

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-7624-2023

Date of decision: 17.04.2023

CHARANJIT BHATIA

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Khush Karan Goyal, Advocate with
Mr. Saurav Bhatia, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab
for respondents No.1 to 4.

Mr. Kanwal Goyal, Advocate
for respondent No.5.

VINOD S. BHARDWAJ, J. (Oral)

The present petition raises a challenge to the order dated 26.10.2022 passed by the Deputy Commissioner, S.B.S. Nagar as being violative of principle of natural justice and further seeks issuance of directions to the respondents No.1 to 4 to ensure implementation of order dated 06.04.2022 and 24.08.2022 passed by respondent No.3 i.e. Sub Divisional Magistrate, Balachaur.

It has been contended that the father of petitioner had instituted a Civil Suit No.508 of 1976 which was decreed in his favour on 07.01.1978. The defendants therein were restrained from changing the nature of suit property and putting it to any use other than the same being used as a 'Kutiya'. The petitioner claims to be maintaining the

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aforesaid Kutiya with alms/donations from the villagers for last 40-45 years and have been performing ritual/puja and other such religious activities from the said place. The mutation of the property is in the name of Kutiya Maharaj Bhuriwale Swami Lal Ji Dass Brahama Nand Ji. After the demise of Brahama Nand Ji, the respondent No.5 is alleged to have got the mutation sanctioned in his name on 25.10.2024 and started projecting the same as his personal property. It is further alleged that locks have thereafter been put on the aforesaid property by the respondent. Aggrieved thereof, an application dated 17.03.2022 was moved before the Sub Divisional Magistrate, Balachaur giving a detail sequence of events. The concerned affected parties were summoned by the Sub Divisional Magistrate and vide order dated 06.04.2022, it was held by the Sub Divisional Magistrate that the locks of the Kutiya and Darbar Sahib be opened for the general public. It was further held that no person shall have the right to make any alteration or addition in the Kutiya without the consent of the management of the Kutiya. The aforesaid order was passed to ensure peace in the area and to maintain the sanctity of the premises.

Subsequently, another application was moved by the petitioner before the Sub Divisional Magistrate on 06.06.2022 addressing his grievance regarding non-compliance of the order dated 06.04.2022. Hence, the Sub Divisional Magistrate passed a further order on 24.08.2022 regarding the timings of the Kutiya.

Aggrieved of the said order, the respondent No.5 preferred a petition before the Deputy Commissioner. The order passed by the

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Sub Divisional Magistrate has now been set aside by the Deputy Commissioner vide order dated 26.10.2022. He contends that the order of the Deputy Commissioner is not only violative of principles of natural justice but also amounts to assuming the jurisdiction of Civil Court and declaring rights, which the executive machinery of the State is not competent to determine.

Notice of motion.

Mr. Saurav Verma, Addl. A.G. Punjab appears and accepts notice on behalf of respondents No.1 to 4.

Mr. Kanwal Goyal, Advocate appears and accepts notice on behalf of respondent No.5.

It is submitted by the learned counsel appearing on behalf of the respondents that the proceedings before the executive authorities were beyond jurisdiction and that the power is vested with the Civil Courts. He contends that he had to approach the Deputy Commissioner only on account of the fact that an illegal order had been passed by the Sub Divisional Magistrate. He contends that he would have no objection in case even the order passed by the Sub Divisional Magistrate dated 06.04.2022 as well as 24.08.2022 are also stayed alongwith the order dated 26.10.2022 passed by the Deputy Commissioner, S.B.S. Nagar.

Counsel for the parties fairly concede that the issue in question is primarily within the domain of a Civil Court and that they had to approach the High Court only on account of the orders passed by the Executive Authorities and that they would have no objection to

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approach the Civil Court to pursue their remedies.

Taking into consideration the circumstances noticed above, the operation of the orders dated 26.10.2022 passed by the Deputy Commissioner, S.B.S. Nagar as well as the order dated 06.04.2022 and 24.08.2022 passed by the Sub Divisional Magistrate, Balachaur are stayed for a period of 04 weeks to enable the parties to take recourse to their remedies in accordance with law, by means of an appropriate petition.

The petition is accordingly disposed of as withdrawn with liberty to the parties to take recourse to the remedies available to them in accordance with law.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 17, 2023

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No