(2009) 08 P&H CK 0169

In the Punjab And Haryana At Chandigarh

Sat Parkash alias Satpal — APPELLANT

Vs

The Financial Commissioner, Revenue and Others — RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2010) 1 CivCC 82 : (2010) 157 PLR 130 : (2009) 4 RCR(Civil) 357

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Saron, J.—This petition under Articles 226/227 of the Constitution of India has been filed seeking quashing of the order dated 12.5.2009 (An-nexure-P.21) passed by the Financial Commissioner, Appeals, Punjab and the order dated 28.4.2008 (Annexure-P.19) passed by the Collector, Rupnagar (respondent No. 3) in terms of which the application filed by respondent No. 5 for correction of Khasra Girdawri has been accepted.

2. The case of the petitioner is that Sant Mahatma Shri Gopal Dass came to Village Ballamgarh in the year 1953. Father of the petitioner, namely, Walaiti Ram helped Sant Mahatma Shri Gopal Dass to purchase land measuring 1 Kanal 13 Marias. In the year 1954, again some land was purchased and one room was constructed. During the year 1965-66 a temple, namely, Shri Radha Krishan Gopal Mandir was constructed. The petitioner and his family members, it is stated, played a major role to construct the temple and helped in its construction in every respects i.e. physically and economically. Sant Mahatma Shri Gopal Dass died in 1969. On his demise, Mata Basanti Devi become Mohatmin and Gaddi Nasheen of Shri Radha Krishan Gopal Mandir. The Guru Gaddi was blessed to Mata Basanti Devi by Sant Mahatma Shri Gopal Dass in the presence of Sant Mahatmas and Sangat in 1966. After the demise of Sant Mahatma Shri Gopal Dass, the petitioner started to live along with his family in the temple and he helped Mata Basanti Devi in the management and development of the temple.

The petitioner and his father purchased 6 Kanals of land in the year 1975 situated in Village Ballamgarh. The said land was purchased from Bhambool Singh for a consideration of Rs. 3500/- in pursuance of sale deed dated 11.6.1975 (Annexure-P.1). In 1976, the petitioner and his father purchased land measuring 2 Kanals by paying consideration amount from their pocket vide sale deed dated 7.6.1976 (Annexure-P.2). Thereafter, the petitioner and his father purchased land measuring 7 Kanals 18 Marias vide sale deed dated 28.12.1988 (Annexure-P.3). Mata Basanti Devi died on 27.11.1982. However, before her demise, she had bestowed the Guru Gaddi to the petitioner on 25.11.1982 in the presence of Sangat and Sant Mahatmas. A photograph (Annexure-P.4) showing the blessings bestowed on the petitioner by Mata Basanti Devi has been placed on record. It is submitted that on the demise of Mata Basanti Devi, the petitioner became Mohatmin as well as Gaddi Nasheen of the said temple and started to render services for the development, maintenance and management of the temple and the land. The name of the petitioner and his father was duly incorporated in the revenue records since 1975 in the Jamabandis (An-nexures-P.5 to P.11) which have been placed on record. Therefore, it is submitted that the petitioner has been managing and maintaining the temple and the land, besides, spending huge money for the improvement of the land by way of levelling through Soil Conservation Department. The copy of the receipt (Annexure-P.l2) regarding payment of revenue has been placed on record. Therefore, it is submitted that the petitioner is cultivating land and the earnings through the said cultivation are spent on the maintenance, development and different festivals/ annual bhandaras performed in the temple. The copies of the annual festival cards for the last three years are annexed as An-nexures-P.13 to P.15. The petitioner is also maintaining the record (Annexure-P.16) regarding the income incurred to the temple and expenditure upon the maintenance, management, development, annual festivals and annual bhandaras performed in the temple. Besides, the petitioner has also paid revenue upto 1984. In the year 1998, the petitioner constructed the iron gate and road upto the temple from the village main road for the convenience of the Sangat. In the year 2002, the petitioner again got land levelled from one Ram Kishan by paying a sum of Rs. 13,000/-. The receipt (Annexure-P. 17) has been attached. It is in the year 2005 that respondent No. 5 moved an application before respondent No. 4 Assistant Collector, Ist Grade, Rupnagar for change of Khasra Girdawri in respect of the land purchased by the petitioner. The Assistant Collector, Ist Grade, Rupnagar (respondent No. 4) inspected the spot and held that the petitioner is maintaining the temple and is in cultivating possession of the land and is managing its affairs. Besides, it was held that respondent No. 5 was not originally resident of Village Ballamgarh. He belongs to Village Bhagon (Khala), P.O. Panjgrain, Tehsil and District Bilaspur (HP) and occasionally visited the temple. Besides, he was not in a position to perform the puja and archana in the temple, hence the application of respondent No. 5 was dismissed vide order dated 30.1.2007. Thereafter, respondent No. 5 through his attorney filed an appeal before the Collector, Rupnagar (respondent No. 3) who accepted the appeal vide order dated

28.4.2008 (Annexure-P.19). The petitioner aggrieved from the order of the Collector preferred an appeal before the Commissioner, Patiala Division, Patiala, who vide order dated 1.9.2008 (Annexure-P.20) accepted the appeal and affirmed the order of Assistant Collector Ist Grade. Respondent No. 5 then preferred a revision petition before the Financial Commissioner, Revenue (respondent No. l) and the learned Financial Commissioner vide order dated 12.5.2009 (Annexure-P.21) accepted the revision petition. Aggrieved against the same, the petitioner has filed the present petition.

3. Learned Counsel for the petitioner has contended that the Jamabandis Annexures-P.5 to P.11 are in favour of the petitioner, therefore, the Khasra Girdawri could not have been entered in favour of respondent No. 5. Besides, the petitioner is the Mohatmin of the temple and he is also maintaining the records of the expenses which is evident from the records (Annexure-P.16). It is also submitted that the orders dated 28.4.2008 (An-nexure-P.19) passed by the Collector, Rupnagar and dated 12.5.2009 (Annexure-P.21) passed by the Financial Commissioner are illegal and devoid of any merit.

4. After giving my thoughtful consideration to the matter and perusing the record, it may be noticed that the case involves disputed questions of fact as to who is in possession of the land. The fact whether the petitioner is maintaining the record and whether he has been bestowed to be the Mohatmin of the temple are matters in issue which would more appropriately be gone into and considered by a Civil Court. This Court in exercise of its supervisory writ jurisdiction is not to embark upon an inquiry and hold a trial on the basis of record and then ascertain as to whether these are correct or otherwise. The photograph (Annexure-P.4) on the basis of which the petitioner is alleged to have been bestowed the Mohatminship would require to be proved by leading evidence. Even the fact whether the petitioner is maintaining the record would be required to be proved by leading evidence. The documents like photographs and the record are not such which are per se admissible in evidence. Therefore, keeping in view the nature of dispute, it would be wholly improper for this Court to go into the same and it would be best left for the Civil Court to ascertain the same. Even otherwise a suit for declaratory decree by a person aggrieved by an entry in a record is maintainable in terms of Section 45 of the Punjab Land Revenue Act, 1887. It is provided therein that if any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights, or in an annual record, he may institute a suit for a declaration under Chapter VI of the Specific Relief Act, 1877 (now Specific Relief Act, 1963). In terms of Section 34 of the Specific Relief Act, 1963 any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make there a declaration that he is so entitled. Therefore, the said provisions indicate the remedy of a person who may feel aggrieved by an adverse entry in the record of rights or in an annual record. In other words the said provisions specify an occasion when a party may file a declaratory suit,

which in the facts and circumstances is the proper remedy.

5. Accordingly, there is no merit in this writ petition and no interference in exercise of the supervisory writ jurisdiction is warranted in the orders dated 28.4.2008 (An-nexure-P,19) and dated 12.5.2009 (Annexure-P.21) passed by the revenue authorities i.e. the Collector, Rupnagar and the Financial Commissioner and the petitioner is relegated to avail his remedy of filing a civil suit.

6. The writ petition is not maintainable and is not the proper remedy and the same is accordingly dismissed.