



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 655 OF 2022

1. Shri. Ramesh Pahadsingh Chaudhari
Age- 27 years, Occ- Agriculture,
R/o. Toranmal, Tq. Akrani, District- Nandurbar.
 2. Shri. Ravindra Chhagan Chaudhari
Age- 26 years, Occ- Agriculture,
R/o. Toranmal, Tq. Akrani, District- Nandurbar.
 3. Shri. Santosh Suklal Chaudhari
Age- 24 years, Occ- Agriculture,
R/o. Toranmal, Tq. Akrani, District- Nandurbar.
 4. Shri. Bharat Jahagya Chaudhari
Age- 28 years, Occ- Agriculture,
R/o. Toranmal, Tq. Akrani, District- Nandurbar.
 5. Shri. Dinesh Aatmaram Naik
Age- 26 years, Occ- Agriculture,
R/o. Toranmal, Tq. Akrani, District- Nandurbar.
 6. Shri. Rohidas Ramkil Chaudhari
Age- 27 years, Occ- Agriculture,
R/o. Toranmal, Tq. Akrani,
District- Nandurbar.
- ...PETITIONERS**

VERSUS

1. Shri. Guru Goraknath Mandir (Mahant)
Through Shri. Mahant Yogi Sanjunath
Maharaj
...(Orig. Petitioner)
2. Olsing Tibdya Naik
Age- 35 years, Occ- Agriculture
R/o. Toranmal, Tq. Akrani, District- Nandurbar.

3. Shri. Shrawannath Guru Musalnath Panth
(Deleted as per Court Order dated 23.1.2023)
4. The Police Inspector
Mhasavad Police Station.
5. The Executive Magistrate/Tahsildar
(Shri. Dnyaneshwar Sapkale)
Akrani, Tq. Akrani, Dist. Nandurbar,
R/o. Tahsil Office, Akrani, Dist. Nandurbar...**RESPONDENTS**

Mr. Yogesh Bolkar, Advocate for petitioners.

Mr. Rajendra Deshmukh i/by. Mr. Shaikh Samir Ahmad Safiuddin,
Advocate for respondent No. 1.

Mr. S.B. Jadhav, APP for State.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 6th MARCH, 2024

PRONOUNCED ON: 2nd APRIL, 2024

JUDGMENT:

1. Rule. Rule made returnable forthwith. With consent of parties, heard finally.

2. This petition filed under Article 227 of Constitution of India, takes exception to the judgment and order dated 19.04.2022, passed by learned Additional Sessions Judge, Shahada, in Criminal Revision Application No. 12 of 2021.

3. Facts in brief giving rise to the present petition can be stated thus:

Bhagyawant Punde

A proposal along with report was submitted by respondent No. 4, Police Inspector, Mhasavad Police Station, Taluka- Shahada, Dist. Nandurbar to respondent No. 5- Executive Magistrate/Tahsildar stating that there is Gorakshnath temple situated at Toranmal and on Mahashivratri thousands of devotees visit the said temple. Respondent No. 1 was Mahant of said temple. Due to complaints and opposition of villagers, respondent No. 1- Sanjunath Maharaj has gone to Madhya Pradesh. One Mahant namely Shrawannath is performing pooja in the temple. There is possibility that Sanjunath Maharaj may visit the temple and same may create law and order problem. Hence, a request was made to take necessary action under section 145 of Cr.P.C. On the basis of said report, respondent No. 5 initiated Chapter Case No. 9 of 2021, under section 145 of Cr.P.C.

4. After hearing both sides, respondent No. 5 on 28.10.2021 passed following order:

1. Shri. Sharawannath Guru Musalnathji Mahraj is authorized to do pooja-archa and management of Gorakshnath Mandir.
2. Shri. Mahant Sanjunath Maharaj should not obstruct Shri. Shrawannath Guru Musalnathji Maharaj in doing pooja-archa.

3. Petitioners (Party No. 2) shall keep peace and order in the vilage and to co-ordinate with Shri. Shrawannath Guru Musalnathji Maharaj and to help him in management.

5. The first respondent challenged the said order before learned Sessions Judge in Criminal Revision Application No. 12 of 2021 on various grounds. The Revisional Court allowed the revision and passed following order:

ORDER

"1. Revision petition stands allowed.

2. The impugned order dated 28.10.2021 passed by the Executive Magistrate/Tahsildar Akrani i.e respondent No. 10 (Party No. 5) in Chapter Case No. 9/2021, initiated under Section 145 of Cr.P.C., at the instance of Police Inspector, Mhasavad Police Station stands set aside and quashed.

3. The petitioner Shri. Mahant Yogi Sanjunath Maharaj (Sanjunath Chaitram Chaukase), the original party No. 1 in the said Chapter Case, be put into possession of the said "Gorakhnath Temple Toranmal" as a "Mahant" thereof instead the respondent No. 8 Shrawannath Guru Musalnath Panth, the original party No. 3 in the said Chapter Case.

4. If, the petitioner commits any act of misconduct while functioning as a "Mahant" of said Temple, the aggrieved party is free to move the Assistant Charity Commissioner, Deputy Charity Commissioner or the Joint Charity Commissioner as the case may be, within his jurisdiction the said Temple falls so as to evict or remove the petitioner as "Mahant" of that Temple.

5. *An authenticate copy of this order alongwith the record and proceeding of said Chapter Case No. 9/2021, be sent to the Executive Magistrate/Tahsildar, Akrani, immediately for information and necessary action.*
6. *The Police Inspector, Mhasavad Police Station be informed of this judgment and order, to see that this order is enforced.*

Petitioners who are the villagers are aggrieved by this order.

6. Heard learned advocate for petitioners, learned Senior Advocate for respondent No. 1 and learned APP for respondent Nos. 4 and 5.

7. By relying on the resolution passed by Village Panchayat, Toranmal, it is submitted that respondent No. 3 is appointed by villagers to perform pooja-archa. 7/12 extract shows that the temple stands at Gut No. 65 and 66, which is a Government land and hence, Revisional Court could not have issued direction to handover the possession of Government land to third person without there being any legal right or title. Due to misconduct on the part of respondent No. 1, several complaints were lodged against him. Villagers also made complaints to Nath Sampraday and respondent No. 1 was suspended from being priest by Nath Sampraday. Guru Shrawannath Maharaj is appointed by Yogiraj and he was

performing pooja and after him his son Tirthdas is performing pooja at temple. Therefore, Executive Magistrate was justified in issuing order under section 145 Cr.P.C. permitting Shri. Sharawannath Maharaj to perform pooja. The Revisional Court has erred in exercising revisional jurisdiction, without there being sufficient grounds. Hence, it is prayed that the impugned order passed by Revisional Court may be quashed and set aside and the order passed by Executive Magistrate, under section 145 Cr.P.C. be maintained.

8. Learned Senior Advocate appearing for respondent No. 1 by relying on affidavit in reply submits that the temple is owned by Nath Sampraday and the reference of the temple can be traced back to Maharashtra State Gazetteers, published in 1880. There is Sanad entry of Gorakshnath temple in the register of Cash Alienation debitable "Allowances and Assignments under Treaties and Engagements" in Khandesh Collectorate as they stood on 1st November 1855, as per which Sanad is granted from 1825. Thus, present math is independent entity belonging to Nath Sampraday and it is acknowledged during British rule. Respondent No. 1 is Sanyasi Yogi of Nath Sampraday. He was appointed as Mahant of the temple from

year 2009 onwards and has taken efforts to develop temple and its premises. He has constructed main temple, dharmshala, security wall near lake, residential complex, big main gate, internal roads and he is in possession of said temple and doing pooja-archa. He submits that sufficient evidence was placed before the Executive Magistrate that respondent No. 1 was in possession of temple since 2009 to 2021 and he is discharging his duty as priest and has undertaken several development works in the temple. The villagers are trying to take control over the temple and management and therefore for time and again villagers made complaints and have passed resolution in respect of temple, to which they have no concern. By relying on *Ranbir Singh v. Dalbir Singh and others*, AIR 2002 SC 1500, he submits that the Revisional Court is perfectly justified in passing the impugned order as the order passed by Executive Magistrate was contrary to section 145 of Cr.P.C.

9. Learned APP submits that as per record appropriate order may be passed.

10. Heard learned advocate for petitioners, learned Senior Advocate for respondent No. 1 and learned APP for State at length. Perused the writ petition memo, annexures thereto

and the impugned order.

11. On going through record, *prima facie*, it appears that Gorakshanath temple belongs to Nath Sampraday and respondent No. 1 was appointed as priest since year 2009 onwards. He has developed the temple and its premises. Thus, *prima facie*, he is in possession of temple as priest since year 2009-2021 and he is appointed as priest by Nath Sampraday.

12. It further appears that the villagers are trying to gain control of said temple. Admittedly, petitioners are not belonging to Nath Sampraday. Villagers have no right to pass any resolution in respect of management of temple. Though, petitioners are trying to contend that the temple is registered Trust in respect of Gorakshanath temple in the year 1988, however, there is nothing on record to show that any change reports were submitted in respect of said Trust and any audit is done. Petitioners are not trustees of said Trust.

13. Perusal of order passed by Executive Magistrate, under section 145 Cr.P.C. shows that in the order he has noted documents submitted by both the parties and contentions of both the parties and has observed that, due to the misconduct

of respondent No. 1, Bhesh Barah Panth Gorakh Dibbi Trust Sabha in the presence of 430 Yogeshwar, outcasted respondent No. 1 from Nath Sampraday and Shri. Sharawannath Maharaj is appointed as priest. After noting this, he has jumped to a conclusion that to maintain law and order situation in Toranmal and to maintain sanctity of Gorakshnath temple, the decision taken by villagers in Village Panchayat is proper and, therefore by invoking powers under section 145 Cr.P.C., he has passed the order noted (supra).

14. It is settled legal position that, *"the Court while dealing with proceeding under section 145 Cr.P.C., is mainly concern with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the Court is not required to decide either title to the property or right of possession of the same."* [Vide Ranbir Singh (supra)].

15. The decision of Executive Magistrate being contrary to the above ratio was legally unsustainable. The Executive Magistrate had no authority under section 145 of Cr.P.C. to dispossess respondent No. 1 of the management of temple and

to decide, who is entitled to maintain the temple. The Executive Magistrate exceeded his jurisdiction while passing order under section 145 Cr.P.C. Revisional Court is justified in quashing and setting aside the order passed by Executive Magistrate. Revisional Court has assigned proper reasons while allowing the revision. No case is made out by petitioners to interfere in the same, in extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

Rule is discharged.

16. It is made clear that, observations in this order are *prima facie* and shall not influence the Civil Court or Charity Commissioner, while deciding the *lis* between the parties.

[NITIN B. SURYAWANSHI, J.]