

(2014) 08 DEL CK 0164

In the Delhi High Court

Case No : CM (M) 742/2014 and C.M. No. 12944-12945/2014

Gurudwara Shri Guru Singh Sabha

APPELLANT

Vs

S. Harvinder Pal Singh

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Constitution of India, 1950 — Article 227

Citation : (2014) 08 DEL CK 0164

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Rajesh Gogna, Advocate for the Appellant; Naina Kejriwal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This petition under Article 227 of the Constitution of India impugns the order of the trial court dated 02.7.2014 by which the trial court has directed the petitioners/defendants to conduct fresh election of petitioner no.1/body after inducing members in the petitioner no.1/defendant no.1/society.

2. A reading of the impugned order shows that the Gurudwara in question was built upon an encroached public land. After building the Gurudwara, much later a society was registered under the Societies Registration Act, 1860 and control of the Gurudwara thereafter vested in the society. It is not disputed before me that the petitioners, inspite of various applications pending for induction of members, conducted elections of the petitioner no.1/society by declining admission as members. The subject suit hence came to be filed challenging the elections as also the control of the petitioner no.1/society by certain vested interests effected through the action of declining admission of new members.

3. The admitted Rule-3 of Rules and Regulations of the petitioner no.1/society and which deals with admission of members reads as under:

" 3. Membership:

Any individual male or female above the age of 18 years, residing in Mansarovar Garden, New Delhi-15, who fully believes in the ideals and the tenets and the ten Gurus and Shri Guru Granth Sahib and considers the path shown by them as "Mukti Marg" and does not believe in any religion other than Sikhism, shall be eligible to become a member of the Sabha after submitting a prescribed form duly completed."

4. A reading of the aforesaid Rule shows that any individual person above the age of 18 years, residing in Mansarovar Garden, New Delhi and who believes in the tenets of the Sikh religion, is entitled to become a member by submitting a prescribed form duly completed. In fact, there is not even a membership fee which is provided for becoming a member. Since the undisputed position is that before conduct of elections of the petitioner no.1/society in the year 2009, there were various persons who sought membership but they were denied memberships, consequently, in view of the admitted facts, the trial court was entitled to proceed under Order 12 Rule 6 CPC by passing the impugned order directing that membership be opened in accordance with rules, necessary publicity be given with respect to opening of a membership, membership forms be taken and membership be given after taking membership forms.

5. The relevant portion of the impugned order dated 2.7.2014 reads as under:

"As the Gurudwara which is a religious place is built upon public land, only a few person cannot be allowed to usurp the said land, management and affairs of the religious place at their own whims and fancies.

Thus, there is no force in the argument of defendant No.2 & 3 that opening of membership even for the first time is their own prerogative which can not be governed.

Accordingly, defendant No.1, 2 & 3 are directed to immediately open the membership of the society for all the eligible persons as per rules of the society. Defendants are directed to give publicity of the opening up of membership of the society in the locality/neighbourhood and the membership forms be provided to the desirous persons as per rules of the society.

The persons who have allegedly already taken membership of the society i.e. Defendant No.1, Gurudwara must also fill fresh membership form.

Defendants are directed to maintain proper record of all the publicity material, membership forms and subscription fees of the members who take membership of the society.

Now, to come up for further proceedings on 07.8.2014."

6. Counsel for the petitioners/defendants, in my opinion sought to raise a very specious argument that the petitioners have an absolute right to decide whom to induct as members and whom to not. In support of the proposition, reliance is

placed upon the judgment of the Supreme Court in the case of Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, .

7. The argument which is urged before this Court completely lacks substance in view of the admitted Rule-3 of the Rules and Regulations of the petitioner no.1/society, and which rule entitles any person complying with the requirement of Rule-3 to be added/inducted as a member. Obviously, the object of limiting membership to certain persons is to perpetuate control on the petitioner no.1/society by limited persons. Therefore, the assertion of a so-called entitlement and a discretion to admit or not to admit by the petitioner no.1/society at its complete discretion is a wholly baseless argument, and in fact a malafide argument by certain persons to keep control of the Gurudwara.

8. I fail to understand as to how the judgment in Damyanti Naranga (supra) will at all apply to the facts of this case in view of the admitted Rule-3 of the petitioner no.1/society, inasmuch as Damyanti Naranga (supra) was dealing with the constitutional challenge to a statute directing admission of members, and in which context certain observations were made by the Supreme Court, and which observations made in context of the constitutional validity of a statute surely cannot apply once the admitted Rule-3 above requires admission of the members on the requirements of Rule-3 being fulfilled. It is settled law that a public interest society such as the petitioner no.1 is bound in its sphere of action by its Rules and Regulations.

9. In view of the above, I do not find any illegality in the impugned order dated 02.7.2014, and the petition is therefore dismissed, leaving the parties to bear their own costs.