

Sr. No.288

Date of Decision : August 08, 2023

VS.

Gurudwara Sahib Village Chang
Basoya through its Gurudwara
Prabandhak Committee and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Satbir Rathore, Advocate
for the petitioners.

Mr. Ravi Chadha, Advocate
for respondent no.1.

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GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to order dated 17.02.2022 (Annexure P-6), passed by learned Civil Judge (Junior Division), Dasuya, whereby the application filed by the petitioners-defendants (Annexure P-4), for appointment of Local Commissioner, has been dismissed.

2. Mr. Ravi Chadha, Advocate, has put in appearance on behalf of respondent no.1, who was proceeded ex-parte on the last date of hearing. On his request, he is allowed to join the proceedings.

3. The brief facts, which are necessary for just decision of this revision petition, are that the plaintiff-respondent no.1 filed a suit for permanent injunction against the petitioners-defendants and other persons,

restraining them not to demolish and not to change the nature of the Gurudwara Sahib building and further for restraining them not to remove any articles of the Gurudwara Sahib from the said premises.

4. The case set up in the plaint is that the plaintiff-Committee was constituted in the year 2005-06 and the said Committee is managing and maintaining the affairs of the Gurudwara Sahib since its inception and the same is duly registered. In the year 2005, defendants Tarlok Singh and Lashkar Singh filed a Civil Suit for permanent injunction against the plaintiff-Committee. The said suit was decreed to the effect that nature of the Gurudwara Sahib would not be changed and the articles of the Gurudwara Sahib should not be removed. The said decree was upheld by the learned District Judge. After passing of the above-said judgment and decree, some of the defendants formed a Committee namely "Purana Gurudwara Prabandhak Committee" on 05.10.2011. Forming of such Committee was challenged by the plaintiff-Committee by filing a civil suit (Annexure P-1), which was decreed by the Court of Civil Judge (Junior Division), Dasuya and the newly formed Committee, which was formed by some of the defendants. was declared to be unauthorized, illegal, null and void. Defendants then preferred appeal against the said order, which was dismissed by the learned Additional District Judge, Hoshiarpur vide judgment dated 08.05.2018. The defendants never relished the above-said decree and are illegally and unlawfully demolishing the existing structure of the Gurudwara Sahib and are also threatening to remove the articles of the Gurudwara Sahib.

5. The defendants contested the suit by filing written statement

wherein it was stated that there was one old Gurudwara Sahib in the village since the time of fore-fathers of the parties. In the year 2003, plaintiff and his party had threatened to demolish the said old Gurudwara Sahib. A civil suit was filed against the plaintiff which was decreed. Appeal against the said decree was also dismissed. So, the plaintiff concealed the material facts from the Court that there are two Gurudwara Sahib and he is only managing the affairs of new Gurudwara Sahib constructed by them in the year 2003 and the old Gurudwara Sahib always used to be managed and controlled by the old Gurudwara Prabandhak Committee. With the free consent of the parties, a compromise was effected on 02.06.2019, whereby plaintiff agreed that previously constituted Prabandhak Committee of old Gurudwara Sahib would carry on performing its duties of the old Gurudwara Sahib and in case, any building is raised in the old Gurudwara Sahib by inhabitants of the village Managing Committee, then no one would have any objection whatsoever. The plaintiff agreed not to interfere in any manner in the working of managing Committee of the old Gurudwara Sahib and further to withdraw the cases on the basis of compromise dated 02.06.2019. It was further stipulated that in case of any dispute, the matter would be resolved by the Gram Panchayat. Since the old Gurudwara Sahib was in dilapidated condition, therefore, in view of the compromise dated 02.06.2019, the inhabitants of the village and office bearers of the old Gurudwara Prabandhak Committee demolished the old structure and constructed the major portion of the old Gurudwara Sahib well before the filing of the suit and only lentil was left to be placed on one portion of the Gurudwara Sahib.

6.

Learned counsel for the petitioner has argued that the

defendants-petitioners filed an application under Order 26 Rule 9 CPC for appointment of Local Commissioner to inspect the spot and report regarding actual and factual position of the suit property for proper decision of the case. The Trial Court dismissed the application mainly on the ground that the Local Commissioner cannot be sent for ascertaining the possession, whereas prayer in the application is to ascertain the fact whether old structure of the Gurudwara Sahib has been demolished or removed and new construction has been raised or not. A Local Commissioner can always be appointed to determine the fact as to what portion has been constructed upon and what not and it would not amount to collection of evidence on behalf of a party. Learned counsel further submits that he only prays for appointment of Local Commissioner to visit the spot and to report about the existence of old structure or as to whether the same is demolished and new structure of the Gurudwara Sahib is already constructed. Reliance in this regard has been placed on a judgment of Hon'ble Supreme Court in **Ece Industries Limited (1) vs. S.P.Real Estate Developers Private Limited and another** reported as **2009(12) SCC 773**, as also various judgments passed by this Court in **Malwinder Singh vs. Maninder Singh and others** reported as **2021(2) RCR (Civil) 849**, **Deepak Narula vs. Shri Satruhan Dwivedi and others** reported as **2013(33) RCR (Civil) 255**, **Jitender alias Leela vs. Rashma** reported as **2022(1) Law Herald 178**.

7. I have heard learned counsel for the parties and perused the case file.

8. The suit has been filed for permanent injunction restraining the defendants etc. not to demolish and not to change the nature of the

Gurudwara Sahib building, as shown in the site plan attached with the plaint with specific boundaries and also not to remove any article of the Gurudwara Sahib from the said premises. The petitioners filed written statement wherein it was specifically pleaded that the old Gurudwara Sahib was in dilapidated condition, so, the inhabitants of the village and the old Gurudwara Prabandhak Committee have demolished the old structure and constructed the major portion of the old Gurudwara Sahib well before the filing of the suit. Learned counsel also referred to the compromise that took place before the filing of the suit, wherein it was agreed by the parties that in case, any building is raised in the old Gurudwara Sahib by inhabitants of the village Managing Committee, then no one would have any objection whatsoever. The learned Court dismissed the application mainly on the ground that possession cannot be ascertained by appointment of Local Commissioner.

9. The learned Court has fallen in error by deciding the application in the aforesaid manner. A Local Commissioner can definitely be appointed to make local investigation. Whether old building is existing or a new building has been constructed there or above the construction existing at the spot, the said fact can be ascertained by local investigation. It would not amount to collecting evidence on behalf of a party. So, the impugned order dated 17.02.2022 (Annexure P-6), passed by learned Civil Judge (Junior Division), Dasuya, whereby the application of petitioners-defendants (Annexure P-4), for appointment of Local Commissioner has been dismissed, is hereby set aside and it is directed that Local Commissioner be appointed as per rules for local investigation of spot to ascertain :- (i)

whether old building is existing?; (ii) new building has been constructed on that place; (iii) construction existing at the spot. However, Local Commissioner shall not report as to who is in possession or not in possession regarding the said property.

10. With the above observations, the present revision petition is allowed. The petitioners are directed to appear before the concerned Court on 04.09.2023. The said Court shall pass the order regarding appointment of Local Commissioner, after giving notice to the other party, in accordance with law. The Court shall also give directions to the Local Commissioner which are necessary for local inspection and also shall fix fee of Local Commissioner.

11. Pending applications, if any, shall stand disposed of along with this judgment.

August 08, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.