

(2011) 01 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 11425 of 2001

Gurmukh Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:

Citation : (2011) 162 PLR 404

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Judgement

Hemant Gupta, J.—Challenge in the present petition is to the order passed by the Learned Financial Commissioner on 25.05.2001 (Annexure P-7), whereby learned Financial Commissioner remanded the matter to learned Collector to determine the question, whether the Petitioner is Mohatmim to manage the affairs of Dharamshaia and also the question, whether the said Dharamshaia is a Gurudwara or not.

2. The brief facts, out of which present writ petition arises is that the land measuring 47 Kanals 12 Marias, situated in village Jatike, Tehsil and District Kapurthala, was given in Muafi for a Dharmshala by the then ruler of Kapurthala estate. The terms of Muafi granted in 1957 Bikram Samwat were as under:

By order of His Highness Maharaja Randhir Singh dated 16th March 1923, this land is given in muafi to Dharmshala (then) in possession of Sadhu Ram Sadh and it will ensure till the existence of Dharmshala provided the incumbent remains of good character.

3. Harnam Dass was the previous Mohatmim of the Dharamshaia, died on 08.10.1975. The present Petitioner applied for appointment as Mohatmim on 29.04.1987 to Sub Divisional Officer, Kapurthala inter-alia on the basis of a Will dated 23.06.1972 executed by the last Mohatmim Harnam Dass in his favour. The said request of the Petitioner was resisted by one Shingara Singh, who claimed to be more qualified for appointment as Mohatmim. The learned Sub

Divisional Officer recommended the name of the Petitioner on 02.11.1987. The learned Collector vide order dated 10.11.1988 sought clarification from the Sub Divisional Officer on the seven issues, as mentioned in the said order. Subsequently on 26.09.1989, the Collector passed an order recommending resumption of Muafi. Aggrieved against the said order, four appeals were filed. Such appeals have been decided by the learned Commissioner, Jalandhar Division, Jalandhar, on 19.06.1991 vide order Annexure P-3. The operative part of the order reads as under:

I have considered the arguments advanced by the parties and have also gone through the record of lower courts carefully. Keeping in view the latest Ruling containing in 1991 (1) CLJ 25 the Collector is competent to appoint a Mohatmim of the institution for its proper maintenance and the muafi land attached thereto. Earlier Harnek Singh was also appointed by the erstwhile Kapurthala State. In case no suitable candidate was available from the present contestant the Collector should invite fresh applications instead of recommending for the resumption muafi land. The muafi was given to the Dharamshala with the condition that the Mohatmim could be of good character. Since the Dharamshala exists then, the question of resumption of muafi land does not arise. Under these circumstances, I consider it appropriate to remand the case to Deputy Commissioner, Kapurthala for its fresh look in the light of my above observations and for passing fresh order after hearing the interested parties. Parties present are directed to appear before him on 21.08.1991. A copy of this order be placed on each file

4. The learned Collector, in terms of the aforesaid order passed by the Commissioner, appointed the Petitioner as Mohatmim vide order dated 11.11.1994. Two appeals were filed against the said order. Both these appeals were dismissed on 28.05.1998. Still aggrieved, the revisions were filed before the learned Financial Commissioner and in the said revision petitions, the impugned order was passed on 25.05.2001, whereby the matter was remitted to Sub Divisional Officer, Kapurthala, for determination of the status of Gurdwara or Dharmshala afresh. The relevant extract of the order is as under:

I have considered the arguments put forth by the counsel for both parties and have gone through record of case. As per spot inspection report dated 18.10.1993 of DRO, Kapurthala, out of 47 K-12 M only 1 K-9 M land is in cultivating possession of Sh. Gurmukh Dass and remaining land is in the cultivating possession of Mohan Singh according to Girdawari Register. As per his report Dharamshala exists, it is admitted fact that Muafi cannot be resumed so long as Dharamshala exists. This point has also been made clear by the Commissioner vide his order dated 19.06.1991. Even both parties are against the resumption of Muafi.

5. Learned Counsel for the Petitioner has vehemently argued that it is the Petitioner who has sought appointment of Mohatmim of Dharamshala. The question of existence of Dharamshala has attained finality when the

Commissioner decided such fact in his order dated 19.06.1991. The said fact is not even disputed before the learned Financial Commissioner. Therefore, the question, whether the institution is a Dharamshala or is Gurudwara does not arise in the case. It is further contended that the issue, whether the institution is Gurudwara or not, cannot be decided in application filed by the Petitioner for appointment of Mohatmim. The order passed by the learned Financial Commissioner has enlarged the scope of an application filed by the Petitioner much beyond the issues raised by the parties.

6. Having heard learned Counsel for the parties, I am of the opinion that determination of the question, whether the institution is a Dharamshala or a Gurudwara, does not arise nor is required to be decided in application filed by the Petitioner for appointment of Mohatmim. The issue required to be examined is, whether the Petitioner is to be appointed as Mohatmim or the Respondents are to be given right to manage the institution of Dharamshala. Even Mr. Nagra could not raise any meaningful argument to the effect that the issue, whether the institution is a Dharamshala or is a Gurudwara, is not required to be decided in the proceedings initiated by the Petitioner.

7. In view of the said fact, the order passed by the learned Financial Commissioner remanding the matter to the Sub Divisional Officer to determine the status of the institution as Gurudwara or a Dharamshala is set aside. Learned Financial Commissioner shall consider the question, whether the Petitioner is to be appointed as Mohatmim or not, in accordance with law.

Parties through their Counsel are directed to appear the before the Learned Financial Commissioner on 21.02.2011.

Disposed of accordingly.