

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-11028 of 2009

Date of Decision: 27.1.2015

Sikander Singh

---Petitioner

versus

State of Punjab and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Shailender Sharma, Advocate
for the petitioner
Mr. Ankur Jain, AAG, Punjab
for the respondent-State of Punjab
Mr. H.S. Bhullar, Advocate
for respondents No. 4, 7, 9 and 10

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short "Cr.P.C.") has been directed against the order dated 15.7.2008 (Annexure P-5) passed by the Additional Sessions Judge (Fast Track Court) Bathinda whereby the proceedings under Section 145 Cr.P.C. initiated by the Sub Divisional Magistrate, Phul were ordered to be quashed.

Counsel for the petitioner contends that in the earlier litigation in regard to the property in question, this Court vide judgment dated 29.8.1989 passed in Regular Second Appeal had held that Jai Singh (defendant) being the Mohatmim of the suit property could be removed

only by filing a suit as contemplated under Section 92 of the Code of Civil Procedure and not otherwise. It was further held that the dera/institution known as 'Sri Guru Granth Sahib Chhoti and Lambi Dhab' is the owner of the suit property and the defendant is only its mohatmim. The suit filed by Thana Singh and others was liable to be dismissed as they had no locus standi to file the present suit as such. It is further argued that Civil Writ Petition No. 16202 of 2005 was filed wherein the order dated 13.9.2005 (Annexure P-1) passed by the Additional Deputy Commissioner, Bathinda was challenged and the said writ petition stands admitted in which operation of the impugned order (Annexure P-9 therein) has been stayed. Later, C.O.C.P. No. 660 of 2006 in C.W.P.No. 16202 of 2005 was filed and vide order passed on July 25, 2006, it was directed that the wheat crop which was taken by the police shall be handed over to the petitioner in terms of the orders passed by this Court. It is argued with vehemence that as the private respondents in the proceedings under Section 145 Cr.P.C. are trying to interfere in possession of the land in dispute creating apprehension of breach of peace, proceedings under Section 145 Cr.P.C. legitimately initiated have been wrongly quashed by order impugned. It is further argued that the impugned order may be set aside and the matter may be remanded to the Sub Divisional Magistrate for adjudication on its merits.

Counsel for the contesting respondents would submit that proceedings under Section 145 Cr.P.C. were initiated in the year 2007 when the civil court was already seized of the matter as dera Sri Guru Granth Sahib through Mohatmim Darbara Singh alias Darbara Nand, Chela Jai Singh Chela Atma Nand through Mahant Sikander Dass, Mohtmim Chela

Darbara Singh alias Darbara Nand, had filed a suit for declaration and permanent injunction in respect of land measuring 43 kanlas 08 marlas detailed therein (land in question). It is argued with vehemence that once the dispute with regard to the land in question was pending in the civil court, the administrative authorities are not competent to entertain proceedings under Section 145 Cr.P.C. It is further argued that the aforesaid suit (Civil Suit No. 56 of 8.3.2006) was disposed of by the Civil Judge (Junior Division), Phul vide judgment dated 26.3.2010 and claim of the plaintiff has been dismissed. The judgment passed by the civil court has attained finality as it was not challenged in appeal.

Another submission made by counsel is that purpose of proceedings under Section 145 Cr.P.C. is to take action in emergent conditions to avoid breach of peace in respect of dispute concerning land or water. It is argued that as the proceedings were dropped in the year 2008, there is no question of revival of those proceedings and the present petition has been filed to abuse process of court with an intent to deprive the private respondents in regard to possession of the suit property.

I have heard counsel for the parties and perused the records.

Counsel for the petitioner is not in a position to counter the submissions made by counsel for the respondents that when the proceedings under Section 145 Cr.P.C. were initiated at the instance of the petitioner, the petitioner had already approached the civil court by filing the suit seeking declaration to the effect that the dera is owner in possession of the land in question. There is no denial that the said litigation initiated in the year 2006 has culminated in the judgment and decree dated 26.3.2010 passed by

the Civil Judge (Junior Division), Phul and the suit filed by the dera through Mohatmim Darbara Singh through Mahant Sikander Dass (petitioner herein) was dismissed by the trial court and the judgment passed by the trial court has attained finality. I find force in the contention of the respondents that since the civil court was seized of the matter, the Sub Divisional Magistrate is not competent to initiate proceedings under Section 145 Cr.P.C. There cannot be any dispute about the fact that the proceedings under Section 145 Cr.P.C. are meant for meeting emergent situations to prevent breach of peace due to dispute concerning any land or water. Keeping in view the fact that the proceedings were quashed as back as in the year 2008 coupled with the factum that civil suit has been decided against the petitioner, I do not find any reason to interfere in the impugned order or order revival of the proceedings under Section 145 Cr.P.C.

For the reasons aforesaid, finding no merit, the petition is dismissed.

(REKHA MITTAL)
JUDGE

27.1.2015
PARAMJIT