

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

**CWP No.4394 of 2017
Date of Decision : March 02, 2017**

SHRI DASHNAM SANYAS MANDAL DOABA, PUNJAB (REGD.)

....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

....Respondents

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Mandeep Singh Sodhi, Advocate
for the petitioner.

M.M.S. BEDI, J (ORAL)

Through the instant writ petition Shri Dashnam Sanyas Mandal Doaba, Punjab through Mahant Ganga Nand Puri has sought a writ in the nature of mandamus directing the respondents to allow the petitioner to bury dead body of Mahant Dev Gir, who expired on 24.02.2017, near the Samadh of earlier Mahants of the Dera and to allow the petitioner to perform the last rites of above said Mahant. It is claimed that there is a Mandir of Murti Shivji Maharaj attached with Dharamshala which is constructed in an area of 08 kanal 19 marlas which was earlier managed by Mohan Jatti, Mohtmim. On demise of said Mahant Mohan Jatti, Mahant Ram Jatti was appointed as Chela. Dead body of Mohan Jatti was buried near the said Mandir. After demise of Mahant Ram Jatti, it was Mahant Bishambar Gir, who was appointed as Chela. After his demise, Mahant Mahesh Gir was appointed as Chela. After his

demise, Mahant Madan Gir was appointed as Chela. The dead bodies of all these Mahants were burried near the Mandir and the Samadhs of all the said Mahants exist near the Mandir. It is claimed in the writ petition that Mahant Madan Gir was appointed Mohtmim by Bheikh of Sadhus and other respectable persons on 14.12.1966. Mahant Madan Gir had bequeathed all the rights pertaining to the property of the Mandir in favour of Mahant Dev Gir. Though, originally the revenue record contained the names of various Mahants but on account of error of revenue authorities, the ownership was changed in the name of Gram Panchayat but Mahant Dev Gir performed the various religious functions in the property being trustee of the property. Under the garb of wrong revenue entries, the Collector, Kapurthala on 19.09.2011 ordered removal of Mahant Dev Gir and appointed Tehsildar Phagwara as Receiver of Mandir, as a result of which, Mahant Dev Gir filed a suit for declaration that he was owner in possession of the land measuring 55 kanals 17 marlas situated in the revenue estate of village Panchhta, Tehsil Phagwara, District Kapurthala and sought the correction of the khasra girdawaris. In the said civil suit, vide order dated 09.12.2011 parties had been directed to maintain status quo. Copy of the order has been placed on record as Annexure P-1.

The grievance of the petitioner is that on account of order of status quo and non existence of any interim mandatory injunction having been granted to the petitioner, the petitioner is not being permitted the burrial of the dead body of Mahant Dev Gir near the Shiv Mandir where the Samadhs of earlier Mahants exist. An application had been

submitted by the petitioner to Tehsildar Phagwara (Annexure P-1) for granting permission to bury Mahant Dev Gir. The said application has been dismissed vide Annexure P-3 dated 27.02.2017 on the ground that status quo order has been passed by Additional Civil Judge (Senior Division), Phagwara on 09.12.2011. Said order was been questioned in this writ petition.

A perusal of the interim order passed by Civil Judge (Junior Division), Phagwara indicates that Mahant Dev Gir had pleaded in the plaint and stay application that the respondents had dispossessed him illegally and forcibly. The restoration of possession had been prayed for. The controversy pertaining to the ownership of land measuring 40 kanals 18 Marlas which has been transferred in the name of Nagar Panchayat and land measuring 6 kanals – 01 marla and 8 kanals 19 marlas allegedly being that of shamlat Patti Mussada Singh and Shamlat Patti Diya Bani being debatable, it will not be feasible for this Court to pass an order permitting the burrial of the body of Mahant Dev Gir at the desired place as the actual status of the property, in dispute, is not certain and it will also not be feasible to enter into disputed question of fact regarding the situation existing on the spot. It will also not be appropriate for this Court to express anything, on the basis of material available on record, to give a finding regarding the status of the deceased as Mahant; the customs of Bheikh and entitlement of the petitioner to utilize the land near Samadhs of the earlier Mahants. The said question is determinable by the Receiver or by the civil Court where the suit is pending. In case, there is no controversy or dispute regarding burrial of the body of Mahant

Dev Gir at a place, sought for by the petitioner, it will always be prudent to seek a formal order from the Court concerned or from the Tehsildar or the rival contenders pertaining to the ownership of the land. Even otherwise, it will always be open to the Court to permit the burrial and performance of the religious functions at a place near Mandir, without prejudice to the rights of the parties which are yet to be determined by the civil Court.

On account of uncertainty about the facts on the spot, adjudication of the matter is avoided in the exercise of writ jurisdiction of supervisory power under Section 227 of the Constitution of India. The petition is accordingly disposed of. However, a direction is issued that in case, the petitioner moves an application for the relief claimed for in the present writ petition before the civil Court where the suit is pending, the said application will be considered in the light of the situation existing on the spot within a period of one week and appropriate orders would be passed forthwith. It is further ordered that till the adjudication of the application, the police authorities or health authorities of the area will permit the retention of the body of Mahant Dev Gir in the hospital mortuary.

A copy of the order be communicated to the Tehsildar, Phagwara, S.D.M., Phagwara, District Magistrate, Kapurthala and also to the Court concerned, forthwith.

**(M.M.S. BEDI)
JUDGE**

March 02, 2017

rajneesh

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No