

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Civil Writ Petition No. 19265/2024

Ambalal Dhakad S/o Jaichand Dhakad, Aged About 50 Years,
Shishoda Kala, Tehsil Nathdwara, District Rajsamand.

-----Petitioner

Versus

1. Assistant Commissioner, Devasthan Department, Jaipur-
(First), Jaipur (Raj.).
2. Assistant Commissioner, Devasthan Department, Udaipur
Block, Udaipur (Raj.).
3. Ramesh Kumar Dhakad S/o Late Hamerlal Ji, Chairman,
Jai Kshetrapal Bherunath (Shishoda) Sarvajanik Pranyas,
Shishoda Kala, Tehsil Nathdwara, District Rajsamand.
4. Bherulal Dhakad S/o Mohanlal, Flat No.101, First Floor,
Vakratund Apartment, Mora Road, Near St. Marys School,
Uran, Navi Mumbai-400702, General Secretary And
Authorized Representative Of Jai Kshetrapal Bherunath
(Shishoda) Sarvajanik Pranyas, Rajsamand.
5. Shankar Lal Dhakad S/o Meghraj, Shishoda Kala, Tehsil
Nathdwara, District Rajsamand.
6. Arjun Lal Jain S/o Bhanwarlal Ji Jain, Shishoda Kala,
Tehsil Nathdwara, District Rajsamand.
7. Pushkar Soni S/o Shankar Lal Ji, Shishoda Kala, Tehsil
Nathdwara, District Rajsamand.

-----Respondents

For Petitioner(s) : Mr. Avin Chhangani

For Respondent(s) : Mr. Deelip Kawadia

HON'BLE DR. JUSTICE NUPUR BHATI

Order

Reserved on: 05/12/2024

Pronounced on: 09/12/2024

1. Though the matter has been listed in the 'Fresh' category, upon
the joint request of both the parties, the matter was heard finally
on 05.12.2024.

2. This writ petition has been filed by the petitioner under Article 226 and 227 of the Constitution of India, 1950 challenging the order dated 11.11.2024 (Annex.6) passed by Commissioner, Devsthan Department, Udaipur, Rajasthan ('Commissioner') in Appeal No. 02/2024, titled 'Ramesh Kumar Dhakad & Anr. v. Ambalal Dhakad & Ors.' whereby the application filed by the petitioner under Order I Rule 10 of the Code of Civil Procedure, 1908 ('CPC') has been rejected.

3. The writ petition has been preferred with the following prayers:

"It is, therefore, most respectfully prayed that by way of an appropriate writ, order or direction:-

A. This Hon'ble Court may kindly quash the impugned order dated 11.11.2024 (Annexure-6) passed in Appeal No. 02/2024 titled 'Ramesh Kumar Dhakad & Anr. v. Ambalal Dhakad & Ors., by Commissioner, Devasthan Department, Udaipur;

B. As a corollary, this Hon'ble Court may kindly allow the application under Order I Rule 10 CPC, filed by the petitioner, for impleadment of the public trust as party respondent, in the appeal pending under Section 20 of the Act of 1959;

C. Any other appropriate writ, order or direction which the circumstances of the case may warrant be also passed in favour of the petitioner."

4. Briefly stated, the facts of the case are that the petitioner submitted Form No. 6 under Rajasthan Public Trust Act, 1950 ('Act of 1950'), on 07.03.2017 for the registration of the Public Trust, Shri Khetpal Bavji (Jai Bherunath) Trust ['Public Trust'], which was allowed by the Assistant Commissioner (First), Devsthan Department, Jaipur on 29.12.2023 (Annex.3). Aggrieved of the order passed by the Assistant Commissioner, the respondent no. 3 and 4 preferred an appeal (Annex.4) before the Commissioner under Section 20 of the Act of 1950.

5. Thereafter, since the Public Trust was not made a party to the appeal, the petitioner filed an application under Order I Rule 10 of CPC seeking impleadment of the Public Trust as a party to the appeal (Annex.4), which came to be rejected by the Commissioner, vide order dated 11.11.2024 (Annex.6).

6. Thus, aggrieved of the order dated 11.11.2024 (Annex.6), passed by the Commissioner, the petitioner has preferred this writ petition.

7. Learned counsel for the petitioner submitted that the Commissioner has erred in law while rejecting the application filed by the petitioner under Order I Rule 10 of the CPC, inasmuch as after the Assistant Commissioner had allowed the application filed by the petitioner under Form No. 6 of the Act of 1950, vide order dated 29.12.2023 (Annex.3), the Public Trust becomes a distinct juristic entity and therefore, is a necessary party to the dispute, and ought to have been impleaded in the appeal.

8. Learned counsel for the petitioner also placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of ***Sudhir G. Angur and ors. v. M. Sanjeev and ors., (2006) 1 SCC 141.***

9. *Per contra*, learned counsel for the respondents no. 3 and 4 submitted that the Commissioner has rightly rejected the application filed by the petitioner under Order I Rule 10 of the CPC, inasmuch as the Public Trust is not registered because vide order dated 29.12.2023 (Annex.3), the Assistant Commissioner had merely recorded a finding in accordance with Section 19 of the Act of 1950, however, the entries as per Section 21 of the Act of 1950 have still not been made, which makes the registration of

the Public Trust ineffective. He thus submitted that as the entries have not been made, the Public Trust cannot be considered to be registered in accordance with the law and thus, the Public Trust was rightly not impleaded as party to the appeal.

10. Learned counsel for the respondents no. 3 and 4 further submitted that Section 29 of the Act of 1950 bars an unregistered Public Trust from filing a suit to enforce its right and in the instant case, the Public Trust is not registered in accordance with law, therefore, no suit can be heard or decided in any Court, for enforcing the right of a Public Trust which is not registered and thus, the Commissioner has rightly rejected the application filed by the petitioner under Order I Rule 10 of CPC, for impleading the Public Trust.

11. Learned counsel for the respondents no. 3 and 4 also submitted that the petitioner himself, who is the Management Trustee of the Public Trust, has already been made a party to the appeal (Annex.4) and therefore, in the present case, the Public Trust, which is still not registered, need not be impleaded as party to the appeal. He thus submitted that the order dated 11.11.2024 (Annex.6), passed by the Commissioner, does not suffer from any infirmity and thus warrants no interference by this Court.

12. In rejoinder to the submissions made by the learned counsel for the respondents no. 3 and 4, learned counsel for the petitioner submitted that Section 21 of the Act of 1950 is merely consequential to the findings (Annex.3) recorded by the Assistant Commissioner under Section 19 of the Act of 1950, and thus the stipulation under Section 21 is only the procedural aspect of the

substantial law set out under Section 19 of the Act of 1950. He thus submitted that once an order under Section 19 of the Act of 1950 is passed, the Public Trust becomes a separate juristic entity, and is required to be impleaded in its legal capacity for adjudication of the dispute.

13. Learned counsel for the petitioner further submitted that the respondents no. 3 and 4 have also failed to demonstrate as to what prejudice will be caused to the parties if the Public Trust is impleaded to the appeal, and therefore, taking into account that the Public Trust is a necessary party for the adjudication of the dispute, the order dated 11.11.2024 (Annex.6), passed by the Commissioner deserves to be quashed and set aside, and the Public Trust ought to be impleaded as a party.

14. Heard learned counsel for the parties, perused material available on record and judgments cited at the Bar.

15. The submission of the counsel for the respondents that since the Public Trust is not a registered Trust and Section 29 of the Act of 1950 provides for bar against suits by the unregistered trust and therefore, the same cannot be impleaded as a party, is required to be adjudicated by this Court and for this, Section 29 of the Act of 1950 is taken into consideration, which reads as under:

"Sec. 29 - Bar against suits by unregistered trust:

1. No suit to enforce a right on behalf of a public trust which is required to be registered under this Act but has not been so registered shall be heard or decided in any court.

2. The provisions of sub-section (1) shall apply to a claim of set off or other proceedings to enforce a right on behalf of such public trust."

Upon perusal of Section 29, it is seen that it bars against suits by an unregistered trust and provides that no suit can be decided or

heard by any Court, where the suit has been filed to enforce a right on behalf of the Public Trust that is required to be registered but is not registered. It is seen that *firstly*, the bar is with respect to the suit however, in the present case, the application for impleadment as preferred by the petitioner, is in respect to the appeal preferred by the respondent nos. 3 and 4 against the order dated 29.12.2023 (Annex.3), wherein challenge was laid to the order passed by the Assistant Commissioner allowing the application filed by the petitioner for registration of the Public Trust.

15.1. Further, Section 29(2) of the Act of 1950, which is a proviso to Section 29(1) of the Act of 1950, provides that Section 29(1) would apply to a claim of set off or other proceedings to enforce a right on behalf of a public trust, whereas in the present case, the application under Order I Rule 10 of the CPC has been filed by the petitioner in order to justify the order dated 29.12.2023 (Annex.3) passed by the Assistant Commissioner wherein the directions for issuance of the Registration Certificate have been given.

16. This Court further observes that it is also an admitted fact that the order dated 29.12.2023 (Annex.3) is passed by the Assistant Commissioner in favour of the petitioner, to which the respondents have laid a challenge by way of filing an appeal before the Commissioner under Section 20 of the Act of 1950, with the prayer that the decision dated 29.12.2023 (Annex.3) passed by the Assistant Commissioner may be cancelled and further the Form No. 6, submitted by the respondent no. 3 and 4, shall be

accepted. The prayer made by the respondents no. 3 and 4 in the appeal is reproduced as under:

“अतः प्रार्थना है कि अपीलान्त / रेस्पोंडेन्ट संख्या तीन द्वारा प्रस्तुत अपील स्वीकार फरमायी जाकर अधीनस्थ कार्यालय सहायक आयुक्त, देवस्थान विभाग, जयपुर प्रथम द्वारा पारित निर्णय दिनांक 29.12.2023 मय खर्चा निरस्त फरमाया जावें एवं अपीलान्त संख्या दो द्वारा प्रस्तुत प्रपत्र संख्या 6 स्वीकार फरमाया जाकर उक्त प्रन्यास का पंजीयन किये जाने का आदेश पारित किया जावे।”

This Court further takes into consideration Section 20 of the Act of 1950, which reads as under:

"Sec. 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."

Therefore, under the given circumstances, when the respondents no. 3 and 4 have themselves filed the appeal for quashing of the order dated 29.12.2023 (Annex.3) passed by the Assistant Commissioner whereby the application filed by the petitioner for registration of the Public Trust was allowed, the Public Trust indeed is a necessary and proper party for the adjudication of the appeal (Annex.4). At this juncture, this Court also deems it pertinent to take into account the mandate of the statute, i.e. Order I Rule 10 of the CPC, which provides for a necessary party to be impleaded at any stage of the suit. Order I Rule 10 reads as under:

"10. Suit in name of wrong plaintiff.—

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted

or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.”

Therefore, upon perusal of the provision, this Court finds that in the present case too, the Public Trust, which was registered by the Assistant Commissioner under Section 19 of the Act of 1950, vide order dated 29.12.2023 (Annex.3), becomes a necessary party for the adjudication of the appeal filed by the respondents no. 3 and 4, inasmuch as they have challenged the said registration itself.

17. Moreover, this Court finds that even in the appeal (Annex.4), filed by the respondent nos. 3 and 4, the petitioner has been made a party in his personal capacity and not in the capacity of the Management Trustee of the Public Trust and if the Public Trust is not impleaded as party respondent in the appeal, then the Public Trust would go unrepresented before the Appellate Authority, i.e. the Commissioner, and in case the appeal filed by the respondents is allowed, the rights of the Public Trust would be seriously prejudiced. Therefore, while looking into the facts of the case, the Public Trust satisfies the essentials as stipulated for the impleadment of a party, i.e. it is necessary party for the

adjudication of the appeal and *secondly*, relief has been sought against the registration of the Public Trust by the respondent nos. 3 and 4, by way of laying challenge to the order dated 29.12.2023 (Annex.3) passed by the Assistant Commissioner.

18. Also, it is seen that the Assistant Commissioner has passed the order dated 29.12.2023 (Annex.3), while exercising his powers under Section 19 of the Act of 1950, which provides that the Assistant Commissioner shall record the findings with reasons, on completion of the inquiry under Section 18 of the Act of 1950. Section 19 of the Act of 1950 reads as under:

"Sec. 19 - Finding of Assistant Commissioner:

On completion of the inquiry provided for under section 18, the Assistant Commissioner shall record his findings with the reasons therefore as to the matters mentioned in the said section."

Thus, this Court finds that the submissions of the learned counsel for the respondents no. 3 and 4 that till the entries are made in accordance with Section 21 of the Act of 1950, it cannot be said that the public trust is registered, is devoid of merit, inasmuch as upon perusal of Section 21, this Court finds that the assistant commissioner is required to make entry in the register in accordance with the findings recorded by him under Section 19 of the Act of 1950 or in case an appeal is filed before the Commissioner while invoking Section 20 of the Act of 1950, then in accordance with the decision of the commissioner in such appeal. Section 21 of the Act of 1950 reads as under:

"Sec. 21 - Entries in the Register:

1. The Assistant Commissioner shall cause entries to be made in the register in accordance with the finding recorded by him under section 19 or, if an appeal has been filed under Sec. 20 in accordance with the decision of the



Commissioner on such appeal, and shall cause to be published on the notice board of his office and at a conspicuous place in the city, town or village where the principal office or the principal place of business of the public trust is situate, the entries made in the register.

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

However, in the present case, the appeal filed by the respondent nos. 3 and 4, under Section 20 of the Act of 1950, is still pending before the Commissioner and therefore, by virtue of Section 21 of the Act of 1950, there is no occasion for the Assistant Commissioner to cause entries in the Register.

19. Therefore, taking into consideration the factum of the case, coupled with the mandate of the statute, this Court finds that there is no bar upon the Public Trust to file an application under Order I Rule 10 of the CPC, for impleadment to the appeal inasmuch as the appeal has been filed challenging the order dated 29.12.2023 (Annex.3) vide which the application filed for registration of the Public Trust was allowed by the Assistant Commissioner and therefore, the Public Trust is a necessary and proper party for the adjudication of the appeal.

20. Accordingly, in the light of discussion made hereinabove, the writ petition is allowed and the order dated 11.11.2024 (Annex.6), passed by the Commissioner is set aside. Any application (s), if pending, shall also stand disposed of. No order as to the cost.

(DR. NUPUR BHATI),J