

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 8025-2016 (O&M)

Date of decision: 26.04.2018

Jaswant Singh

.....Petitioner

versus

Asthan Dera Udassian and another

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Sukhdeep Singh Brar, Advocate for the petitioner
Mr.Naresh Kauushal, Advocate for the respondent no.1
Mr.Kanwaljit Singh, Senior Advocate with
Mr.Abhishek Bajaj, Advocate for the respondent no.2

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J.

This revision petition under Article 227 of the Constitution of India has been filed by one Jaswant Singh son of Gurdev Singh, resident of village Manauli, Tehsil and District Mohali against order dated 14.7.2015, passed by the learned Additional District Judge, SAS Nagar, Mohali.

Brief facts of the case are that respondent no.1 Asthan Dera Udassian Murti Baba Siri Chandji, village Manauli, Tehsil and District Mohali through its Mahant Biram Dass Chela Sewa Dass filed a petition under Section 34 of the Indian Trust Act, 1882 against the General Public seeking permission to sell land measuring 36 bighas 18 biswas situated in village Manauli, now falling in Sector 82, Mohali. It was stated that all the owners / khewatdars of village Manauli have already sold their lands to Janta Land Promoters for development of Industrial Sector 82. Land of the

Dera has become sandwiched/ Marooned. No path is available to reach the said land and the said land cannot be utilized for any worthwhile purpose. Janta Land Promoters have developed land in Sector 82 and have carved out plots around the suit land. Hence, it will be in the interest of justice if the applicant is allowed to sell the said land on the market rate. The applicant undertook to purchase some other land in the name of the Dera after selling the said land.

Notice was issued to the General Public through publication in Daily 'Tribune' Chandigarh. None appeared on behalf of the General Public.

In the ex-parte evidence, applicant examined Amar Singh Draftsman as AW1. Applicant Biram Dass as AW2 and Tejbir Singh Patwari as AW3.

The learned Additional District Judge, after considering the prayer, granted the following relief:-

14. As such the petition under consideration is allowed. It is opined that the petitioner Dera may sell the suit property subject to the following conditions:-

i) That it shall convene a Bheikh to seek approval of its resolve to sell the suit property by further requesting the congregation to authorize Mahant Biram Dass to execute the sale deed;

ii) That the suit property shall not be sold below the 'reserve price' of Rs.1,70,00,000/- per acre;

iii) That after sale of the suit land to M/s JLPL or other such prospective buyer, the entire sale consideration shall be

deposited in the shape of an FDR with some Nationalised bank of the choice of the petitioner;

iv) That the prospective purchaser as well as Sub Registrar who will register this sale shall ensure deposit of sale consideration in a Nationalised bank of the choice of the petitioner in the shape of an FDR at their own responsibility.

For due compliance a copy of this judgment be endorsed to the Sub-Registrar, SAS Nagar, Mohali;

v) That the applicant shall purchase agricultural land or immovable property with the sale proceeds of suit land within six months from this sale and shall furnish certified copies of those sale deeds in its favour to this Court for records;

vi) That the petitioner may utilize accrued interest on the FDR to carry out its religious activities and shall undertake not to mis-use the remittances/ interest/ sale proceeds for his personal gains.

Upon notice, both the respondents appeared. Respondent nos.1 and 2 have filed some documents to show that the land in question has already been sold and in its place, some land has been purchased.

Learned counsel for the petitioner has argued that he being a member of General Public, is appearing and assisting the Court. It is stated that the land belongs to Dera Udassian and that the Mahant Biram Dass had no authority to sell the same. It is further contended that the petition under Section 34 of the Indian Trust Act, 1882 was wrongly filed since Dera Udassian is not a Trust within the meaning of Section 3 of the Indian Trust

Act, 1882. It is contended that Mahant of Dera connived with Janta Land Promoters and sold the land @ Rs.1 crore 70 lakhs per acre, whereas value of the land is much more. Janta Land Promoters carved out plots and sold the same at much higher premium. In this way, Dera property has been misused.

Reliance has been placed upon the authority of this Court titled as State of Punjab and others vs. Mahant Jatinder Dass Chela Mahant Narotam Dass, Mahant, Mandir Dun, Patiala, 2015 (3) RCR (Civil) 476, wherein a Division Bench of this Court observed that religious institutions in hand cannot be brought back to their original pristine glory unless they are freed from the conmen who have invaded these institutions and keeping them hostages. It is an arduous task and the cleaning up exercise shall involve a marathon exercise of determining the multifarious factual issues including the issues mentioned in the said judgment. It was also held that Mahant-cum-Mohtmim has no authority or power to alienate the property of the religious institution in any manner whatsoever and such property vests exclusively in the religious institution only. In the said case, the Court passed the following orders:-

(186) In the light of the above discussion, we sum up our conclusions as follows:-

(i) Farman-i-Shahi dated 18.04.1921 AD is held to be a valid law duly saved under Article 13 read with Article 372 of the Constitution and it continues to be a valid law until altered, repealed or amended by a competent Legislature or other competent authority. It is further held that Farman-i-Shahi is not hit by Articles 13(1), 14 or 300-A of the Constitution.

(ii) *Farman-i-Shahi is applicable and continues to regulate the appointment of a Mahant or Mohtmim of such a Religious Institution of Non-Sikh Sampardaya to whom land or any other immovable property was given by the erstwhile Rulers of Patiala State or any other Princely State which later merged into PEPSU.*

(iii) *Farman-i-Shahi neither prescribes the mode of selection of a Mahant or Mohtmim nor is it attracted till the stage of approval for appointment of a chosen Mahant or Mohtmim reaches. The Mahant-cum-Mohtmim of a Non-Sikh Religious denomination shall be chosen only as per the customs, practices and conventions followed by such Sect, continuously and consistently.*

(iv) *Dharmarth Board does not have any administrative control in the matter of regulating the affairs of Deras or other Religious Institutions of Non-Sikh Sampardaya.*

(v) *State of Punjab or its authorities are not empowered to select Mahant-cum-Mohtmim of a Religious Sectcum-Dera of Non-Sikh Sampardaya at their own but the approval of the Competent Authority in the State Government shall be required for such appointment.*

(vi) *A Mahant-cum-Mohtmim has no authority or power to alienate the property of the Religious Institution in any manner whatsoever and such property vests exclusively in the Religious Institution only.*

(vii) *Any transaction in relation to the immovable properties of*

the Dera-cum-Religious Institutions of Non-Sikh Sampardaya which are subject-matter of these cases, entered into so far by the Mahant-cum- Mohtmims are prima facie declared to be acts of fraud and collusion, without any authority and are held to be detrimental to the interest of the respective Dera-cum-Religious Institution. Consequently, all such transactions are hereby declared null and void, having no binding effect on the concerned Dera-cum-Religious Institution subject to however, the right of the affected person to approach the Special Civil Court constituted hereinafter and to establish that the transaction in question was free from the above illustrated or any other fatal legal infirmity and further that such transaction was beneficial for the dera-cum-religious institution. The onus to prove that any of the transactions deserves to be validated, shall lie on the person who claims any right, interest or title through such transaction. Until such onus is discharged, the subject property shall stand mutated and continue to be owned by the dera-cum-religious institution free from all encumbrances.

The Court also inter-alia granted the following relief:-

188. xxxx xxxx xxxxx

(iv). All those sale deeds, exchange deeds, lease deeds or any other Instrument of transfer of immovable property executed by the Mahant-cum-Mohtmims of the deras in transgression of their powers and authority, are hereby declared null and void having no binding effect on the Dera-cum-Religious

Institution(s) subject to, however, the conditions mentioned in para-186(vii) of this order read with direction No.(viii) below;

In this way, all the sale deeds, exchange deeds, lease deeds or any other instrument of transfer of immovable property executed by the Mahant-cum-Mohtmims of Dera in transgression of their powers and authority were declared null and void and set aside.

Definition of Trust, Trustee, Beneficiary, Trust Property etc. is given in Section 3 of the Indian Trust Act, 1882 as under:-

A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner: "author of the trust": the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust"

It is contended on behalf of the petitioner that Dera Udassian is not a public or private Trust. In fact, the learned Additional District Judge, after discussing the said definition also came to the conclusion that strictly speaking, it cannot be called a Trust property. However, the learned Additional District Judge took a view that the property, in dispute, has been

dedicated in the name of Murti Baba Siri Chandji and as such, it is legally held in Trust on behalf of Murti Baba Siri Chandji by Mahant Biram Dass. Mahant Biram Dass is merely a custodian of the property, whereas, the property vests in Asthan Dera Udassian Murti Baba Siri Chandji. Baba Sri Chand Ji was the son of First Sikh Guru Nank Dev Ji and founder of Sect called Udasis. The trial Court also took the view that once, the trappings of Trust are found, though the purpose of endowment is not clearly discernable, it can be arrived at that Indian Trust Act, 1882 must govern the management and administration of such property because under Section 4 (ibid) a Trust may be created for any lawful purpose, which is not forbidden by law. Section 34 of the Indian Trust Act, 1882 provides as under:-

34. Right to apply to Court for opinion in management of trust- property.-Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in

the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

The perusal of Section 34 of the Indian Trust Act, 1882 shows that the party has right to apply to the Court for opinion in management of the Trust property. The management amongst others includes the sale. The trial Court took the view that on account of development of Sector 82, the property has become sandwich/Maroon in the land owned by private promoters namely Janta Land Promoters. Before trial Court, a copy of the site plan issued by Janta Industrial Land Sector 82 was also perused. Shajra-Aks prepared by the Architect (Ex.AW3/A) was also produced. Before the trial Court, respondent Mahant undertook to purchase the equivalent chunk of land elsewhere. Trial Court also called for the Collector rate of the land, which were Rs.95 lakhs per acre. However, vide letter dated 22.8.2014 by Janta Land Promoters Limited, they made an offer to purchase the suit land @ Rs.1,70,00,000/- per acre. Trial Court was not satisfied with the single bid and in order to invite competitive bid, made a publication in Daily 'Punjab Kesri'. However, no bid was received. When the matter was adjourned, the trial Court noticed that there are averments to the effect that there is acute recession in the market and even Janta Land Promoters Limited may withdraw its bid. Therefore, the Court gave its opinion under Section 34 of the Indian Trust Act, 1882, as mentioned above. It also comes out that in pursuant to the opinion given by the Court, the land has already been sold to Janta Land Promoters @ Rs.1 crore 70 lakhs per acre vide different sale deeds, copies of which have been placed on file.

Respondent no.2 has also placed on file information through application that respondent no.1 Dera has purchased the land measuring 22.28 acres in Tehsil Machhiwada for Rs.5,57,11,360/- and land measuring 24.35 acres for Rs.6,21,09,500/- at Amloh. In this way, total land measuring 46.63 acres has been purchased for Rs.11,78,20,860/-. As per affidavit of Mahant Biram Dass, land measuring 36 Bighas 18 Biswas was sold to respondent no.2 Janta Land Promoters Limited vide sale deeds dated 7.6.2016 and 18.7.2016 for sale consideration of Rs.12,76,27,500/-, which were transferred in a Fixed Deposit and from which the said land has been purchased. This Court is further informed that on account of the interest on the said amount, some more amount accumulated and even after purchasing the said land, which is much more than the chunk of land earlier owned by respondent no.1 Dera about more than Rs.one crore has been saved.

Learned counsel for the respondent has vehemently argued that dedication of property to the Dera was an endowment which is in the nature of Trust and that only opinion of the Court was sought under Section 34 of the Indian Trust Act, 1882. The trial Court took all the precautions and imposed the conditions which included convening of Bheikh to seek the approval of its resolve to sell the land by further requesting the congregation to authorize Mahant Biram Dass to execute the sale deed. In this case Bheikh was held and Mahant was duly authorized in terms of the opinion of the Court. It is further contended that it is not the case of sale of land of Dera by the Mahant but sale of land by the Mahant on the basis of the authority given by the congregation of Udasi Sadhus. Moreover in lieu of the said property, much more property has been purchased, therefore, authority of Mahant Jatinder Dass (*supra*) will not apply to the facts of the

present case. Moreover, in the said case indiscriminate sale by the Mahant without following the procedure was in question and therefore, in those cases, the view was taken that the Mahant could not sell the land. In none of those cases, opinion of the Court was sought under Section 34 of the Indian Trust Act, 1882 and the authority was taken by the Mahant after holding Bheikh. Moreover, in the said case, certain questions involved were different which were enumerated in the said judgment, including the question Nos.(vi) and (vii), reproduced below:-

(vi) Whether Farman-i-Shahi can be enforced only against that Mahant or Mohtmim who seeks Dastar, Doshala, Bandhan or Muafi from State Government?

(vii) Whether Mahant-cum-Mohtmim of a religious institution can alienate the property of Dera in the interest of Dera or otherwise?

Therefore, only the sale which was subject matter of the said petitions are governed by the said case.

I am of the view that the authority of Mahant Jatinder Dass (supra) is not attracted in the present case, as in the present case, sale was made by the Mahant after getting opinion of the Court under Section 34 of the Indian Trust Act, 1882 and after complying with the conditions imposed by the Court, as enumerated above. Even thereafter, much more land has been purchased in lieu of the said land and some money has been saved. Therefore, there is no wastage of the land of the Dera. Therefore, there is no illegality or infirmity in the impugned order. Regarding the maintainability of revision by Jaswant Singh, this Court is of the view that General Public was made party as respondent. Though strictly speaking,

Jaswant Singh is not follower of the Udassian Sect but he being the member of General Public could maintain the present revision. Therefore, it is held that the revision was otherwise maintainable.

In view of the foregoing discussion, there are no merits in the present revision petition. Same is accordingly dismissed.

Since the main case has been dismissed, therefore, the pending CM, if any, also stands disposed of.

26.04.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes