

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 6801 of 2016 (O&M)

Reserved on: 11.4.2023

Date of Decision: 20.4.2023

Swaran Dass

.....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. Nitin Kaushal, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. H.S.Batth, Advocate
for respondent No. 2.

Mr. S.S.Swaich, Advocate
for respondents No. 3 and 4.

Mr. Johny, Advocate for
Mr. Gurmeet Singh, Advocate
for respondents No. 5 to 9.

SURESHWAR THAKUR, J.

Factual background

1. Gram Panchayat of village Jattan Niwan, Tehsil Khamano, District Fatehgarh Sahib, through its Panch Rajinder Singh instituted, before the Collector concerned, a petition, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the PVCL Act, 1961), to which petition case No. 20 of 6.10.2015 became assigned. In the said case, one Sawarn Dass, chela of Baba Puran Dass, Chela of Baba Masat Ram,

Mohatim, dera Baba Masat Ram, resident of village Jattana Niwan, Tehsil Khamano, District Fatehgarh Sahib, was impleaded as a respondent. The claim made in the said petition was for ejectment of the respondent from the land situated in khasra No. 21//17(7-11), 18/1(7-0), measuring 14 kanals and 11 marlas. The learned Collector concerned, through a decision made, on 11.2.2016, on the case (supra), decision whereof is enclosed in Annexure P-9/T, proceeded to make an order of dismissal on the petition (supra). However, the said decision, as made by the learned Collector concerned, was not challenged by the Gram Panchayat concerned, before the appellate authority concerned. Therefore, the verdict of dismissal, as became made on case (supra), by the learned Collector concerned, and, as becomes enclosed in Annexure P-9/T, thus does acquire a binding, and, conclusive effect. Therefore, the gair mumkin samadh of Baba Masat Ram, and gair mumkin kutia, as comprised in khasra No. 21//17(7-11), 18/1(7-0), measuring 14 kanals and 11 marlas, is to be concluded to be not vesting in the Panchayat deh concerned.

Jurisdiction exercised by the Director concerned, on the motion of the petitioner concerned, does not at all affect the verdict enclosed in Annexure P-9/T, as the said exercised jurisdiction by the Director, is limited to ensure only the able management and control of the affairs of the Samadh concerned, with but is a place of worship.

2. Be that as it may, a reading of Annexure P-12/T, which encloses an order made by the Director, Village Development and Panchayat, Punjab (for short 'the Director'), reveals that the petitioners therein, one Meva Singh and one Jagjit Singh, had accessed the Director concerned, hence for seeking the cancellation of resolution dated 22.4.2008, as became passed by the Gram Panchayat concerned, whereby a committee

had been constituted for the management of Dera Baba Masat Ram, village

Jattan Niwan. The above petitioners also prayed, that the Gram panchayat concerned, be directed to take appropriate steps, to manage the dera lands measuring 22 kanals 11 marlas. The reasons, as set-forth therein, for rescinding of the said resolution, became grooved in the factum, that some greedy people, in connivance with the Gram Panchayat concerned, were misusing the funds of the samadh concerned, and, were also indulging in manufacturing of wine in the dera. On the petition (supra), the learned Director concerned, through a decision made thereons, on 18.3.2006, made a direction, that though, the Panchayat concerned, is entitled to form a committee under Section 25 of the Punjab Panchayati Raj Act, 1994 provisions whereof are extracted hereinafter.

25. Standing Committees of Gram Panchayats.

(1) Every Gram Panchayat shall constitute the following committees by election, namely. –

- (i) the Production Committee for performing functions relating to agriculture production, animal husbandry and rural industries and poverty alleviation programmes;*
- (ii) the Social Justice Committee for performing function relating to –*
 - (a) promotion of education, economic, social, cultural and other interests of the Scheduled Caste, and Backward Classes and other weaker sections.*
 - (b) protection of such castes and classes from social injustice and any form of exploitation;*
 - (c) welfare of women and children;*

(iii) the Amenities Committee to perform functions in respect of education, public health, public works and other functions of the Gram Panchayat.

(2) (a) Each Standing Committee shall consist of not less than three and not more than five members including the Sarpanch and the Sarpanch shall be the ex officio member and Chairman of all these Standing Committees:

Provided that the Social Justice Committee shall

consist of at least one member who is a woman and one member belonging to the scheduled Castes or Backward Classes.

(b) Each Committee shall be competent to co-opt. In such manner as may be prescribed, members of farmers clubs, mahila mandals, yuvak mandals and other similar bodies recognized by the State Government and representative of co-operative societies in the Gram Panchayat area shall also be co-opted to the Production Committee.

(3) The Standing Committees shall perform the functions referred to in subsection (2) to the extent the powers are delegated to them by the Gram Panchayat.

3. However, given the fact that since the membership of the panchayat undergoes a change, therefore, the BDPO, Khamano was directed to form a committee, hence comprising of the elected Sarpanches, and, Panches to the Panchayat but for managing and controlling the offerings, as, made at the samadh by the worshippers, and, thereafter deposit the said income in the accounts of the Gram Panchayat concerned, so that, the said deposited income is used for the welfare of the villagers. Moreover, the user of such deposited amounts, was directed to be made only after a resolution, being made by the Gram Panchayat concerned.

4. Since one Sawran Dass failed to produce any record to show that he was appointed as a Mohatim of the Dera, therefore, it was but concluded, that he had no right, title and interest to succeed, to the gaddi of his predecessor(s)-in-interest, and, nor held any right, title or interest to manage the affairs of the dera or of the samadh concerned.

5. Though the verdict, made on the petition (supra) (Annexure P-9/T), does acquire a conclusive, and, binding effect, as the samadh of the said Saint, is reflected in the jamabandi drawn for the year 1954-55, and, as relates to the petition land, to become located in khasra No. 21//14(8-0),

17(7-11), 18/1(7-0). Therefore, since the jamabandi for the said year, and,

with its making the above reflections, is drawn prior to the coming into force of the PVCT Act, 1961. Resultantly, when Section 2(g)(5)(ix) of the PVCL Act, 1961, provisions whereof become extracted hereinafter, saves from vestment in the panchayat deh, such used lands as a place of worship or for purposes, subservient thereto, especially when such users whereofs, is but evidently recorded to occur, rather immediately before the commencement of the Act (supra).

(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act].

6. Resultantly, and, reiteratedly with the existence of the above reflections in the jamabandi relating to the said land, jamabandi whereof became drawn prior to coming into force of the PVCL Act, 1961. Thus, the said entries, save the lands, rather with the above designations, but from their vestment in the panchayat deh.

Submissions of the learned counsel for the petitioner

7. The learned counsel for the petitioner, has very vehemently argued before this Court, that since the Gram Panchayat concerned, instituted against the petitioner herein, a civil suit bearing No. 333 of 16.9.2011, claiming therein the relief of possession, and, also a further relief of permanent prohibitory injunction. However, when the above espoused relief was declined by the learned Civil Court concerned, through a judgment made on the suit (supra), on 13.8.2012. Furthermore, when the appeal bearing No. RBT-163 of 2012, as became filed thereagainst, by the aggrieved Gram Panchayat concerned, also resulted in a similar verdict of dismissal being made thereons, on 13.2.2013. Moreover, when, upon RSA No. 1131 of 2013, as became filed by the aggrieved Gram Panchayat

concerned, before this Court, rather a verdict of dismissal was made by this Court, on 26.5.2014. Therefore, it is contended that the Director concerned, through his drawing the verdict, as enclosed in Annexure P-12/T, could not substitute the present petitioner with a committee to manage, and, control the affairs of the dera or of the samadh, given the present petitioner, being declared by the judgments, and, decrees (supra) to be in possession of the land concerned.

Reasons for rejecting the above arguments

8. However, the above made argument is extremely frail, and, is rejected by this Court. The principal reason for rejecting the above argument, is rested upon the factum, that even if this Court, for reasons (supra), has assigned conclusivity to the verdict of dismissal, as made by the Collector concerned, on case No. 20 of 6.10.2015. However, the assigning of conclusivity to the verdict, as made by the learned Collector concerned, on case No. 20 of 6.10.2015, upon the petition filed under the PVCL Act, 1961, is rested, only on the ground, that the petition lands with the above designation, were but saved from their vestment in the panchayat deh. However, the application of the saving clause to the petition land, would not *per se* facilitate one Swaran Dass, to claim any legitimate right, title, and, interest to the samadh or dera, of his predecessor(s)-in-interest, but merely on the anvil of the above binding, and, conclusive decrees, as made by the learned Civil Courts concerned.

9. Though, the Civil Courts concerned, in respect of the above designation assigned to the petition land, did have the jurisdiction to entertain, and, try the suit for possession, and, for permanent prohibitory injunction, and, which relief(s) was claimed by the Gram Panchayat concerned. However, a perusal of the judgments, and, decrees, as become

relied upon by the learned counsel for the petitioner, do not, as required by law, display that despite the verdict of dismissal, being made upon the said suit for possession, and, prohibitory injunction, also carry any declaration, excepting the petitioner herein, who was the defendant in the said suit, being in admitted possession of the suit land, qua his also being entitled to retain the said possession but pointedly on the plank that he was the validly appointed successor to the petition properties, by his predecessor-in-interest concerned. Even no issue in respect thereof become struck by the Civil Court(s) concerned, nor when any finding became recorded thereons. Therefore, the said Swaran Dass cannot, on the basis of the judgment(s), and, decree(s) (supra), as, made by the Civil Court concerned, claim that he was the validly appointed successor to the petition properties, by his predecessor-in-interest.

10. Necessarily, when only on the above finding, occurring in the judgments, and, decrees, as made by the learned Civil Court concerned, could one Swaran Dass rather claim a valid succession to the gaddi or to the samadh of one Masat Ram. However, when no such declaration, exists therein, thereupon, irrespective of the fact, that the above designated lands, are excluded from vestment in the panchayat deh, yet for want of the petitioner bringing-forth evidence suggesting that he can well stake a valid claim to succeed to the samadh or to the dera of his predecessor-in-interest one Masat Ram. Resultantly, the petitioner herein cannot claim any legitimate right, title or interest to either control or manage the samadh or dera concerned, nor he can maintain any valid right, title or interest to manage the lands appurtenant thereto or subservient to the dera or samadh of one Masat Ram.

discussion, that for want of adduction of evidence in respect of one Swaran Dass, the petitioner herein, succeeding to the gaddi or the samadh of one Masat Ram. Therefore, in the absence of the petitioner validly succeeding to the gaddi or the samadh or Masat Ram, and, irrespective of the said gaddi or samadh, and/or the lands appurtenant thereto, being subservient to the said religious purposes, and, where people pay homage, rather becoming saved from their vestment, in the panchayat deh, yet does not entitle the petitioner to stake any claim to yet continue to manage, and, control the earnings, and/or to manage or control the lands appurtenant to the samadh or the dera which but are subservient to the religious purposes concerned.

12. Even though before this Court, the petitioner has placed on record Annexure P-1/T, which reveals that he has been appointed as the successor to the gaddi of one Mahant Puran Dass, but only a photocopy thereof has been placed on record. It appears, that the said document was drawn in the year 1994, hence prior to the petitioner being impleaded as a party-respondent in the proceedings, as became drawn by the Director concerned, and, which resulted in the drawing of Annexure P-12/T. However, he has chosen to yet belatedly therefrom institute an application (supra) before this Court. Though, it would be permissible for him to argue before this Court, that it is required to be adduced as a piece of additional evidence to support his claim, of his succeeding to the gaddi or to the samadh concerned, and/or to the offerings made there by the devotees concerned, besides to succeed to the land(s) appurtenant thereto which are subservient to the said religious purpose(s). However, the said argument could be well built, on the statutory pedestal, as becomes encapsulated in Order 41 Rule 27 of the CPC, provisions whereof become extracted

hereinafter, only when he was able to show, but in an application filed in

terms of the said provisions, that despite exercise of due diligence, the said document was not made earlier available to him.

“27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or ;

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to the produced, by an Appellate Court, the court shall record the reason for its admission.”

13. Since the said application has not been filed in terms of the said provisions, nor any averment in terms of the above statutory provisions, has been made in the said application. Therefore, reliance, if any, made upon the said document, but as a piece of permissible additional evidence, to support the claim of the petitioner of his succeeding to the gaddi or the samadh concerned, rather cannot be accepted by this Court.

Final order

14. In the wake of the above discussion, this Court finds no merit in the petition, and, is constrained to dismiss it. Consequently, the petition is dismissed. The impugned order is maintained, and, affirmed.

15. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

April 20th, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No