

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.7153 of 2014

Date of Decision: December 05, 2016

Trust Shivala Ram Kishan Sood (Registered) Moga through
its Secretary Joginder Pal Sood

...Petitioner

Versus

Commissioner, Ferozepur Division, Ferozepur & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.S.K.Singla, Advocate, for the petitioner.

Ms.Monica Chhibber Sharma, DAG, Punjab.

Ms.Rashmi Dhillon, Advocate, for respondent No.3.

RAMESHWAR SINGH MALIK, J.(Oral)

Present writ petition is directed against the order dated 22.11.2012 (Annexure P-4) passed by Commissioner, Ferozepur Division, Ferozepur-respondent No.1, whereby the eviction order dated 11.06.2010 (Annexure P-2) passed by learned District Collector, Moga, was set aside, remanding the case to the District Collector with a direction to decide the eviction proceedings, after decision of the civil suit pending between the parties.

Notice of motion was issued and in compliance thereof, written statement was filed by respondent No.3. Short reply was filed on behalf of respondent Nos.1 and 2.

Heard learned counsel for the parties.

The entire case of respondent No.3, as set up by him in his

appeal (Annexure P-3) before the Commissioner, Ferozepur Division, Ferozepur, was that he inherited the property in question from his father, who was *pujari* of Shivala Ram Kishan. It is a matter of record that petitioner filed the eviction petition against respondent No.3 under Section 3 of the Punjab Religious Premises and Land (Eviction & Rent Recovery) Act, 1997. Said eviction application filed by the petitioner was allowed, by the learned District Collector, Moga, vide his detailed order dated 11.06.2010 (Annexure P-2).

Respondent No.3 filed his appeal (Annexure P-3) on the ground that he has inherited the property from his forefathers, because of which present petitioner had no authority to file and maintain the eviction petition against him. Learned Commissioner, while proceeding on wholly misconceived approach and referring to an interim order dated 21.08.2012, passed by learned Civil Judge (Junior Division), Moga, in the suit for injunction filed by respondent No.3 as plaintiff, illegally set aside the abovesaid eviction order dated 11.06.2010 (Annexure P-2), remanding the case to the District Collector with a direction that he should decide the case afresh but only after decision of civil suit.

During the course of hearing, it has gone undisputed before this Court that in the civil suit which has been filed by respondent No.3, no question of title is involved. It is only a suit for injunction. This fact alone would show that respondent No.3 has been taking self-contradictory pleas before the respondent authorities as per his own suitability. It is so said because had respondent No.3 been claiming the

ownership over the property in question, he ought to have filed a suit for declaration which he did not do so, for the reason best known to him. Once the question of title is nowhere pending between the parties, petitioner had every right and authority to file and maintain the eviction petition against respondent No.3. Respondent No.3 was granted full opportunity to defend himself by learned Collector before passing self contained order dated 11.06.2010 (Annexure P-2), whereby respondent No.3 was ordered to be evicted from the temple premises and the properties attached there with.

Having said that, this Court feels no hesitation to conclude that since the Commissioner has exceeded his jurisdiction and committed error of law while passing the impugned order, the same cannot be sustained and the order dated 11.06.2010 (Annexure P-2) passed by learned District Collector, Moga, deserves to be restored.

It is so said because the only argument raised on behalf of respondent No.3 before the Commissioner as well as before this Court was that since he has inherited the property in question from his father, he cannot be ordered to be ejected at the instance of the petitioner. This was the reason that the learned counsel for respondent No.3 was confronted to show that respondent No.3 was entitled to inherit the property in question from his father. However, learned counsel for respondent No.3 had no answer and rightly so, it being a matter of record. Religious premises, from which petitioner sought ejectment of respondent No.3, was not subject to inheritance and this fact has also

gone undisputed before this Court. Once respondent No.3 was not entitled to inherit the property in question, he had no case either on facts or law. However, since the Commissioner, Ferozepur Division, Ferozepur, has misdirected himself while completely misreading and misunderstanding the abovesaid factual, as well as legal aspect of the matter, impugned order cannot be sustained, for this reason as well.

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 since impugned order dated 22.11.2012 (Annexure P-4) passed by the Commissioner, Ferozepur Division, Ferozepur, has been found suffering from patent illegality, the same cannot be upheld. Accordingly, the impugned order is hereby set aside. Consequently, the order dated 11.06.2010 (Annexure P-2) passed by learned District Collector, Moga, is restored. Writ petition deserves to be accepted.

Resultantly, with the abovesaid observations made, present writ petition stands allowed, however, with no order as to costs.

December 05, 2016

seema

**(RAMESHWAR SINGH MALIK)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No