HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.7985 of 1997 (O&M)
Date of Decision: 10.04.2015

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Thakardwara Shiv Duala
Mandir Adhwala & Anr. ... Petitioners

VS.

State of Punjab & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE RAJ MOHAN SINGH

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

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Present: Mr. MK Tiwari, Advocate for the petitioners

Mr. Ashwani Talwar, Addl. AG Punjab with
Mr. Sunil Kumar Vashisht, AAG Punjab

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SURYA KANT, J.

(1) This writ petition has been filed by Thakurdwara Shiv Duala Mandir Adhwala and its Mohtmim – Onkar Krishan, challenging the order dated 19.03.1997 (Annexure P6) passed by Financial Commissioner, Revenue, Punjab whereby Deputy Commissioner, Patiala was directed that "Till a new Mohatmim is appointed in Mandir, Shiv Dawala Adwala Sanour Road, Patiala, the possession may be taken immediately and handed over to revenue officer/supervisor Dharam Arth and a proposal for the appointment of the new Mohatmim may be sent to Govt. in accordance with the Punjab Govt. instructions/rules…".

(2) The petitioners' case is that the erstwhile Ruler of Patiala State, Maharaja Narinder Singh, gave 100 bighas of land situated on the Patiala-Sanaur Road to Pandit Harjas Rai by way of two gift notifications (Annexure P1 & P2), reciting that the land was given in donation (Punarth) for the construction of Thakurdwara and it was 'exempted' from 'revenue charges'. Rupees hundred were still taken from Pandit Harjas Rai as the cost of 'well' located on the land. It was further ordered that the land including the well be given to Pandit Harjas Rai '**permanently**' to meet with the expenditure to be incurred in performing rituals i.e. Parsad, Bhoj Deep etc.

(3) After the death of Harjas Rai, there arose a dispute amongst the legal heirs of his daughters. On consideration of their rival claims, the then Maharaja Bhupinder Singh of Patiala State appointed Pandit Deen Dayal as the Mohtmim vide order dated 18.05.1940 (Annexure P3). The aforesaid appointment order duly signed by Maharaja was subject to the conditions of (i) good behaviour and conduct; (ii) faithful performance of duties towards the temple; (iii) **"the immovable property attached to the said temple shall always remain the property of the temple and shall on no account, under any condition, be treated as his personal property..."**.

(4) The second petitioner is the grandson of Pandit Deen Dayal. It is his case that his grandfather Deen Dayal died on 13.10.1942 and thereafter petitioners' father Kedar Nath was appointed as Mohtmim by Maharaja Yadvinder Singh of Patiala vide the following order dated 09.07.1943:-

> *"By the order of Shri 108 His Highness Maharaja Dhiraj Mohinder Bahadur, Atal Partapi Parja Palak through S.Pretam Singh Shergill Sardar Sahib Deodi Mohalla as Karrora Sahib Ranohas Bahark, that Din Dayal Mohtmim Thakurdwara Adhawala situated on Sanaur Road has expired on 13 Assoj, 1999. In his place, his son Kidar Nath is appointed as Mohatmim from the said date. Matter of 85 bigha 6 biswas of land be entered in the name of Thakurdwara and Muafir and Rs.57/- in the name of Temple be done through the Control/Batoon) of Kidar Nath Mohatmim is sanctioned".*

(5) The petitioner has further averred that one Madhav Sarup filed a petition under Section 92 CPC for the removal of Pandit Kedar Nath as Mohtmim. The matter finally reached before this Court in LPA-1169-1985 reported as <u>1989 Vol-I, Northern Legal Reports 610</u> which was decided in favour of Kedar Nath holding that he shall continue as Mohtmim subject to those very three conditions which were imposed while appointing Pandit Deen Dayal as the Mohtmim. Special Leave Petition against that order was dismissed by Apex Court.

(6) The claim of second petitioner is that the erstwhile Rulers of Patiala State had accepted the appointment of Mohtmim of subject-temple by the rule of succession, namely, the hereditary claim. Hence after the death of his father, the second petitioner ought to have been appointed as Mohtmim, subject to those very conditions which were imposed while appointing Pandit Deen Dayal or Pandit Kedar Nath. On this premise, the petitioners have asserted that the Financial Commissioner, Revenue, Punjab need not to have directed the Deputy Commissioner to take over the management and affairs of the subject-temple, rather the second petitioner ought to have been appointed as the Mohtmim.

(7) State of Punjab has filed its written statement through the Deputy Commissioner, Patiala with a specific plea that under the Standing Order No.7 of the State Government read with *Farman-i-Shahi,* the Financial Commissioner, Revenue, Punjab is the competent authority to appoint Mohtmim and the second petitioner has no right to seek such appointment.

(8) At the time when this petition was taken up for final hearing, we directed the State counsel to apprise the development, if any, which might have taken place during the pendency of the case for the reason that the Financial Commissioner, Revenue had made an interim arrangement only "till the new Mohtmim was appointed…". We thus asked whether such an appointment was

made meanwhile and if not, why the claim of second petitioner has not even been considered?

(9) In response thereto, the Deputy Commissioner, Patiala has filed affidavit dated 09.01.2015 which does not even suggest that the claim of second petitioner was ever considered or that he was not found suitable for any valid reason. The affidavit is nothing but reiteration of the facts that after the death of Kedar Nath on 17.10.1996, the power to appoint Mohtmim lies with the Financial Commissioner, Revenue, Punjab.

(10) The second petitioner is grand-son of Pandit Deen Dayal who was admittedly the Mohtmim of first petitioner, namely, temple-cum-dera and was appointed by the then Ruler of Patiala State vide order dated 18.05.1940 (Annexure P3). Respondent-authorities have not been able to deny the fact that Mahant-cum-Mohtmim of petitioner No.1 has always been appointed following the rule of succession within the family. It was as per that convention only that the father of second petitioner was also appointed the Mahant and his appointment was duly upheld by this Court as well as Supreme Court.

(11) However, what surprises us is that after the death of father of petitioner No.2 on 17.10.1996, the Financial Commissioner, Revenue passed the impugned order dated 19.03.1997 asking the Deputy Commissioner, Patiala to take over

the temple-cum-dera instead of appointing a new Mohtmim/Mahant in accordance with the law. Even during the interregnum also, no step has been taken to appoint the Mahant and the latest affidavit filed by Deputy Commissioner, Patiala on 09.02.2015 fails to disclose the hidden reasons as to why the claim of second petitioner or any other eligible person has not been considered? Suffice it to observe that the stand taken by the authorities is self-contradictory. On one hand, they rely upon *Farman-i-Shahi* and subsequent Ordinances and notifications to contend that Financial Commissioner, Revenue is the competent authority to appoint a Mahant-cum-Mohtmim and on the other, they have failed to exercise such power for last more than 15 years.

(12) Since the rule of succession has been the consistent practice followed in the past and no contrary material is brought on record to disqualify petitioner No.2 from such consideration, more-so when petitioner No.2 has not questioned the authority of State Government in the matter of appointment of Mahant rather himself applied for such appointment, we allow this writ petition to the extent that the impugned order dated 19.03.1997 is quashed. The Financial Commissioner, Revenue is directed to consider the claim of petitioner No.2 for appointment as Mahant of petitioner No.1 subject to all those conditions which the then

Ruler of Patiala State had imposed while appointing the grandfather of petitioner No.2 as Mahant vide order dated 18.05.1940. If the competent authority does not find petitioner No.2 suffering any disqualification, the authorities are directed to follow the rule of succession and make consequential appointment. In the event of such appointment, the appointee shall be bound by the conditions imposed by the erstwhile Ruler of Patiala State vide order dated 18.05.1940 (Annexure P3). The competent authority shall be at liberty to impose the additional terms and conditions also, if need be, in accordance with law. The appropriate decision shall be taken within *six months* from the date of receipt of a certified copy of this order and meanwhile petitioner No.2 shall be allowed to continue to perform the duties of Mahant-cum-Mohtmim.

(13) If the Financial Commissioner, Revenue does not accept the claim of second petitioner for appointment as Mahant-cum-Mohtmim, in that event, a speaking order shall have to be passed within the stipulated period and the Mahant shall have to be appointed as per the succession Rule elaborated above.

(Surya Kant)
Judge

10.04.2015
vishal shonkar

(Raj Mohan Singh)
Judge