Assistant Commissioner, and the Assistant Commissioner before whom the application was filed first shall decide which Assistant Commissioner shall have jurisdiction to register the public trust.

7. An appeal against the order of the Assistant Commissioner before whom the application was filed first, given under sub-section (6) may be filed within sixty days before the Commissioner and, subject to the decision on such appeal, the orders of the Assistant Commissioner under sub-section (6) shall be final.

Thus, Section 17 mandates that within three months from the date of enforcement of this Section to a public trust, the working trustee can make an application to the Assistant Commissioner, in the prescribed form for registration. Sub-Section (4) of Section 17 prescribes the particulars which shall contain in the application so made. Clause (v) of sub-Section (4) specifies that the application shall contain a list of movable and immovable trust property. Under sub-Section (7) an appeal shall lie before the Commissioner against the order of the Assistant Commissioner within a period of sixty days.

27. Section 18 describes the procedure of inquiry to be undertaken by the Assistant Commissioner for registration of the public trust. The said Section reads thus:

Sec. 18 - Inquiry for Registration:

1. On receipt of an application under Sec. 17 or upon an application made by any person having interest in a public trust or on his own motion, the Assistant Commissioner shall make an inquiry 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 objects of such trust;
- vii) the amount of gross average annual income and expenditure of such trust: and
- viii) the correctness or otherwise of any other particulars furnished under sub-section (4) of 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 person having interest in the public trust inquiry to prefer within sixty days objection, if any, in respect of such trust.

28. On completion of the inquiry as contemplated under section 18, the Assistant Commissioner shall record his findings as provided under Section 19 of the Act. Section 20 of the Act makes the provision for Appeal and reads thus:

“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.”

29. Section 21 of the Act prescribes that the Assistant Commissioner shall cause entries to be made in the register and under sub-section (2) the entries so made shall become final and conclusive. As per Section 22, if anyone is aggrieved by any entry, he may institute a civil suit. If there is any necessity for changes in the entries so recorded in the register, the working trustee can make an application under Section 23(1) to the Assistant Commissioner. After holding an inquiry under Section 23(2) the Assistant Commissioner can change the entries. Section 24 enables the Assistant Commissioner to undertake further inquiry, at any time after the entries are made under Section 21 or 23. The said Section reads thus:

24. Further inquiry by Assistant Commissioner:

If, at any time after the entries or amended entries are made in the register under Section 21 or section 23, it appears to the Assistant Commissioner that any particulars relating to any public trust, which was not the subject matter of the inquiry under section 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 at, 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.

30. It is the duty of the Auditor under Section 34 of the Act, to prepare balance sheet of the public trust and to report irregularities, if any, and the Auditor has to forward a copy thereof to the Assistant Commissioner. It is further the duty of the Auditor to mention in the report in case of any irregularity, illegality or improper expenditure, failure or omission to recovery moneys or other property belonging to the public trust or of loss or waste of money or other property thereof.

31. Chapter 8 of the Act deals with Management of trust property. Section 38 therein provides for issuing directions by the Assistant Commissioner on an application filed by any person having interest in a public trust or otherwise 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 can direct inquiry after giving the working trustee an opportunity of being heard.

32. Section 39 provides that where the Assistant Commissioner rejects an application, fails or refuses to make an application to the Court, an appeal lies to the Commissioner. On receipt of an application made under Sections 38 or 39, the Court shall consider and pass appropriate orders under Section 40 of the Act. Section 41 envisages that if the present working trustee of a public trust, for any reasons mentioned therein, can make an application to the Assistant Commissioner having jurisdiction seeking permission to apply to the Court for appointment of a new working trustee and the Court under Section 43 of the Act can make inquiry and pass an order.

33. Section 49 of the Act empowers the Assistant Commissioner to ask for explanation of the working trustee. If the Assistant Commissioner, on a perusal of the report of the auditor made under Section 34, is of the opinion that material defects exist in administration of the public trust, he may require the working trustee to submit an explanation thereon within such period as he thinks fit.

34. Some special provisions are provided to public trusts under Chapter

10. Section 52 emphasizes how this chapter is applied to a public trust.

It provides that this Chapter applies to every public trust which has a gross annual income of Rs. 1.00 lakh or more or is maintained or managed by the State Government. Sub-section (2) provides that it is the duty of the State Government to publish in the official gazette a list of the public trusts to which this chapter applies. The amended sub-section (3) makes it clear that for the purpose of maintaining public order, the State Government may suspend by notification in the official gazette, the application of this Chapter to any public trust or the procedure for constitution of committee of

management under this Chapter for such period as may be specified in such notification.

35. Section 53 as amended on 9th May, 2007 provides that if the State Government is satisfied with the public interest, it 'may', by notification in the official gazette, vest the management of a public trust in a committee of management to be constituted by it. Before the said amendment, the old Act contained the word 'shall' in place of 'may'. Thus, before the amendment, it was compulsory for the Government to constitute a committee which was diluted by introducing the provision as 'may'.

36. Sub-section (5) of Section 53 states that the Committee of Management which is to be appointed by the Government, must include, the hereditary trustee in case of a public trust whereas in case of a Math, the head thereof as the Chairman of the Committee of Management.

37. Whenever the State Government decides to appoint a Committee of Management under Section 53, a notice shall be issued under Section 54 to the hereditary trustee or the head of the Math, as the case may be, about the intention of the Government to constitute the committee and shall hear their objections, if any. Under Section 55 of the Act one can be disqualified from being considered as a member of the Committee of Management. According to Section 56, the term of office of the committee is five years.

38. Section 67 of the Act provides that the officers holding enquiries shall have the power of civil Court. The Section reads thus:

In holding enquiries under the 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) trying a suit

—

- a) Proof of facts by affidavits;
- b) Summoning and enforcing the attendance of any persons and examining him on oath;
- c) Compelling the production of documents; and
- d) Issuing of Commissions.

39. From the above, it is evident that all the officers holding enquiry under the Act i.e. the Commissioner and Assistant Commissioner, have the power of a civil Court in respect of proof of facts by affidavits, for summoning and enforcing the attendance of any person and examining him on oath and further compelling the production of documents and issue of Commissions.

40. A detailed examination of the Act reveals that it is a self-contained Act. We have thoroughly examined the Sections and each and every provision of law that is relevant for the purpose of the case on hand and find that the Act has provided appropriate mechanism (a) to deal with the

registration of a public trust;

(b) making of entries in the register, their correction and inquiry, if any; (c) duties of auditor and inspection of balance sheet by any person interested in such public trust; (d) application by any person seeking directions from the Assistant Commissioner to appoint a new working trustee on the ground that the properties of the trust are not being properly managed or administered; (e) power of the Assistant Commissioner to ask for explanation of the working trustee about the administration of the trust; and (f) in case of mismanagement, power of the State Government to appoint a new committee of management etc.

41. Now in the light of the above provisions of the Rajasthan Public Trust Act, we would like to deal with the submission of the counsel on either side and the legality or otherwise of the order passed by the High Court.

It appears from the material placed before us that there is a long standing dispute with regard to the properties of the Galta Peeth/Thikana which was established in the 15th century by one Mahant Shri Krishnadas Payohari. Later on 06.07.1943, Ramodaracharya, the father of respondent No.4 herein was appointed as Mahanth by the ruler. The Rajasthan Public Trusts Act 1959 has come into force w.e.f. 01.07.1962. The case of the appellant is that on 25.10.1962, the Mahant submitted a list of properties to the Jagir Commissioner showing some of the properties of the Trust as his personal properties. Then the Mahanth has executed gift deeds in favour of his wife and sons. On 31.12.1962, Mahant Ramodaracharya made an application for registration of the Mandir Thikana Shri Galtaji as a Public Trust under the Act. In the application, as regards the mode of succession of the Office of the Trustee, he stated that it would be "by custom and usages". On 26.04.1963, the Assistant Commissioner passed order registering the Trust. Later on, a series of litigation went on between the parties with regard to the properties of the Trust/Math. When the Government appointed a five-Member Committee for proper management of the Trust, challenging the same D.B. (Civil) W.P. No.6607 of 2004 was filed. When the Assistant Commissioner re-opened the issue of succession, 4th respondent herein filed D.B. (Civil) W.P. No.5650 of 2007. Two Public Interest Litigations i.e. D.B. (Civil) W.P. No. 5111 of 2004 and D.B. (Civil) W.P. No. 2321 of 2006 were filed seeking to declare (a) the properties are trust properties, (b) the mode of succession, (c) direct the Government to take over the management of the trust and (d) to appoint a Board to manage the properties in line with Vaishno Devi Shrine or Tirupati Balaji Temple.

42. The above narrated facts disclose that either in the Public Interest Litigation or in the private civil litigation, the entire issues revolve around the properties of Galta Peeth and the mode of succession to the Peeth. Already in respect of these issues, by the time, these writ petitions were filed, statutory enquiry application Nos. 1/2004, 1/2006 and 1/2007, under Section 24 of the Act, were pending before the Assistant Commissioner. Hence, the High Court felt that those issues can be effectively decided by the Assistant Commissioner, and accordingly, permitted the appellant to implead himself in the pending applications before the authority. In view of the statutory provisions, as narrated and discussed by us supra, which give extensive powers to the Assistant Commissioner and Commissioner, in some cases the power of the civil Court to effectively decide the issues of the Public Trust, by providing effective mechanism, we are unable to agree with the contentions

advanced by the learned counsel that the Assistant Commissioner has no jurisdiction to adjudicate the disputes involved, because the Act clearly demonstrates the power and jurisdiction of the Assistant Commissioner in deciding the issues pertaining to public trust and particularly the issues raised before us.

43. Apart from that, the appellant herein has impleaded himself in the applications pending before the Assistant Commissioner which were disposed of by him vide orders dated 28.03.2013, and against those orders of the Assistant Commissioner, it appears that the parties have preferred appeals as provided under the Act. The appellant having availed the alternative remedy available under the Act, however, approached this Court by way of these Civil Appeals. In our opinion, the appellant cannot be permitted to avail two remedies simultaneously, and such conduct of the appellant is abuse of process of Court. It is no doubt settled law that mere availability of alternative remedy cannot be a ground to reject the relief in a Public Interest Litigation, but in the facts and circumstances of the case, namely the history of the case, right from 15th century, the long standing litigation, the voluminous record, etc. involving disputed questions of facts and law, we are of the considered opinion that adjudication of such disputes is not possible in a Public Interest Litigation, and the remedy is to get such disputes adjudicated by a fact finding authority as enumerated under the Act, which remedy is not only alternative, but also effective, because the parties can put a quietus to the litigation once for all. Hence, in view of our above discussion, we are of the considered opinion that the High Court, by the impugned order, was justified in relegating the parties to the Assistant Commissioner, before whom the applications are pending adjudication. The appellant having got impleaded himself in the applications before the Assistant Commissioner and having invited an order from the High Court, now cannot be permitted to question the said order of the High Court. Accordingly, the first and second issues are answered.

44. Third issue that requires our consideration is whether the appellant herein is aggrieved by the orders passed in D.B. (Civil) W.P. No. 6607 of 2004, which was dismissed as infructuous. The case of the appellant is that the High Court should not have dismissed the writ petition as withdrawn basing on the submission that the term of the Committee has expired. It ought to have decided the issue on merits. By this order, the High Court has created a vacuum not contemplated by the Act, which is against Public Interest, in view of the status quo orders passed by the Court, the Committee could not function its full period. Hence, the Committee has to be allowed to function till a permanent Committee is appointed by the Government.

45. We are also not able to appreciate the argument advanced by the learned counsel for the appellant for reason that D.B. (Civil) W.P. No. 6607 of 2004 was filed by the father of Respondent No.4 herein questioning the constitution of the Committee. When the Court directed the parties to appear before the Assistant Commissioner for proper adjudication of the issues as the five-year term of the Committee expired, the 4th respondent sought permission of the Court and withdrew the writ petition, with a liberty to raise all the issues before the authority. The appellant herein who was not a party to D.B. (Civil) W.P. No. 6607 of 2004 has not chosen to implead himself nor objected to the withdrawing of the writ petition when the order was passed in his presence. He is taking such an objection and such plea for the first time before this Court. He relied on *Shehla Burney (Dr.) Vs. Syed Ali Moosa Raza & Ors.* (2011) 6 SCC 529; that on technical objection, this Court cannot reject

to grant relief to the appellant in this Public Interest Litigation. There is no dispute with regard to the legal proposition that technicalities should not come in the way of the Court in granting relief in a Public Interest Litigation, but application of a legal proposition depends upon the facts and circumstances of each case.

Here we deem it appropriate to extract Section 53 which reads thus:

Sec. 53 - Management of public trusts to which this chapter applies:

1. Notwithstanding anything contained in any provision of this Act or in any law, custom or usage, if the State Government is satisfied that it is expedient in public interest so to do, it may, by notification in the official Gazette, vest the management of a public trust to which this Chapter applies in a committee of management to be constituted by it in the manner hereinafter provided from such date as may be appointed by it in this behalf.

2. On or before the date so fixed under Sub-Sec. (1) in respect of a public trust, the State Government shall subject to the provision contained in Sec. 54, constitute by notification in the official Gazette a Committee of management thereof under such Committee shall be deemed to be the working trustee of the said public trust and its endowment.

Provided that upon the combined request of the trustee of and persons interested in several public trusts representing the same religion or persuasion, the State Government may constitute a Committee of management for all of them, if their endowments are situated in the same city, town or locality.

3. Every Committee of management constituted under sub-sec. (2) shall be a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property subject to such conditions and restrictions as may be prescribed and may by the name specified in the notification under sub-section (2) sue and be sued.

4. A committee of management shall consist of a Chairman and such even number of members not exceeding ten and not less than two as the State Government may determine.

5. The Chairman and members of a committee of management shall be appointed by the State Government by notification in the official Gazette from amongst –

(a) trustee of public trusts representing the same religion or persuasion and having the same objects, and

(b) person interested in such public trusts or in the endowments thereof or belonging to the denomination for the purpose of which or for the benefit of whom the trust was founded, in accordance with the general wishes of the person so interested so far as such wishes can be

ascertained in the prescribed manner.

Provided that in the case of a public trust having a hereditary trustee, such trustee, and in the case of a Math, the head thereof, shall be the Chairman of the committee of management, if he is willing to serve as such.

46. In this case, a Committee was constituted pursuant to notification dated 18.09.2004, and the term of the Committee expired on 17.09.2009, and even though four years have passed from the date of expiry of the term of the Committee, the Government has not chosen to appoint a fresh Committee. The appointment of the Committee invoking Section 53, depends upon the satisfaction and necessity felt by the Government. It is brought to our notice that the notification was issued by the Government invoking unamended Section 53 of the Act. The said Section has now been amended on 12.10.2007, where the Government was given discretion to appoint or not to appoint the Committee. We have gone through the amended Section 53 of the Act wherein the word 'may' has been substituted in the place of 'shall'. The Assistant Commissioner has already passed an order and the same is subject matter of appeal before the Commissioner. In view of the same, we are not able to appreciate the contention of the counsel that a permanent Committee has to be appointed to look after the management of the Galta Peeth, and such contention, deserves no consideration by this Court, and is accordingly rejected, and further hold that the order passed by the High Court in D.B. (Civil) W.P. No. 6607 of 2004 is perfectly valid. Accordingly, issue No.3 is answered.

Under the circumstances, we cannot give any direction to the Government to invoke Section 53 for appointment of a Committee of Management to the trust.

47. The scope of Public Interest Litigation is very limited, particularly, in the matter of religious institutions. It is always better not to entertain this type of Public Interest Litigations simply on the basis of affidavits of the parties. The public trusts and religious institutions are governed by particular legislation which provide for a proper mechanism for adjudication of disputes relating to the properties of the trust and their management thereof. It is not proper for the Court to entertain such litigation and pass orders. It is also needless to mention that the forums cannot be misused by the rival groups in the guise of public interest litigation.

48. We feel that it is apt to quote the views expressed by this Court in Guruvayoor Devaswom Managing Committee (supra) wherein this Court observed :

“It is possible to contend that the Hindus in general and the devotees visiting the temple in particular are interested in proper management of the temple at the hands of the statutory functionaries. That may be so but the Act is a self-contained Code. Duties and functions are prescribed in the Act and the rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance. The State should be asked to look into the grievances of the aggrieved devotees, both as *parens patriae* as also in discharge of its statutory duties.

... .. The Court should be circumspect in entertaining such public interest litigation for another reason. There may be dispute amongst the devotees as to what practices should be followed by the temple authorities. There may be dispute as regard the rites and rituals to be performed in the temple or omission thereof. Any decision in favour of one sector of the people may hurt the sentiments of the other. The Courts normally, thus, at the first instance would not enter into such disputed arena, particularly, when by reason thereof the fundamental right of a group of devotees under Articles 25 and 26 may be infringed. Like any other wing of the State, the Courts also while passing an order should ensure that the fundamental rights of a group of citizens under Articles 25 and 26 are not infringed. Such care and caution on the part of the High Court would be a welcome step.

... .. When the administration of the temple is within its control and it exercises the said power in terms of a Statute, the State, it is expected, normally would itself probe into the alleged irregularities. If the State through its machinery as provided for in one Act can arrive at the requisite finding of fact for the purpose of remedying the defects, it may not find it necessary to take recourse to the remedies provided for in another statute. It is trite that recourse to a provision to another statute may be resorted to when the State finds that its powers under the Act governing the field is inadequate. The High Courts and the Supreme Court would not ordinarily issue a writ of mandamus directing the State to carry out its statutory functions in a particular manner. Normally, the Courts would ask the State to perform its statutory functions, if necessary within a time frame and undoubtedly as and when an order is passed by the State in exercise of its power under the Statute, it will examine the correctness or legality thereof by way of judicial review”.

49. The concept of Public Interest Litigation is a phenomenon which is evolved to bring justice to the reach of people who are handicapped by ignorance, indigence, illiteracy and other down trodden people. Through the Public Interest Litigation, the cause of several people who are not able to approach the Court is espoused. In the guise of Public Interest Litigation, we are coming across several cases where it is exploited for the benefit of certain individuals. The Courts have to be very cautious and careful while entertaining Public Interest Litigation. The Judiciary should deal with the misuse of Public Interest Litigation with iron hand. If the Public Interest Litigation is permitted to be misused the very purpose for which it is conceived, namely to come to the rescue of the poor and down trodden will be defeated. The Courts should discourage the unjustified litigants at the initial stage itself and the person who misuses the forum should be made accountable for it. In the realm of Public Interest Litigation, the Courts while protecting the larger public interest involved, should at the same time have to look at the effective way in which the relief can be granted to the people, whose rights are adversely affected or at stake. When their interest can be protected and the controversy or the dispute can be adjudicated by a mechanism created under a particular statute, the parties should be relegated to the appropriate forum, instead of entertaining the writ petition filed as Public Interest Litigation.

50. In view of the above discussion and the law laid down by this Court and particularly taking into consideration that the appellant has already availed statutory remedies and the appeals are still pending before the Commissioner, we do not find any reason to interfere with the impugned order.

51. Accordingly, the appeals fail and are dismissed with no order as to costs.

.....CJI.

(P. SATHASIVAM)

.....J .

(RANJAN GOGOI)

NEW DELHI,
APRIL 17, 2014

.....J .

(N.V. RAMANA)