
(2000) 02 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Review No. 45 of 1998 in Miscellaneous No. 147 of 1998

Shiv Kumar Kapoor

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Citation : (2001) 2 PLJ 537 : (2002) 2 RCR(Civil) 13 : (2002) 1 RCR(Civil) 342

Hon'ble Judges : Mrs.Shyama Mann, F.C.

Advocate : Balbir Singh, Senior State Counsel., Advocates for appearing Parties

Judgement

Shyama Mann, F.C.

1. This order shall dispose of the application dated 31.8.1998, made by Shri O.K. Puri, the then Senior State Counsel seeking to review the order dated 13.7.1998 of Shri K.S Janjua my learned predecessor.

2. Mahant Shiv Kumar Kapoor stating to be the Mohatmim of Mandir Talab Mongia, Rajpura Road, Patiala had filed Misc. Application No. 147 of 1988 dated 16.6.1998 before my predecessor Shri K.S. Janjua, IAS for leasing out his agricultural land attached with the Mandir and for issue of directions to SubRegistrar and Registrar to grant permission for the same as they had refused to register the lease deed saying that Farmanishahi under which these lands were allotted did not allow such kind of transfers. The petitioner took the plea that the land being a very lowlying area was unproductive of any crop and there being no income at all from the Mandir and from the land attached to it, he wanted to lease out 8 Bighas of land in the interest of Mandir Talab Mongia Wala. The petitioner Mahant alleged that he had approached the Registrar and the SubRegistrar with the lease deed on 15.10.1995, 17.1.1996, 14.2.1996, 16.9.1996 and 7.5.1998 on which oral refusal was intimated. He also referred to another order passed by Shri Janjua in which he had held that Mahant/Mohatmim of the Dera could have the lease deeds registered and mutation sanctioned in terms of the lease.

3. On the application dated 16.6.1998 Mahant Shiv Kumar Kapoor my predecessor passed the following orders on 13.7.1998.

" I have considered arguments propounded. As held by the High Court, the State Government has no powers to issue directions to Registrar and Sub Registrar. But they are duty bound to fall in line with the orders, passed by High Court and the Financial Commissioner's Court. This Court has already expressed its views on the subject. The aggrieved party can place the relevant orders before Registrar/SubRegistrar, and request them to comply with the orders.

With these observations, the petition is disposed off ".

The Senior State Counsel Shri O.K. Puri thereafter filed the present application dated 31.8.1998 seeking review of the said order.

4. The main grounds agitated in this application are that the Mahant could not alienate the land attached with the Mandir to any one as per the contents of FarmaniShahi; further, that as per provisions of the Indian Registration Act the appeal, against refusal by the SubRegistrar to register and document lies to the Registrar and an appeal could be filed before the Registrar. No further second appeal or revision lies against the order of the Registrar as per provisions of the Indian Registration Act. Therefore, Financial Commissioner, Revenue while exercising his revenue judicial powers, has no jurisdiction to entertain any application seeking direction to the SubRegistrar/Registrar and, therefore, the then Financial Commissioner Revenue passed an order by outstepping his legal competence and jurisdiction. The Mahant if he has any grievance against SubRegistrar/Registrar could file a Civil Suit or approach the High Court. It was further alleged in the review application that the facts of these case relied upon in Para 2 of Financial Commissioner Revenue's order dated 13.7.1998 was clearly distinguishable from the facts of the present case. As per interpretation of Hon'ble Punjab and Haryana High Court in C.W.P. No. 4172 of 1992 it has clearly been observed that FarmaniShahi issued by the erstwhile Ruler of Patiala is a law and continues to be a law till repealed or substituted by a competent legislation. Since the Farmani Shahi issued by Maharaja places a specific bar on the transfer of the land attached to the Mandir in any form or way, vide said FarmaniShahi the Sub Registrar/Registrar was fully justified in refusing to get the lease deed registered, since the leasing out in other words tantamounts to the transfer of the land in favour of some persons.

5. Information was sought on whether the lease deed presently stood registered or so when, and for what period, because it was found that as per Roznamcha command dated 10.7.2000 BK (1943 AD) Mahants were debarred from leasing out lands for any period whatsoever except with the express permission of the Government and this permission had to be within the parameters laid down by the FarmaniShahi dated 1921. Copies of lease deed were also directed to be brought on record to indicate what were the terms of lease, and whether the amount of lease money represented a fair price of land in the locality. The Senior

State Counsel was also directed to intimate what use the Mahant had put the money to. This was considered necessary because Mahant had in his application before the then Financial Commissioner Revenue stated that the land is 10 to 15 feet below the road level and had been ravaged by floods of July, 1993; and had stated that the old building of the Mandir had become dilapidated. The ostensible reason for seeking to lease out 8 Bighas of land attached to the Mandir was to pay attention to the renovation of the Mandir. The Senior State Counsel was also directed to clarify whether the succession of the Mahant was disputed.

6. In response to these queries the learned Senior State Counsel referred the matter to the Deputy Commissioner. The Deputy Commissioner has given the following information in response to these queries :

(i) No refusal to register any document was made on the five dates mentioned above.

(ii) The area falls within Patiala city and can be useful for commercial exploitation. Registration of transactions in this locality is being done at approximately Rs. 5000/ per Sq. Yd.

(iii) The SubRegistrar has revealed that no one approached him for registration in consequence of the impugned order dated 13.7.1998.

(iv) The area adjoining to Mandir is 10 feet deep flooded in July, 1993.

(v) There was no record available regarding the appointment of Shiv Kumar Kapoor as Mahatmim.

(vi) Since the Mahant did not present the alleged lease deed for registration the period and name of the party in whose favour he wants to get the lease deed executed is not known.

7. On receipt of the information from Deputy Commissioner, notice by ordinary process as well as through registered cover was ordered to be issued to the Mahant at Government expenses on 27.7.1999; and again on 7.9.1999. The alienation of the property was also stayed. On 7.12.1999 the report of the Tehsildar Patiala was considered which wanted the correct address of the petitioner to be supplied. The summons/notice was sent at the very same address which Mahant had given while submitting application dated 16.6.1998. Thereafter the Tehsildar reported that Mahant is residing at Haridwar and gave Haridwar address after checking from the neighbourhood. Accordingly, Mahant Shiv Kumar Kapoor was ordered to be served through "Munadi" and "affixation" and was also sent registered letter at the Haridwar address given by the Tehsildar. However, the registered envelope came back undelivered with the report regarding several unsuccessful attempts by postal authorities. However, as per report of the revenue authorities Munadi and service by affixation at the disputed land had been duly effected.

8. A keen look at the facts and circumstances of the case reveals that the Mahant

has misled my predecessor by not stating the correct facts. As per FarmaniShahi dated 18th April, 1921 Mahants who were recipients of certain amount of recognition by the Maharaja were not permitted to alienate any Muafi land. Such grants were not intended to be treated as personal property of the concerned Mahant/Mohatmim and he was not clothed with an authority to sell or mortgage the land so granted. Thereafter vide Roznamcha order of the Deodhi Moalla dated 26th October, 1946 issued from the Moti Bagh Palace, Patiala it was further ordained that all lands and shops given on lease or rent beyond 3 years were to be returned and in future no lands were to be leased for any period whatsoever without the prior sanction of Sardar Sahib Deodhi Moalla.

9. It is further noticed from the petition dated 16.6.1998 of the Mahant which culminated in the impugned order dated 13.7.1998 of Sh. K.S. Janjua, that neither the name of the intended lessees nor the period of lease; nor the rental/lease money which was expected from this lease has been mentioned. On the contrary, it now transpires from the records of this office that the Mahant (petitioner) had earlier approached the Government for granting permission to lease out the 8 Bighas of land attached to Mandir Talab Mongia Wala situated at Rajpura Road, Patiala for 99 years for raising funds for its development. The Chief Minister had desired that the matter be examined and appropriate action be taken. After thorough examination of the case, permission was refused vide Government letter No. 4/5/19J3/38/3876 dated 29.12.1997 addressed to the Commissioner, Patiala Division a copy of which was endorsed to Sh. Shiv Kumar Kapoor (petitioner). He was further advised to lease out the land on annual "chakota". It is some what intriguing to note that the factum regarding the refusal of permission vide letter dated 29.12.1997 was cleverly concealed by the Mahant in his petition dated 16.6.1998 decided by my Id. predecessor vide his order dated 13.7.1998. Thus it is evident that Sh. Shiv Kumar Kapoor, Mahant made a crude attempt to manipulate the aforesaid order of Sh. Janjua by making vague and devious prayer. In the petition dated 16.6.1998 he made a request for grant of permission to lease 8 Bighas of land attached to Mandir with the further request for directions to the SubRegistrar/Registrar Patiala for registration of the lease deed. All this goes to explain in no uncertain terms as to why the Mahant went into oblivion and despite several attempts made to serve him personally, he failed to put an appearance. The Mahant is not the owner of the property and he is not entitled to lease out the same outside the terms of ShahiFarman. In his petition dated 16.6.1998 the Mahant categorically admitted that Government permission is necessary as per terms of ShahiFarman to lease out the property. As already stated the said permission has already been refused vide letter dated 29.12.1997. But he intentionally concealed this fact while making the petition dated 16.6.1998. In view of the clear and conscious refusal of the Government to allow the land to be given for any term beyond annual lease, there was no occasion for my Id. predecessor to pass the order dated 13.7.1998. The same was clearly obtained by playing fraud and concealing material facts. Accordingly, the said order dated 13.7.1998 passed by my Id. predecessor is hereby recalled

being not sustainable, and the petition/application dated 16.6.1998 of Mahant Shiv Kumar Kapoor is hereby dismissed.

Announced.

Review application accepted.