

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

**CRM-M No.43582 of 2014
Reserved on:05.09.2018
Pronounced on:17.09.2018**

Ram Avtar Masta

....petitioner

Versus

State of Haryana and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Jatin Hans, Advocate
for the petitioner

Mr.Himmat Singh, DAG Haryana

Mr.Alok Jain, Advocate
for respondents No.2 to 10

ARVIND SINGH SANGWAN, J. :

CRM No.30259 of 2018

Application is allowed as prayed for. Annexure P13 is taken on record.

CRM-M No.43582 of 2014

Prayer in this petition is for quashing the order dated 20.07.2011(Annexure P1), passed by Sub-Divisional Magistrate (SDM), Bhiwani, vide which the application filed under Section 145 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by residents of Haalu Mohalla, including respondents No.2 to 10 was allowed and Tehsildar, Bhiwani was appointed as receiver to manage the affairs of the Chezaren temple (hereinafter referred to as “temple”), by constituting a committee of 5/7

members who are residents of the aforesaid area and to hand over the management of the temple to said committee, as well as the order dated 17.10.2014 (Annexure P2), passed by the Additional Sessions Judge, Bhiwani, vide which the revision filed by the petitioner challenging the aforesaid order passed by the Sub Divisional Magistrate, Bhiwani, was dismissed.

Brief facts of the case are that on 19.01.2009, an application was moved by respondents No.2 to 10 along with others for taking action against the petitioner on the ground that general public has constructed rooms for the temple and the petitioner wants to take forcible possession of the property and is stopping the general public from visiting and paying obeisance to the temple. It is stated in the application that the petitioner has no individual right to claim the property which is a temple. On receiving the application, the SDM Bhiwani issued notices to both the parties and vide impugned order dated 20.07.2011 (Annexure P1), initiated the proceedings under Section 145 Cr.P.C. on 12.02.2009 and thereafter, appointed Tehsildar, Bhiwani as a receiver under Section 146 Cr.P.C. The possession was taken by the Tehsildar on the same day and he started managing the affairs as per the said order.

Thereafter, the appeal filed by the petitioner before the lower appellate Court was dismissed on 26.08.2009 and even the petition i.e. CRM-M No.35620 of 2009 filed by the petitioner was dismissed by this Court vide order dated 04.10.2010, by issuing a direction that the case be disposed of finally within a period of six months regarding the proceedings under Section 145 Cr.P.C. Thereafter, the Sub-Divisional Magistrate, Bhiwani, allowed both the parties to lead their respective evidence in which

both the parties produced oral as well as the documentary evidence.

The SDM Bhiwani, after, hearing both the parties, vide impugned order dated 20.07.2011 (Annexure P1), held that on the day when the complaint under Section 145 Cr.P.C. was filed, the possession of the temple was with the general public. Therefore, the path in dispute, which was used by the general public for ingress and egress to the temple, should be kept as a path, open for the general public for the same purpose. It was also observed that the Tehsildar, Bhiwani, will create a committee of 5/7 members amongst the worshippers of the temple and if such committee is constituted, he will hand over the management of the temple to the committee and till such time, he will work as a receiver and look after the management.

The petitioner, thereafter, filed the revision before the Additional Sessions Judge, Bhiwani. The appellate Court, after hearing both the parties, dismissed the revision holding that the property in dispute is a temple, where the people from general public are offering their prayers and the petitioner could not claim that he is in exclusive possession of the temple. Therefore, finding no fault with the order passed by the SDM, the revision petition was dismissed.

This petition was filed in the year 2014 and since then it is pending. There is no interim stay. However, vide order dated 05.05.2015 passed by this Court, it was directed that the respondents will not cause any harm to the residential house of the petitioner, with a rider that the order is not applicable, if it was found that the petitioner had made any encroachment on the public passage.

The respondents have filed their respective replies.

Learned counsel for the petitioner has submitted that the petitioner has filed a Civil Suit bearing No.336 of 1997 titled as “Smt.Shanti Devi and others vs. Municipal Council and others”, in which the petitioner was plaintiff No.2, praying for a declaration that the property bearing MC No.H-458 is the ownership of the temple known as Bhani Ram and an order dated 03.03.1997 passed by the Executive Officer, Municipal Council, Bhiwani, changing the ownership and possession is illegal.

Learned counsel for the petitioner submits that the said suit was decreed on 15.12.2003 by holding that the impugned order dated 03.03.1997 passed by the Municipal Council, is illegal and the entries in the municipal record be restored back. Counsel for the petitioner has further argued that even in a suit filed by two persons i.e.Bala Devi and Prema, against the petitioner praying for a decree for permanent injunction, the Civil Court had directed to maintain status quo regarding the construction at point AB shown in the site plan (the dispute in this suit was whether the point AB is public passage used by the public as a path or not), vide order dated 06.03.2009. It is further stated that the said suit was later on adjourned sine die by the civil Court vide order dated 18.09.2010 (Annexure P13), in view of the statement made by parties.

Counsel for the petitioner has further argued that once the matter is pending before the Civil Court, there was no justification for the SDM, Bhiwani, to initiate the proceedings under Section 145 Cr.P.C. and the same are liable to be quashed.

In reply, learned counsel for respondents No.2 to 8 has submitted that since vide order dated 04.10.2010, passed in Criminal Misc.No.M-35620 of 2009, this Court had already directed the SDM to

decide the petition under Section 145 Cr.P.C. within a period of six months, the SDM, Bhiwani, was justified in passing the order dated 20.07.2011. Learned counsel further submitted that in an another suit filed by the petitioner against the Municipal Council, Bhiwani, for restraining from interfering in the possession of House No.H 447-D, abutting the temple, the Civil Court, vide its judgment dated 20.03.2014, held that the petitioner Ram Avtar admitted in his cross examination that the temple is situated in the property for the last more than 250 years and there is no record of ownership regarding the suit property except the assessment register of Municipal Council. The civil Court also recorded a finding that qua property H-447, one Madan Lal is recorded as owner and the suit filed by the plaintiff is relating to Unit 447-D whereas in the Municipal Committee Assessment Record, it is H-447. The civil Court, thus, recorded a finding that from evidence, the petitioner has failed to produce any document of ownership regarding the suit property, which is part of the temple land and dismissed the suit. Learned counsel further relied upon certain old sale deeds in which, the suit property has been shown as a temple and not the individual ownership of the petitioner.

Learned counsel for the petitioner further submits that the decree dated 20.03.1990, is inter se parties between Ram Avtar and Shanti Devi and it is not binding on the general public as the temple belong to the general public, even as per the municipal record and the petitioner cannot draw any benefit from the same as only an order of the Executive Officer of the Municipal Council was set aside by this decree.

In reply to a Court query, learned counsel for the petitioner, learned State counsel, as well as counsel for respondents No.2 to 8 have

submitted that the committee constituted in pursuance to the impugned order, is taking proper care of the temple.

After hearing learned counsel for the parties, I find no merit in the present petition. It is not disputed that the suit filed by the plaintiffs stands adjourned sine die and the parties were directed to maintain status quo with regard to the passage, which is the bone of contention between the parties for going in and out of the temple by the general public.

A perusal of the civil court decree dated 20.03.2014 (Annexure R3), dismissing the suit of the petitioner further shows that the petitioner has failed to produce any document of ownership before the civil Court. Therefore, I find no ground to differ with the findings of the SDM, Bhiwani in the order dated 20.07.2011, as well as in the order dated 17.10.2017, passed by the Additional Sessions Judge, Bhiwani, as on a reasonable apprehension of breach of peace, qua the passage which is the only approach to the temple, it is directed to constitute a committee for the management of the temple, the present petition is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

17.09.2018

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No