IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 26168 of 2013
Date of Decision: 21.9.2016

Balwant Singh

.....Petitioner

Vs.

Financial Commissioner, Revenue, Punjab and others

.....Respondents

2) **Civil Writ Petition No. 27064 of 2013**

Gurudwara/Dharamshala Parbandhak Committee, Jatike, Tehsil & District Kapurthala

.....Petitioner

Vs.

Financial Commissioner, Revenue, Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Mandeep Singh Bedi, Sr. Advocate with
Ms. Shubreet Kaur, Advocate
for the petitioner in CWP No. 26168 of 2013.

Mr. B.M. Vinayak, DAG, Punjab.

Mr. Kulbhushan Sharma, Advocate
for respondent No.4.

Mr. G.S. Nagra, Advocate
for respondent No.5 in CWP No. 26168 of 2013 and
for the petitioner in CWP No. 27064 of 2013.

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RAMESHWAR SINGH MALIK J. (ORAL)

These two identical writ petitions bearing CWP Nos. 26168 and 27064 of 2013, are being decided by this common order, because both the writ petitions are arising out of similar facts and raise common questions of law. However, for the facility of reference, facts are being culled out from CWP No. 26168 of 2013 (Balwant Singh Vs. Financial Commissioner, Revenue, Punjab and others)

Both these writ petitions are directed against the order dated 5.3.2013 (Annexure P-8), passed by the Financial Commissioner, Revenue, Punjab, which was passed by him in compliance of the order dated 27.1.2011 passed by this Court in CWP No. 11425 of 2001 (Annexure P-6), upholding the appointment of Gurmukh Singh-respondent No.4 as Mohatmim.

Notice of motion was issued and in compliance thereof, three written statements have been filed. One written statement has been filed on behalf of respondents No. 1 to 3. Another written statement was filed on behalf of respondents No.4 and 5 and another separate written statement has been filed on behalf of respondent No.4.

Heard learned counsel for the parties.

It has gone undisputed before this Court that Gurmukh Singh was appointed as Mohatmim by the District Collector, vide order dated 11.11.1994 (Annexure P-3). This order came to be challenged by the petitioners before the Commissioner (Appeals), Jalandhar Division, Jalandhar. Appeals filed by the petitioners were dismissed vide order dated 28.5.1998 (Annexure P-4) and the abovesaid order dated 11.11.1994 passed by the District Collector was upheld, appointing Gurmukh Singh as Mohatmim. However, Financial Commissioner, vide his order dated 25.5.2001 (Annexure P-5), remanded the matter to SDM, Kapurthala, for determining the status of the property, whether it was a Gurudwara or a Dharamsala.

Order dated 25.5.2001 (Annexure P-5) came to be challenged by Gurmukh Singh by way of CWP No. 11425 of 2001, which was disposed of by this Court on 27.1.2011 (Annexure P-6), observing that Financial Commissioner need not to decide the status of the institution as Gurudwara or Dharamsala. The Financial Commissioner was directed to consider the limited question as to whether Gurmukh Singh was to be appointed as Mohtmim or not, in accordance with law. In compliance of the abovesaid order passed by this Court, impugned order dated 5.3.2013 was passed by the Financial Commissioner.

Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that since both these writ petitions are without any merit, the same are liable to be dismissed. To say so, reasons are more than one, which are being recorded hereinafter.

Operative part of the order dated 27.1.2011 passed by this Court in CWP No. 11425 of 2001, reads as under :-

> *"Having heard learned counsel for the parties, I am of the opinion that determination of the question, whether the institution is a Dharamshala or a Gurudwara,*

does not arise nor is required to be decided in application filed by the petitioner for appointment of Mohatmim. The issue required to be examined is, whether the petitioner is to be appointed as Mohatmim or the respondents are to be given right to manage the institution of Dharamshala. Even Mr. Nagra could not raise any meaningful argument to the effect that the issue, whether the institution is a Dharamshala or is a Gurudwara, is not required to be decided in the proceedings initiated by the petitioner.

In view of the said fact, the order passed by the learned Financial Commissioner remanding the matter to the Sub Divisional Officer to determine the status of the institution as Gurudwara or a Dharamshala is set aside. Learned Financial Commissioner shall consider the question, whether the petitioner is to be appointed as Mohatmim or not, in accordance with law.

Parties through their counsel are directed to appear before the learned Financial Commissioner on 21.02.2011.

A bare reading of the abovesaid order passed by this Court would show that the issue was put in a very narrow compass. The only matter which was left to be decided by the Financial Commissioner was whether Gurmukh Singh was to be appointed as Mohtmim or not. Other issues which were being raised by the parties, time and again, were set at rest by this Court, saying that Financial Commissioner need not to decide about the status of the institution, whether it was a Gurudwara or Dharamsal. In strict compliance of the abovesaid directions issued by this Court, Financial Commissioner arrived at a conclusion that the orders passed by Collector and Commissioner, appointing Gurmukh Singh as Mohtmim, were not suffering from any patent illegality or perversity.

The relevant observations made by the Financial Commissioner in the impugned order, which deserves to be noticed here, read as under:-

> *"When the case was taken up for consideration, counsel for the petitioner pointed out that the Muafi had been issued by the then Maharaja on the condition that the dharamshala should be in existence and the priest should be of good character. However, the present respondent No.1, was not a person of good character, did not have knowledge of religious scriptures and therefore could not effectively function as mohtmim. He did not maintain accounts of the income accrued from the land in fact he had left the village since 1987 and was continuing with the proceedings only with a view to usurp the land attached to the dharamshala. He further submitted that the Panchayat of the village had declared that a Gurdwara was located on the land in question. Various arguments to support the contention that in fact a Gurdwara was functioning were also raise but have not been considered in view of the direction of the High Court that the status of the property is not in question. Countering these arguments, counsel for respondent No.1*

> *pointed out that he had been appointed as mohtmim by the Collector and the appointment had been upheld by the Commissioner. Similar allegations about him being a wayward habits were raised before the Collector and the Commissioner also but had not found favour. The current allegations were also totally unsubstantiated, and hence, there was not merit in the petition.*
>
> *Having considered the rival contentions, I do not find any merit in the arguments raised on behalf of the petitioner. Allegations against respondent No.1 have been raised but have not been supported by any evidence whatsoever. Rather the main attempt of the petitioner, has been to show that he institution is a Gurdwara however as noted above this issue cannot be gone into the current proceedings. There is therefore no circumstance that would warrant interference by way of revision in the orders of the Collector and the Commissioner."*

During the course of hearing, learned senior counsel for the petitioner could not point any patent illegality or perversity in the impugned order passed by the Financial Commissioner, which may warrant interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. Further, no prejudice of any kind, whatsoever, has been shown which might have been caused to the petitioner, by passing of the impugned order. In fact, the impugned order passed by the Financial Commissioner is in consonance with the directions issued by this Court. The Financial Commission has not exceeded his jurisdiction, while passing the impugned order and the same deserves to be upheld, for this reason also.

Learned senior counsel for the petitioner refers to a Division Bench judgment of this Court in **State of Punjab and others Vs. Mahant Jatinder Dass Chela Mahant Narotam Dass, Mahant, Mandir Dun, Patiala, 2015 (3) RCR (civil) 476**, to contend, that issue regarding appointment of Mohatmim is to be decided by a Special Civil Court-cum-Tribunal and the impugned order passed by the Financial Commissioner, would be an order without jurisdiction.

After giving anxious consideration to the contention raised by learned senior counsel, this Court is of the view that since the Financial Commissioner has passed the impugned order dated 5.3.2013, in strict compliance of the directions issued by this Court vide abovesaid order dated Annexre P-6, the impugned order passed by the Financial Commissioner cannot be said to be an order without jurisdiction, by any stretch of imagination.

So far as the judgment rendered by Division Bench of this Court in **Mahant Jatinder Dass's case** (supra) is concerned, the issue of appointment of respondent No.4 as Mohatmim, was no more pending before the Financial Commissioner or any authority of the State Government at the time of passing of this judgment. It goes without saying that after the judgment in the **Mahant Jatinder Dass's case** (supra), rendered by Division Bench of this Court, all concerned would be bound by the directions issued by the Division Bench of this Court, including authorities of the respondent

State.

However, any appointment order already passed, appointing any person as Mohatmim will not be set at naught by the judgment of this Court in **Mahant Jatinder Dass's case** (supra). It is so said because appointment of respondent No.4 had already been ordered by Collector way back in the year 1994 which has been upheld by the Commissioner and thereafter, by the Financial Commissioner as well. In this view of the matter, judgment in **Mahant Jatinder Dass's case** (supra) does not advance the case of the petitioner in any manner.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these writ petitions are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, both the writ petitions stand dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

21.9.2016
Ak Sharma

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