
(1997) 01 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 231 of 1986

Additional Deputy Commissioner and Another

APPELLANT

Vs

Krishan Gopal Kataria and Others

RESPONDENT

Date of Decision : 09-01-1997

Acts Referred:

Constitution of India, 1950 — Article 13

Registration Act, 1908 — Section 21, 23, 28, 32, 35

Citation : (1997) 116 PLR 175 : (1997) 3 RCR(Civil) 49

Hon'ble Judges : Sarojnei Saksena, J;N.C. Jain, J

Bench : Division Bench

Advocate : S.P. Gupta and Raj Bassi, for the Appellant; H.S. Sethi, for Respondent Nos. 1 and 2 and S.K Sharma, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Sarojnei Saksena, J.—By this judgment, Letters Patent Appeals Nos. 231 and 339 of 1986 and 409 of 1994 are decided as common question of law is involved therein. LPA Nos. 231 and 339 of 1986 are against the same judgment passed in the CWP No. 1706 of 1985. LPA No. 231 of 1986 is filed by the Additional Deputy Commissioner, Patiala (exercising the powers of Registrar under the Indian Registration Act) and Sub Registrar, under the Indian Registration Act, Patiala, while LPA No. 339 of 1986 is filed by these two appellants along with the State of Punjab. In LPA No. 231 of 1986 the State of Punjab is shown as respondent No. 3.

2. The facts of LPA Nos. 231 and 339 of 1986 are same as in that case the lease deed (Annexure P-I) presented by the writ petitioner-respondents was not registered by the appellant Sub Registrar in view of the executive instructions (Annexures P-3 and P-5) issued in pursuance of Farman-i-shahi (Annexure R-I). In LPA No. 409 of 1994 the sale deed presented for registration by the petitioner-respondents was not registered by the Sub Registrar, Patiala, by order dated April 29,1993 (Annexure P-I) in view of the executive instructions (Annexures P-2

and P3) issued in pursuance of the Farman-i-Shahi. The appeals filed by the petitioner-respondents were also dismissed by the appellant-Registrar.

3. The appellants' learned counsel contended that Farman-i-Shahi (Annexure R1) is law under Article 13 of the Constitution. In view of the directions given in Farman-i-Shahi the aforementioned instructions were issued by the executive authorities keeping in view the conduct of the persons incharge of these religious and charitable institutions in squandering away the property given to such, institutions in Maufi by the Sovereign Authority. From this Farman-i-Shahi it is evident that these Mohants/Managers of said Deras religious and charitable Institutions are not owners of the said property, but the Dera/Institution is the owner thereof. For their personal affluence these Mohants/Managers/Pujaris used to transfer by way of sale, mortgage or lease the property belonging to the Dera etc. To protect the property of such Deras/Institutions Farman-i-Shahi Annexure R-1 was issued and in pursuance thereof executive instructions were issued to the Registrar and the Sub Registrar not to register any deed of sale, mortgage or lease affecting the property of such Deras/Institutions. Thus, according to him the learned Single Judge fell into an error in allowing the writ petitions filed by the petitioner-respondents.

4. To appreciate the point in controversy, English translation of Farman-i-Shahi is reproduced below in extenso:-

"Farman-i-Shahi dated 18th April, 1921 A.D. TODAY IJLAS KHAAS

Approved. Direction should be given heretofore that unless and until any Mohant is appointed through Deodhi Maulla duly approved by Ijlas Khaas till then no land on Maufi should be entered in the name of any Mohant who is entitled to receive Dastar (Turban), Doshalla or any usage or Maufi etc. from the Sandharwala.

"And it should also be entered that land concerning any Dehra should not be considered as ownership of any Mohant and the ownership of any Mohant should not be entered in Govt. record, instead it should be entered as Ownership of Dehra under the Management of Mohant. The Mohants shall not be entitled to sell or mortgage the land belonging to Dehra."

"Revenue Department should also be informed accordingly and this order should be published in Gazette."

"Dated 18.4.1921 A.D. Sd/- Daya Kishan Kaul Prime Minister Sd/- Nihal Singh Judicial Magistrate Sd/- Raghunath Singh Home Minister Sd/- Gokal Chand Foreign Minister Sd/- Dalip Singh Revenue Secretary Sd/- Rala Singh Chief Engineer. True copy Sardar Sahib Deodhi Maulla Patiala.

Certified to be true copy

29.6.03

Sd/-x Director of Archives Punjab Patiala 16.12.82 "

5. Concededly this Farman-i-Shahi has the force of law under Article 13 of the Constitution. A bare perusal of this Farman-i-Shahi reveals that the Sovereign directed that unless and until any Mohant is appointed through Deodhi Maulla duly approved by Ijlas Khaas, till then no land or Maufi should be entered in the name of any Mohant who is entitled to receive Dastar (Turban), Doshalla or any usage or Maufi etc. from the Sandharwala. He further ordered that it should also be entered i that land concerning any Dera should not be considered as ownership of any Mohant and ownership of any Mohant should not be entered in Government record; instead it should be entered as ownership of Dera under the management of " Mohant. The Mohant shall not be entitled to sell or mortgage the land belonging to the Dera.

6. In this Farman-i-Shahi there is no mention of transaction of lease. Thus, the executive authorities had no legal right to issue instructions referred to above directing the Registrar or the Sub Registrar, functioning under the Registration Act, 1908 (in short, the Act) not to register any lease deed with regard to the property of any Dera or religious or charitable institutions.

7. The Registration Act is a complete Code. It enumerates specific reasons for which the Registrar or the Sub Registrar may refuse to register a document. Section 69 of the Act authorises Inspector-General to exercise a general superintendence over all Registrars functioning in the State and to make rules consistent with the Act providing for the matters enumerated therein. The State Government has not been invested with any powers of superintendence or control over the Sub Registrars, Registrars or Inspector-General of registration. Hence it is obvious that the State Government has no power to issue any instructions to these officers not to register lease deed/sale deed etc. The State Government cannot create contours in any statute. It can only iron out certain minor creases therein. The powers given to the Sub Registrars/Registrars cannot be curtailed by executive instructions issued by the State Government. The Sub registrar by declining to register lease deed/sale deed presented by the petitioner-respondents had failed to exercise the jurisdiction vested in him. The Registrar also fell into that error in dismissing their appeals. Sections 21, 23, 28, 32 and 35 provide various grounds on which the Sub Registrar can refuse to register a document, but the Act no where provides that the Sub Registrar/Registrar can refuse to register lease deed/sale deed pertaining to the properties of religious/charitable institutions. The State Government through its executive instructions cannot put a clog on registration of such lease deed/sale deed. The Legislature has not thought it proper to make such a provision in the Act. The Sub Registrars/Registrars cannot travel beyond the powers to be exercised by them under the provisions of the Act. If the Mohants/Pujaris/Managers of such religious and charitable institutions/Deras execute sale deed, mortgage deed or lease deed etc. affecting the property of such Deras/Institutions, such transactions can be challenged by taking out legal proceedings in appropriate forum.

8. Thus, in our considered view, the learned Single Judge rightly allowed the writ petitions filed by the petitioner-respondents for registration of the lease deed vide judgment dated February 18, 1986, in CWP No. 1706 of 1985.

9. Following the judgment given in *Krishaa Gopal Kataria and Anr v. State of Punjab and Ors.*, CWP No. 1706 of 1985 (1986)89 P.L.R. 613) another Single Judge has rightly allowed CWP No. 7199 of 1993 filed by petitioner-respondents 1 to 3, wherein the Sub Registrar declined to register the sale deed presented by them for registration vide his order dated April 29, 1993 (Annexure P-I).

10. Resultantly, all these three Letters Patent Appeals are hereby dismissed with no costs.