

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-60435-2023 (O&M)
Reserved On: 20.01.2024
Pronounced On: 23.01.2024

Gram Panchayat Devsar

.....Petitioner

Vs.

State of Haryana & Others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Aditya Sanghi, Advocate and
Mr. Sumit Sharma, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana
for respondent Nos.1 to 4.

Mr. Bipan Ghai, Senior Advocate with
Mr. Keshav Pratap Singh, Nikhil Ghai and
Mr. Prabhdeep Singh Bindra, Advocate
for respondent Nos.5 to 13.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner-
Gram Panchayat, Devsar, Tehsil and District Bhiwani has prayed to set aside
impugned order dated 17.10.2023 passed by learned Additional Sessions
Judge, Bhiwani, whereby two revision petitions filed by respondents bearing
No.CRR-105/2023 titled as '*Vikram Pujari & Anr. vs. Gram Panchayat,
Devsar & Ors.*'; and CRR-104/2023 titled as '*Sukhpal & Ors. V. Gram
Panchayat, Devsar & Ors.*', were allowed; and the order dated 28.09.2023
(Annexure P-1) passed by learned Sub-Divisional Magistrate, Bhiwani was set
aside and the matter was remanded back to SDM, Bhiwani to decide afresh.

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2. As it emerges on perusal of the paper-book that Gram Panchayat, Devsar moved a complaint under Section 145 Cr.P.C. against private respondents before the Court of SDM, Bhiwani alleging therein that temple of Mata Durga had been constructed at a *pahadi* (hill) in Village Devsar since times immemorial and that Gram Panchayat, Devsar was the owner of the said hill as well as the surrounding land. A fair of Mata Durga was organized twice a year, which was organized by Shree Devsar Dham Trust, Gram Panchayat and the respectables of the village. It was alleged further that Pujaris of the said temple, hailing from Rajput and Brahmin family of the village, had no longer any faith in Mata Durga and they had made it a business and were embezzling the offerings received from devotees by issuing fake and forged receipts. They were not even maintaining any accounts and used to file complaints against each other and on that account, there was likelihood of breach of peace concerning the temple constructed on the Shamlat land.

3. The respondents challenge the *locus standi* of the Gram Panchayat in moving the complaint. They also submitted that misunderstandings *inter se* the priests had been resolved. They also referred about the decision of the Civil Court of 1957-58, whereby ancestors of the respondents were held entitled to receive the donations.

4. After hearing both the sides, SDM, Bhiwani vide order dated 28.09.2023 (Annexure P-1) held that Mata Durga Mandir was the property of Gram Panchayat, Devsar, on which disputes used to take place between the two parties and so, there was disturbance of peace in the village. Exercising the powers conferred under Section 145 & 146 Cr.P.C., he ordered the attachment

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of the property of the Mata Durga Mandir, Devsar and further ordered constitution of a Committee to take over custody of the Mandir with immediate effect and that income generated from the Mandir shall be deposited in a new bank account to be opened by the Committee. SHO concerned was directed to maintain peace.

5. The respondents filed separate revisions before the Court of Sessions.

5.1 By way of impugned order dated 17.10.2023, it was found by learned Additional Session Judge that during the earlier round of litigation between Gram Panchayat, Devsar; and Manphul son Lalji, Caste Rajput, and Pahla Ram son of Sheo Lal, Caste Brahman, the ancestors of the respondents, a suit of recovery of ₹500/- on account of value of offerings made at the temple, had been dismissed on 31.07.1957 by Sub Judge 1st Class, Hisar, by specifically holding that temple did not belong to the Gram Panchayat; that it was dedicated to the idol, who is a juristic person capable of holding property. Gram Panchayat, Devsar preferred an appeal against the said judgment and decree but the same was dismissed by Senior Sub Judge, Hisar on 23.01.1958 by observing that descendants of the two families i.e. one family of Thakurs and other of Brahmins of village Austa continued to manage and receive the offerings made at this Temple and that the respondents being the descendants of those persons were entitled to the offerings. It was further found by learned Additional Session Judge that the Civil Courts judgments had attained finality.

5.2 Ld. Additional Session Judge noticed further that possession of the respondents/priests of the temple had not been disputed by the complainant-

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Gram Panchayat, Devsar. It was noticed further that in order to find out as to whether there was any apprehension of breach of peace amongst the priests of the temple, SDM, Bhiwani had sought a report from Police Station Jui Kalan. The report was received, as per which the parties had arrived at a compromise and that their grievances stood resolved and they did not want any action against each other and no complaint was now pending in the police station.

5.3 Learned Additional Sessions Judge found that in these circumstances, it appeared that there was no apprehension of breach of peace in Village Devsar regarding Temple. Thereafter, learned Additional Session Judge discussed the scope of Section 145 & 146 of Cr.P.C. and held the order passed by the SDM to be arbitrary and suffering from material illegality, infirmities, irregularity and impropriety, inasmuch as the order had been passed by ignoring the Civil Court findings.

5.4 Allowing both the revisions, the matter was remanded to the SDM concerned to decide it afresh after following due procedure under law. The three Member Committee, which had earlier been directed to be constituted by the SDM, was directed to deliver the possession of the temple, taken from the respondents along with the complete record of the temple to the respondents and to ensure that any money lying deposited in the new account shall be transferred in the account of the deity, in order to fix the accountability in future.

6. Challenging the aforesaid order dated 17.10.2023 passed by learned Additional Sessions Judge, learned counsel for the petitioner has raised only one issue before this court, which is regarding the maintainability of the

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revision before the Court of Sessions. Learned counsel does not dispute that neither there was a dispute related to title nor regarding possession of the temple in question, as any such issue had already been decided by the Civil Court way back in 1957.

6.1 Learned counsel has referred to ***“Kartar Singh v. Smt. Pritak Kaur” 1984 (1) R.C.R.(Criminal) 617***, wherein it was held by a Division Bench of this Court that order of attachment of immovable property under Section 146(1) Cr.P.C. is inherently temporary in nature and that revision against the said order is not maintainable.

7. On the other hand, learned Sr. counsel for the respondents has referred to the Full Bench judgment of Allahabad High Court in ***“Munna Singh @ Shivaji Singh v. State of U.P.” 2012(3) R.C.R.(Criminal) 333***, wherein it was held that orders passed under Section 145(1) of the Code are not in every circumstance, orders simplicitor and therefore, a revision would be maintainable depending upon the facts involved in each case. It was held further that determination of such an issue as to whether a revision would be maintainable or not, would in turn depend upon the nature of the order and the circumstances in which it came to be passed.

7.1 Learned Sr. counsel has further referred to ***“Lachman Gir v. State of Haryana” 1993(1) R.C.R.(Criminal) 432***, wherein land was owned by Idol (Mandir). There was dispute between the parties with respect to management of land of Mandir and utilisation of its income. It was held by this Court that proceedings under Section 145 Cr.P.C. were not competent and that remedy lied in civil action.

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7.2 It is contended by Ld. Senior Advocate for the respondents that in the light of above legal position, revision was maintainable against the order of SDM, Bhiwani, who had assumed the jurisdiction, by ignoring the civil courts findings and despite there being no dispute relating to title or possession over the Temple in question.

8. Submissions considered.

9. As has been held by the Court of learned Additional Sessions Judge and not disputed before this Court that during the earlier round of litigation between Gram Panchayat Devsar and the ancestors of the respondents, it had been held vide judgment dated 31.07.1957 that temple did not belong to the Panchayat and rather, it was dedicated to the idol, which is a juristic person capable of holding property. The appeal filed by the Gram Panchayat was dismissed. It was observed by the Civil Court that descendants of the two families i.e. one family of Thakurs and the other of Brahmins of Village Austa, continued to manage and receive the offerings made at this Temple and therefore, the Gram Panchayat could not become the proprietor of the temple, which had already been constructed and was being managed by Brahmin and Thakur families of Austa. It was further found that land around the temple was in Shamlat area but the land connected to the temple came under the ownership and possession of the idol of Goddess Austa Devi and was managed through the above two families of village Austa and that those descendants were entitled to the offerings at the temple. It was held further that temple in the question and the land under it was not part of Village Shamlat nor it had vested in the Panchayat. It was further found that Civil Court judgments

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had attained finality.

10. In the aforesaid facts and circumstances, when there is no dispute regarding the title or possession of the temple in question, the observation of the SDM Bhiwani to the effect that Mata Durga Devi temple was the property of Gram Panchayat Devsar, was clearly an abuse of power, by ignoring the Civil Court judgments. SDM, Bhiwani assumed the jurisdiction contemptuously by holding the temple to be property of Gram Panchayat, by ignoring civil court findings.

11. Further, learned Additional Session Judge found on the basis of police report that disputes *inter se* between the priests in respect of the offerings made by the devotees at the temple, already stood resolved and no complaint at all with the police was pending.

12. In the aforesaid facts & circumstances, learned Additional Session Judge rightly exercised the revisional jurisdiction, as proceedings under Section 145 Cr.P.C. itself were not maintainable. The order passed by the SDM, in the facts and circumstances of the present case, cannot be stated to be simplicitor interlocutory. Rather, it was an intermediary order, by which even the management of the temple was handed over to a committee constituted by the SDM.

13. It has also been held by Hon'ble Supreme Court in ***"Ashok Kumar v. State of Uttarakhand"* 2013(1) R.C.R.(Criminal) 961** that pending dispute of ownership in Civil Courts, the Magistrate should not pass any order under Section 145 Cr.P.C. as only the Civil Court has to decide the letter.

14. In the present case, as observed earlier, the issue of title or

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possession was not involved and as such, SDM wrongly assumed the jurisdiction under Section 145 & 146 Cr.P.C. and therefore, learned Additional Session Judge has rightly exercised revisional power to set aside the order of the SDM. As such, it is held that revision against the order of SDM was maintainable in the facts and circumstances of the present case, in view of the legal position explained by the Full Bench of Allahabad High Court in *Munna Singh's case (supra)*.

15. Consequently, upholding the impugned order passed by learned Additional Session Judge, the present petition is hereby dismissed being devoid of any merits.

(DEEPAK GUPTA)
JUDGE

January 23, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No