

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

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*CWP No.11343 of 2018 (O&M)*

*Date of Decision:11.09.2018*

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Nahar Nath

..... Petitioner

Vs.

State of Punjab and others

..... Respondents

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**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**

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Present: - Mr.M.K. Singla, Advocate,  
for the petitioner.

Mr.R.S. Pandher, Advocate,  
for respondent No.7.

Ms.Lavanya Paul, AAG, Punjab.

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***RAKESH KUMAR JAIN, J.***

The prayer made in this petition is for the issuance of a direction to respondent No.4 to restore the possession of the property in question and to handover the amount generated after the sale of wheat to the petitioner.

In brief, one Vikram Nath Chela Mahant Jaswant Nath was appointed as Mahant of Dera Sidh Baba Sulakhan Nath Dera Houssainpura-Badhochhi Kalan, Police Station Mullepur, Tehsil and District Fatehgarh Sahib in the year 2013 in the presence of Bhekh Bhagwan. It is averred that the Civil Judge (Senior Division), Fatehgarh Sahib, vide its order dated 18.8.2011, held that Vikram Nath Chela Baba Jaswant Nath is the Mohatmim of the Dera and mutation No.1462 dated 09.06.2014 was sanctioned in favour of Guga Marri Baiyatmam Vikram Nath Chela Baba Jaswant Nath Chela Sarao Nath @ Siria Nath and Vikram Nath. The said

Vikram Nath was allegedly involved in a false criminal case in March 2018 and arrested. The property of Dera was being managed by the petitioner being Chela of Vikram Nath. A committee was constituted on 10.4.2018 and allegedly appointed one Vikas Nath as Mahant of the Dera which could not have been done by the committee as a Mahant can be appointed only by the Bhekh/Sadhu Samaj. It is further averred that the said persons got prepared a calendra under Section 145 of the Cr.P.C. on 12.04.2018 and on the same day respondent No.3/SDM Fatehgarh Sahib passed the order appointing Tehsildar/respondent No.4 as the receiver. He was directed to get the standing crop harvested under his supervision and to deposit the income derived from it in any nationalized bank and with further observation that whenever the order passed under Section 145 of the Cr.P.C. is set aside by the competent Court then as per the order of the Court, receiver would be bound to return the money to the concerned authority. The order dated 12.4.2018 was challenged by the petitioner by way of CRM-M-15779 of 2018 in which notice of motion was issued on 19.4.2018 for 28.5.2018 and the operation of the order dated 12.4.2018 was stayed. The said order dated 19.4.2018 read as under: -

*“Notice of motion be issued to the respondents for 28.5.2018.*

*In the meanwhile, the operation of the impugned order will remain stayed.”*

On 20.4.2018, respondent No.3 recalled its order, in view of the order of stay dated 19.4.2018, and passed the order that *“Hon’ble Punjab and Haryana High Court, on 19.04.2018 has passed the order of stay till further orders (remain stayed). In compliance of the orders of the Hon’ble Court, order dated 12.4.2018 of this office, is taken back (recalled) with immediate*

*effect. Tehsildar-cum-Receiver Fatehgarh Sahib is directed to submit report in this office, after immediately handing over the possession, as per rules, to the concerned party, taken in this case. Special attention be given to the fact that any order of any Hon'ble Court be not disobeyed".*

It is averred in the petition that despite the aforesaid order, respondent No.4 illegally harvested the crop of the land measuring 8-9 acres and sold the same on 20.4.2018 through M/s Beermann Trading Company and Commission Agent Sirhind Mandi and Punjab Agro had purchased the same for ₹2,07,684.16. The petitioner had allegedly met respondent No.4, who had allowed the petitioner to harvest the remaining wheat crop but when the petitioner tried to collect the wheat, chaff etc., respondent No.4 restrained him from entering the property in dispute. It is also mentioned that respondent No.4 had written a letter to the Manager, State Bank of India, Branch Sirhind Mandi to seal the account of the Dera on account of imposition of Section 145 of the Cr.P.C. but on 27.4.2018 directed the manager to open the said account. The petitioner had allegedly approached respondent No.4 and 6 for returning of the amount of the wheat crop but neither the money has been returned nor the possession has been delivered back. Hence, the present petition has been filed.

Separate replies are filed on behalf of respondents No.1 to 4 & 7. An application was also filed under Order 1 Rule 10 of the CPC for impleading respondent No.9 to which reply has also been filed by the petitioner.

Learned counsel for the petitioner has submitted that on 1.6.2018, respondent No.3 wrote a letter to respondent No.4 for delivering physical possession of the property in question to the petitioner which was

and at the same time on 1.6.2018, respondent No.4 asked the petitioner to come present on 2.6.2018 for taking over the possession of the land in question. However on 2.6.2018, the petitioner was not allowed to give possession by an unruly mob which gathered there and was not controlled even by the police. It is further submitted that on 4.6.2018, respondent No.3 passed the order, which is attached as Annexure R-5/T with the reply of respondents No.1 to 4, that for the purpose of handing over the possession at the spot, Nahar Nath/petitioner was informed but he did not come present at the spot and therefore, the proceedings for delivery of possession could not be initiated/completed. It was rather observed by respondent No.3 that the Tehsildar-cum-Receiver shall not take any action, till the receipt of order, passed by this Court. It was specifically mentioned in the order dated 4.6.2018 that when the possession was sought to be delivered, a ruckus was created by the people of adjoining area who were raising slogans against the petitioner and in favour of Mahant/respondent No.7, who was appointed as Mahant on 20.5.2018. Thus, it is submitted by learned counsel for the petitioner that though the possession is to be delivered to the petitioner yet due to disturbance caused with the unruly mob by respondent No.7, respondent No.3 even in presence of the police has failed to deliver the same.

Learned counsel for respondent No.7 has submitted that respondent No.7 has been appointed as Chela of Vikram Nath in Bhekh ceremony held on 20.05.2018 and the possession of the land be handed over to respondent No.7.

In this regard, learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of ***“R.H. Bhutani Vs. Miss Man.***

Section 145 of the Cr.P.C. is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties and under the second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may for the purpose of the enquiry be deemed to have been in possession on the date of that order.

I have heard learned counsel for the parties and perused the available record with their able assistance.

There are certain facts which are not disputed namely, the arrest of Vikram Nath in March 2018, appointment of receiver under Section 146 of the Cr.P.C. on 12.4.2018 for the possession of the property in dispute, alleged appointment of Vikram Nath as Mahant on 09.06.2014, stay of the order dated 12.4.2018 on 19.4.2018, reference of the order dated 12.04.2018 and 20.05.2018 by the SDM, the proceedings of 1.6.2018 and 2.6.2018 for delivery of possession to the petitioner and its failure due to interference by the supporters of respondent No.9.

Thus, in view of the aforesaid facts and circumstances, it is plain and simple that the possession of the property in dispute has to be handed over to the Dera through the petitioner and the amount realized after the sale of wheat by the receiver during the period when the property in dispute was in his possession has to be transferred to the bank account of the Dera. The dispute as to whether the petitioner is lawfully appointed as Chela/Mohtmim or respondent No.7/Vikas Nath of Vikram Nath is not the subject matter of dispute to be decided in this case as all that has to be decided is that as to whom the possession is to be handed over because the property in dispute is still in the hands of respondent No.3/respondent No.4

Cr.P.C. was initiated has already been stayed by this Court. Consequently, the writ petition is allowed and direction is issued to respondents No.3 and 5 to ensure the handing over of the possession of the property in dispute to the petitioner within a period of three days from the date of receipt of certified copy of this order and also to transfer the amount lying with it, belonging to the Dera, in the bank account of the Dera, the detail of which would be provided by the petitioner. It is needless to mention that any violation of this order would attract the provisions of the Contempt of Courts Act, 1971.

11.09.2018

*Vivek*

(RAKESH KUMAR JAIN)  
JUDGE

*Whether speaking /reasoned : Yes/No*

*Whether Reportable : Yes/No*