

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 19156 of 1996

Reserved on : 11.3.2024

Date of Decision: 08.4.2024

Gram Panchayat Roorki

.....Petitioner

Versus

Joint Development Commissioner (IRD),
Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Argued by: Mr. Rai Singh Chauhan, Advocate
Mr. Rohit Sapehiya, Advocate and
Mr. V.K.Sandhir, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab,

SURESHWAR THAKUR, J.

1. Dera Tumbi Parkash, village Roorki, Tehsil and District Fatehgarh Sahib through its Mohtmin Sher Singh Chela Sewa Ram resident of village Roorki, Tehsil and District Fatehgarh Sahib instituted against the Gram Panchayat Rurki, Tehsil and District Fatehgarh Sahib, thus a declaratory suit before the Collector/DDPO, Fatehgarh Sahib, whereby the petitioner (supra), claimed the rendition of a declaratory decree vis-a-vis the suit land. The Collector concerned, made a common verdict dated 28.2.1995 (Annexure P-6), upon suit (supra) bearing File No. (11) 107/DDPO, instituted on 23.1.1995, and, also upon the suit filed by Gram Panchayat village Roorkee, bearing file No. (7) 156/DDPO, instituted on 29.2.1993. Through the common verdict (supra), the suit filed by Dera Tambi Parkash became dismissed, and, the suit filed by Gram Panchayat village Roorkee, thus became decreed.

2. In sequel, excepting two biswas of land, whereons a samadh was existing, and, to which obeisance was paid by the public, the other lands, thus in the illegal, and, unauthorized possession of one Sher Singh, and, one Surinder Singh residents of village Roorkee, thus obviously were declared to be owned by the Gram Panchayat concerned.

3. The making of Annexure P-6 caused grievance to the plaintiff i.e. Dera Tumbi Parkash, and, resulted in an appeal bearing No. 80/95 becoming instituted before the Joint Development Commissioner (Punjab) (Exercising the powers of Commissioner). On the said appeal, the appellate authority through Annexure P-7, after reversing Annexure P-6 rather proceeded to accord the espoused declaratory relief to the plaintiff/appellant.

4. Resultantly Annexure P-7 caused grievance to the Gram Panchayat concerned, and, led it to institute thereagainst the instant writ petition before this Court.

5. When the instant writ petition came up for hearing before this Court on 28.7.1997, this Court after dismissing the writ petition, proceeded to affirm Annexure P-7. The said decision, as made on 28.7.1997, upon, the instant writ petition, is *ad verbatim* extracted hereinafter.

“This writ petition has been filed against the order of the joint Development Commissioner holding the disputed land to be belonging to the Dera. After discussing the entire evidence, it has been held that the land in dispute is not shamilat deh and that exception in Section 2(g) of the Punjab Village Common Lands (Regulation) Act does apply to the facts of the present case. The findings recorded by the Joint Development Commissioner read as under:-

“After hearing the ld. Counsel for the appellant, I agree with her contention. The Gram Panchayat has not been able to show as to how this land vests in them as Shamlat

Deh. It is beyond the scope of definition of Shamlat Deh as contained in Section 2(g). In fact, this land comes under exception(ix) as it is a religious place. The land is Shamlat Deh Hasab Rasad Zar Khewat of the nature of Banjar Qadim and not used for any common purposes. This land will not vest in Gram Panchayat. The ownership of this land changed in 1971-72 but no satisfactory explanation is coming why this change of ownership took place. It is a place where thousands of people come on every purnima. The order of the collector that the Dera is entitled to only two biswas is probably wrong. The land attached to the Smadh cannot and should not be separated. It is natural that people visit this place and the area around serves the devotees who come on different modes of transportation. Then the area around may be serving to grow crops etc. for running common kitchen (Langar). The Dera is in existence since the year 1947. No proof has come on record if at any time the land was put on auction or used for common purpose.”

In addition to the aforementioned finding, the learned counsel for respondent No. 2 has read out before us the statement of certain devotees to the effect that functions are held on the disputed land which belongs to Dera. The finding is based on facts. No interference in writ jurisdiction is called for. Dismissed at the stage of motion hearing.”

6. The said decision caused grievance to the Gram Panchayat concerned, and, led it to institute thereagainst Civil Appeal No. 4307 of 1998 before the Hon’ble Apex Court. The Hon’ble Apex Court through a decision made on 18.12.2003 on the civil appeal (supra), after allowing the said civil appeal, proceeded to quash the verdict (supra), as made earlier by this Court, upon the instant writ petition, and remitted the instant writ petition to this Court for deciding it afresh.

7. Before proceeding to make an adjudication afresh, upon the instant writ petition after remand thereof being made to this Court, thus by the Hon'ble Apex Court, it is imperative to cull out the relevant revenue entries. The relevant revenue entries are enclosed in the jamabandi for the year 1961-1962 (Annexure P-5), wherein, in the column of ownership the revenue term shamla deh majkoor exists, but in the column of cultivation, the revenue term makbooja majkoor exists, besides in the column of classification, the lands are described as banjar kadim. In the jamabandi for the year 1966-67 Nagar Panchayat is shown to be owning the suit land, but in the column of cultivator, the revenue term 'makbooja nagar panchayat maskoor' exists, in respect of khewat No. 166, but in respect of khewat No. 275, the name of the cultivator is shown as 'Sewa Ram Chela Shiv Nath'. Moreover, the land measuring 6-5, enclosed in khasra No. 1462 is shown as 'billa lagan ba-waja kabja banjar kadim', and, in respect of land enclosed in khasra No. 1463, 6-5, it is shown as 'banjar kadim G.M.', and, in respect of 6-3 to the extent of 0-2, it is shown as 'kutia'. In the jamabandi for the year 1991-92, Nagar Panchayat Deh is shown as the owner, and, Sher Singh, Surinder Singh sons of Sewa Ram @ Sunder Ram Chela Shiv Nath are shown as cultivators. Khasra Girdawri for the year 1992-1997 shows Nagar Panchayat as the owner and Sher Singh Surinder Singh sons of Sewa Ram alias Munder Ram Chela Shiv Nath as the cultivators. Copy of the jamabandi for the year 1945-46 shows the name of the owner as shamlat deh hasab rasad zar khewat. In the column of cultivator, it is shown as maqbooza malkan, and, the nature of the land is shown as banjar kadim.

8. After having delineated the revenue entries (supra), as appertaining to the suit land(s), it is subsequently necessary to also

determine whether (i) the plaintiff-Dera suing through its purported

Mohtmim Sher Singh, through his claiming himself to be the Chela of Sewa Ram, thus was well enabled to claim the rendition of a declaratory decree in favour of the plaintiff-Dera, and/or whether the said purported Mohtmim was claiming the rendition of a declaratory decree in his individual capacity, (ii) whether the institution of the declaratory suit by the plaintiff-Dera through its purported Mohtmim could have been instituted, as such, by its purported Mohtmim, thus without rendition of a declaratory decree, by the Civil Court of competent jurisdiction or by the District Collector concerned, rather declaring the said Sher Singh to be the chela of Sewa Ram, (iii) whether in the absence of the said declaratory decree or an order becoming passed by the District Collector concerned, whether Sher Singh could claim himself to be inheriting the samadh of his predecessor-in-interest Sewa Ram, and, thereby was entitled to constitute the declaratory suit before the Collector concerned, (iv) whether the plaintiff-Dera suing through its purported Mohtmim (supra) was entitled to claim the benefit of Section 2(g) (ix), as occurs in Punjab Village Common Lands (Regulation) Act, 1961 (for short '*the Act of 1961*'), provisions whereof stand extracted hereinafter.

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

9. Though, the private respondents have vehemently contended in their reply, that the order (Annexure P-7) passed in the appeal by the appellate authority concerned, is a well reasoned order, and, requires no interference, but for the reasons to be assigned hereinafter, the said contention requires rejection.

Reason for accepting the instant writ petition, and, for rejecting the submissions of the respondents concerned, whereby they claim the assigning to them of the beneficent grace of the provision (supra), as

occurs in the Act of 1961.

10. The hereinabove alluded revenue entries do suggest, that in respect of the disputed land(s) rather respectively the Gram Panchayat concerned, and, subsequently the Nagar Panchayat concerned, became entered as owners thereof. However, insofar as khewat No. 275 is concerned, though in the column of ownership thereof, the suit lands are entered in the name of Nagar Panchayat Majkoor, but in the column of possession, one Sewa Ram Chela Shiv Nath, specifically in respect of khasra No. 1462, and, qua khasra No. 1463, thus becomes respectively entered as cultivator thereof. Khasra No. 1462 measures 6-5, and, against the said khasra number, the entry *billa lagan ba-waja kabja banjar kadim* exists. Therefore, the import of the said entries but naturally, is that, the said Sewa Ram Chela Shiv Nath, though was not paying rent, and/or was in permissive possession of the said khasra number(s), yet with the land entered within the said khasra number rather being described as banjar kadim, resultantly the said Sewa Ram Chela Shiv Nath, could not be said to be tilling the said khasra numbers. Moreover, in respect of land measuring 6-5, as borne in khasra number 1463, the revenue term *banjar kadim* exists. Consequently, the import of the classification (supra) assigned to the land (supra) enclosed in khasra no. 1463, is none other than the said portion of the suit land also not being brought to cultivation. Nonetheless, over an area of 0-2, a kutia is said to exist, and, thereovers after the demise of Sewa Ram Chela Shiv Nath, a samadh is existing, whereons, obeisance is paid by the public.

11. In the light of the above revenue entries which exist but only post 1961, and, which evidently did not exist prior to 1961, whereas, in case the said revenue entries existed prior to 1961, thereby the plaintiff-Dera may have become entitled to receive the beneficent grace of the savings

clause (supra). Resultantly, in the face of non-existence of any entry in the column of cultivation in the jamabandi relating to the suit land, as appertaining prior to 1961, thus reflecting that the said Sewa Ram Chela Shiv Nath was entered to be making cultivations of the suit land. Therefore, in the absence of the said entry, the plaintiff was not entitled to claim, that the suit lands were amenable to become assigned the beneficent grace of the savings clause (supra).

12. Be that as it may, even the descriptions of the suit lands in the classification column of the jamabandis, thus as banjar kadim but cannot foster any further inference, that excepting the existence of a kutia measuring 0-2, the remaining lands enclosed in khasra Nos. 1462 and 1463, rather were subservient to the kutia or the samadh. Resultantly, therebys also excepting the kutia whereons there is now a samadh whereto obeisance is paid by the public, this Court cannot make any conclusion, that the lands appurtenant thereto rather described as banjar kadim were subservient to the samadh, and/or were necessary for promoting the religious, and, charitable purpose, as but ancillary to the Samadh existing over a minimal area of 0-2.

13. Be that as it may, for the further reasons to be assigned hereinafter, this Court is of the firm view, that though a samadh of Sewa Ram Chela Sahiv Nath, thus is existing over an area measuring 0-2, but yet the purported Mohtmim, who instituted the suit on behalf of the Dera also cannot become endowed with any indefeasible right to take care, and, appropriate donations, as, made at the said Samadh.

14. Moreover, even the suit instituted on behalf of the Dera, by its purported Mohtmim, is also for the reasons assigned hereinafter, thus a completely mis-constituted suit, or rather is laid by its purported Mohtmim

donations, as, made at the samadh of one Sewa Ram Chela Sadhu Nath.

15. The reason for making the above conclusion becomes sparked from the trite factum, that in Hindu law, an idol inside a temple is a minor, and, thereovers guardianship is assumed by a Shehbit or a Mohtmim. The Shehbit or a Mohtmim of an idol inside the temple, but on behalf of the minor deity, manages, and, takes care of not only the temple, but also of the lands appurtenant to the temple. Therefore, a Shehbit or a Mohtmim, does not thereby become the owner of the lands, which he otherwise cultivates on behalf of the idol inside the temple. Resultantly, the rights of a Mohtmim or of a Shehbit of an idol inside the temple is extremely limited, to his only performing the apposite duties, thus vicariously or on behalf of the idol inside the temple, in respect whereofs he functions as a Shehbit or as a Mohtmim.

16. The concomitant corollary of the above, is that, there could be no propagation by a Mohtmim or a Shehbit of a minor deity inside the Hindu temple, qua his holding independent cultivating possession over the suit lands, as, therebys he does untenably obliterate the rights of the minor deity inside the temple, resultantly he becomes dis-entitled to become invested with right, titles, and, interests as owner of not only the temple but also of the lands appurtenant thereto.

17. Be that as it may, it appears that in the garb of his being the Mohtmim of the temple/samadh, that one Sher Singh proceeded to make a mis-founded claim for a declaratory decree qua the suit lands becoming pronounced in favour of the plaintiff-Dera whereovers now there is a samadh of Sewa Ram Chela Shiv Nath. However, on a scanning of the evidence, and, thus thereby this Court tearing apart the veil of the projection

made by the respondent concerned, qua thus in his ably functioning as a

Mohtmim, of the samadh, thus his instituting the relevant suit on behalf of the temple/samadh (supra), rather this Court discovered, that he is prosecuting the suit claim not for the benefit of the samadh, but only for ensuring that he becomes declared as lawful owner of the samadh, and, of the barren lands appurtenant theretos. Resultantly, thereby he appears to intend to misappropriate the offerings made at the samadh, besides intends to misappropriate to himself the lands appertunant theretos. Moreover, the purported Mohtmimship or Shehbitship which the petitioner assumes over the Samdh of Sewa Ram Chela Shiv Nath, is also engulfed in a cloud of doubt.

18. The reason for making the above conclusion stems, from the factum, that there is no declaratory decree made by Civil Court of competent jurisdiction, thus declaring the present petitioner to be a Mohtmim or a Shehbit of the samadh, thereby there was no well locus standi inhering in the present petitioner to, as a Mohtmim or a Shehbit of the samadh (supra), institute a declaratory suit before the learned Collector concerned, which otherwise too, is in the guise of his rather intending to lay an untenable claim for a declaratory decree becoming assigned only in his favour. Therefore, the instant petition was completely mis-constituted, and, was required to be, on the above score itself, rather dismissed at the threshold.

19. Even otherwise, as is apparent from a reading of FCR's Standing Order No.7, which becomes extracted hereinafter, and, which relates to appointment of Mohtmims, that the office of a Mohtmim or a Shehbit rather is not hereditary, but yet the learned Collector concerned, of the Revenue District, becomes empowered to sanction succession to the

heirs of the deceased Mohtmim but only in terms of the grant.

“FCR's Standing Order No.7

7. Appointment of Mohtmims: Para 14 to 18 of the FCR's Standing Order No.7 deal with the question of succession in respect of Muafis.

a. Para 14- The succession is not hereditary and the terms of the Muafi indicate clearly who the successor or successors must be.

b. Para 15 - The Deputy Commissioners may sanction the succession of heirs in accordance with the terms of the grant.

c. Para 17 - In the case of assignments of land revenue released during the pleasure of the government, the Financial Commissioner, Revenue is empowered to sanction the succession of heirs to grants of the annual value of Rs.50 or less. For the grants above Rs. 50/-, proposals should be submitted through the Financial Commissioner to the government. The cases of appointment of Mohtmims are sent to the FCR by the DC for approval under this Para. The Mohtmim of Bir Kheri Gujran Dera was appointed by the FCR under this Para in 1989.

8. Resumption of Muafis: Para 23,24 of the Standing Order No. 7 deal with the resumption of Muafis.

a. Para 23 Paragraphs 176 to 182 of the Land Administration Manual, which should be consulted explain the circumstances under which land revenue assignments are to be resumed. Special attention is invited to the provisions regarding assignments for the support of religious institutions, and to the breaches of the condition of loyalty and good conduct.

b. Para 24 - Financial Commissioner, Revenue has powers to resume any grant of the annual value of Rs. 50/- and less at any time if he is of the opinion that the conditions of which the grant was made are not substantially fulfilled. The proposal for resumption of any grant of which the annual value exceeds Rs. 50/- is to be submitted through the FCR for the orders of government.”

20. If so, unless there is a declaratory decree pronounced by the jurisdictionally competent Civil Court, thus declaring the respondent concerned, to be the Mohtmim or the Shehbit of the Samadh (supra), thereupon he could neither claim that, on demise of his predecessor-in-interest, who was the permissive grantee of the suit land, thus he stepped into his shoes, nor could he institute a suit purportedly on behalf of the Samadh/Dera (supra). However, as stated (supra), no such declaratory decree has been placed on record. Moreover, there is also no order in terms

of the above extracted FCR’s Standing Order No.7, thus made by the District Collector concerned, whereby he declared the respondent concerned, to on the demise of his predecessor-in-interest, thus as Mohtmim or the Shehbit of the Samadh. Resultantly when there is no locus standi in the respondent concerned, to well stake any claim, that he was ably functioning as Mohtmim or Shehbit of the Samadh/Dera, nor he could claim that he has an able capacity to sue on behalf of the Samadh/Dera (supra).

21. In aftermath, with the above observations, this Court finds merit in the instant petition, and, is constrained to allow the same, hence the instant petition is allowed, and, the impugned orders are quashed, and, set aside.

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

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

April 08, 2024
Gurpreet

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