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

**Civil Revision No.5608 of 2018 (O&M)
Date of Decision: 21.02.2019**

**MAHANT DEV GIR (DECEASED) THROUGH HIS LRS
MAHANT GANGA NAND PURI**

.....Petitioner

Vs

STATE OF PUNJAB AND ORS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. M.S. Sodhi, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. This revision has been preferred against the order dated 09.05.2018 passed by the Civil Judge (Jr. Divn.) Phagwara vide which the application filed by the petitioner for conducting complete recitation of Shri Ramayan Scripture by organizing Hawan Yagya and Shodsi Community Kitchen Service as per spiritual tradition for the benefit of Brahmleen Mahant Dev Gir was dismissed.

[2]. Brief facts are that Mahant Dev Gir Chela Madan Gir Chela Mahesh Gir being Mohtmim of Shiv Mandir/Shivala and Dharamshala filed a civil suit for declaration that the plaintiffs

are the owners in possession of the land as shown in the headnote of the plaint and the entries in the column of ownership be corrected by defendants No.1 and 2 in the name of the plaintiffs in place of name of defendant No.3. Permanent injunction was also sought restraining the defendants from interfering in the possession of the plaintiff with consequential relief for mandatory injunction directing the defendants to put plaintiffs in possession in case they are found to have been dispossessed from the suit property.

[3]. Plaintiff No.2 is a Shiv Mandir/Shivala and the same was attached with Dharamshala which was constructed in an area of 8 Kanals 19 Marlas in Khasra No.354/2(8-11) and 47//11/2 (0-8). Plaintiff No.1 claimed himself to be Mohtmim of plaintiff No.2. He claimed that he was appointed by Bheikh of Sadhus and other respectable persons of vilalge Panchahatt on 14.12.1966 after the death of his Guru Mahant Madan Gir. Earlier Panchayatnama was executed on 19.02.1961 vide which plaintiff No.1 was appointed as Chela by Mahant Madan Gir. During his life time Mahant Madan Gir executed a registered Will dated 23.07.1965 bequeathing all rights pertaining to the suit property in favour of plaintiff No.1. The suit land was endowed by Maharaja Kapurthala on 23rd Sawan 1935 (1983 B.K.) and a *Muafinama* was also executed regarding the same.

[4]. In the application under Order 39 Rules 1 and 2 read with Section 151 CPC, the matter was considered by the trial Court and it was opined by the trial Court that the plaintiffs are not entitled to interim mandatory injunction on the ground that firstly they have not been forcibly dispossessed from the suit property, rather they were dispossessed as per order dated 19.09.2011 passed by the Collector, Kapurthala i.e. in due course of law. There was no interim order in favour of the plaintiffs. Plaintiff No.1 was appointed as Mohtmim by the then Collector, Kapurthala vide order dated 25.02.1992. Since plaintiff No.2 was appointed as Mohtmim by the Collector, Kapurthala, therefore, Collector, Kapurthala is competent to remove him. Validity of order dated 19.09.2011 is a matter of evidence and the same cannot be decided at the stage of application under Order 39 Rules 1 and 2 CPC. Plaintiffs have claimed title to the property, whereas in the revenue record Nagar Panchayat is shown to be owner of the suit property and the name of the plaintiff No.1 is reflected in the column of cultivation. The title of the property can only be decided after leading of evidence by the parties. In the order dated 19.09.2011, the Collector, Kapurthala has held that plaintiff No.1 and ten members of the Committee earlier constituted vide order dated 11.07.2000 by the Collector have not been

performing their duties properly. Therefore, the Collector removed plaintiff No.1 as well as those ten members of the Committee and has appointed Tehsildar, Phagwara as receiver of the property. Tehsildar, Phagwara was further directed to send the names of the competent persons for the appointment of new Mohtmim of plaintiff No.2. With this background order dated 19.09.2011 was passed.

[5]. The trial Court dismissed the application for grant of interim mandatory injunction, however both the parties were directed to maintain *status quo* regarding possession over the suit property till pendency of the suit.

[6]. After the demise of Mahant Dev Gir, permission was sought for burial of his mortal remains in Shiv Mandir and the same was declined by the Tehsildar, Phagwara vide letter dated 27.02.2017 on the premise that vide letter dated 11.01.2013, Tehsildar has constituted a six member Committee, who is managing the affairs of the Mandir. The case is pending in the Court, where status quo has been granted, therefore, no action was taken on the application for seeking permission for burial of Mahant Dev Gir of Shiv Mandir.

[7]. CWP No.4394 of 2017 was filed in the High Court. The same was decided by the High Court on 02.03.2017. Operative part of the order reads as under:-

“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.”

[8]. Perusal of the aforesaid order would show that the Court found the exercise to be not feasible at that stage by directing the authorities that in case petitioner moves an application for relief claimed in the writ petition before the Civil Court, the said application will be considered in the light of situation existing on the spot. Thereafter the Tehsildar, Phagwara vide letter dated 04.04.2017, communicated the Mahant Ganganand Puri that the civil Court has passed the order dated 21.03.2017 granting protection for burial of the dead body. No order has been passed for recitation of Ramayan Scripture by organizing Hawan Yagya and Shodsi Community

Kitchen Service as per spiritual tradition for the benefit of Brahmleen Mahant Dev Gir in Shiv Mandir at village Pasta from 05.04.2017 to 07.04.2017. Liberty was given to the Addressee to seek protection from the civil Court. Thereafter the application was filed before the civil Court on 06.04.2017 for permission to conduct complete recitation of Shri Ramayan Scripture as per religious traditions.

[9]. The application was contested by the respondents. The civil Court dismissed the application vide the impugned order dated 09.05.2018 on the premise that the recitation can be held at any other place also.

[10]. During course of arguments, learned counsel for the petitioner submitted that as per oral custom recitation can only be done at the place of burial. However, no such oral custom has come forth on record.

[11]. The basic controversy in the suit is the competence of Mahant, who was appointed by the Collector and has been removed along with ten members of the Committee. As per entries in the revenue record, Nagar Pachayat is the owner. The title of the suit property is still sub-judice before the Civil Court. The cause of action which apparently arose in the year 2017 in the context of death/burial of mortal remains of Mahant Dev Gir cannot be perpetuated at this stage, particularly when the

recitation of Ramayan Scripture by organizing Hawan Yagya and Shodsi Community Kitchen Service as per spiritual tradition can be done at any other appropriate/religious place other than the *Samadhi* of Mahant Dev Gir. The title of the suit property is still *sub-judice* before the trial Court.

[12]. In view of facts and circumstances of the case, I do not see any reason to interfere in the revision petition. The same is hereby accordingly dismissed.

[13]. Since the revision petition has been dismissed, therefore, there is no need to adjudicate upon all other pending applications. The same are accordingly disposed of.

February 21, 2019	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No