(1997) 05 P&H CK 0175

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11963 of 1996

Thakar Dwara Bhoray and another APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 30-05-1997

Acts Referred:
Constitution of India, 1950 — Article 14, 226, 227

Citation : AIR 1997 P&H 293 : (1997) 3 RCR(Civil) 353

Hon'ble Judges : N.K. Agrawal, J;Amarjeet Chaudhary, J

Bench : Division Bench

Advocate : Arun Palli, for the Appellant; Randhir Singh, DAG, for the Respondent

Judgement

N.K. Agrawal, J.—This is a petition by Thakar Dwara, Bhoray, Tehsil Nabha, District Patiata (hereinafter referred to as "the Thakar Dwara") and Mahant Raghunath Dass, under Articles 226 and 227 of the Constitution for quashing the order dated 18-3-1996 passed by the Financial Commissioner Revenue, Punjab (respondent No. 2), whereby Raghunath Dass (petitioner No. 2), the present Mahant and Mohatmim of the Thakar Dwara, has been removed from his office and possession of the entire movable and immovable property of the Thakar Dwara was taken over by the Slate Government.

2. The Thakar Dwara is a religious and charitable institution of the Bairagi sect and is in existence for a long lime. The petitioners'' case is that, since succession to the office of Mahant of the Thakar Dwara had taken place in the past from Guru to Chela in accordance with the custom and usage of the Bairagi sect, Raghunath Dass came to be appointed as the Mahant by his Guru Sadhu Dass on 17-1-1983. Power to appoint the Mahant was, as per the custom, vested in the Bhekh (members of the religious fraternity). Raghunath Dass is also said to have been appointed by the Bhekh on the demise of his Guru, Sadhu Dass, on 17-1-1983. He was managing and controlling the affairs of the Thakar Dwara since then. Land measuring 62 Bighas 13 Biswas is under cultivation and is managed by the Thakar Dwara. Out of the aforesaid area, land measuring 34

bighas 2 biswas was given on contract and the remaining land was cultivated by the Mahant himself. Besides, agricultural land measuring 35 to 40 Bighas, situated in village Jaliwal (Bhadson), is also attached to the Thakar Dwara. The petitioners have challenged the removal of the present Mahant and the takeover of the possession of the property on the ground that a properly-appointed Mahant could not be removed by the Slate Government, nor could the properties be taken over without sufficient reasons. Since the Thakar Dwara belonged to a religious sect, Bairagi, the Government had no authority to interfere with the religious affairs of that particular sect. The appointment of the Mahant cannot be challenged nor the control and management of the Mahant over the properties of the Thakar Dwara can be taken over. There is a temple of Lord Krishna and Radhika, and also of other idols, inside the premises of the Thakar Dwara. There arc nine Samadhis of the deceased Mahams. It is alleged that some revenue officials came to the Thakar Dwara on 31-7-1996 and physically threw the Mahant out from the premises of the Thakar Dwara and put their locks on the rooms and the main gate. The revenue officers obtained the thumb-impression of the Mahant on certain documents and forcibly look over the possession of all the properties. The action of the State Government is said to be a flagrant abuse of the executive powers inasmuch as the action was initiated without sufficient reasons or valid authority. The State had no right to interfere with the religious affairs of the Thakar Dwara which was in the status of a religious and charitable institution of the Bairagi sect.

3. The respondents have in their joint reply, admitted that the Thakar Dwara was a Dharmarth institution. The Dharmarth property of the Thakar Dwara has been duly incorporated in the Dharmarth property-register in the tehsil of Nabha. Action to remove the Mahant and to take over the possession of the properties was initiated after making an enquiry into a complaint made by the Panchayat and the residents of village Bhoray. Since serious allegations had been levelled against the Mahant about the mis-use of the Thakar Dwara, action was promptly initiated following the enquiry. It was alleged in the complaint that the Mahant ''did not spend any money out of the income on the repairs or maintenance of the properties which lay in a dilapidated condition. It is also stated in the respondents'' reply that Muafi of the agricultural land had been granted by the State Government as was evident from the entries in the jamabandis for the years 1952-53 and 1956-57. Muafi of 29 rupees and 3 annas has been recorded in the jambandi. Since mis-management of the properties and non-maintenance of any account of income and expenditure became evident on enquiry the Deputy Commissioner, Patiala, sent a report to the Commissioner. Patiala Division, on 19-9-1995. Thereafter, the Financial Commissioner Revenue, Government of Punjab, passed the impugned order dated 18-3-1996. Under the orders of the Deputy Commissioner, Paliala. dated 11-6-1996, Tehsildar, Nabha, proceeded to take possession of the properties on 31-7-1996.

4. It would appear from the order passed by the Financial Commissioner on 18-3-1996 that Mahant Raghunath Dass was removed from his office on account

of mis-management of the Thakar Dwara. The enquiry report, which was sent by the Deputy Commissioner, Patiala to the Stale Government, deals with the complaint which had been made by the Gram Panchayat, Bhoray, and other residents of the village against the Mahant. It is, however, not clear whether the Mahant was given a copy of the complaint or a show-cause notice during the course of the enquiry. A statement of the Mahant (copy Annexure R-6) is said to have been recorded by the Enquiry Officer and bears the left-thumb impression of Mahant Raghunath Dass. It is statement is self-incriminating inasmuch as the Mahant made an admission therein that he had not spent any income of the Thakar Dwara on the repairs of the building and he had spent the entire income on the marriages of his sons and daughters. He also admitted that he did not know how to perform the Arti. Mahant Raghunath Dass has, however, denied to have given the aforesaid statement and has also claimed to have never put his thumb-impression on the alleged statement. He claims to be a literate person and knows how to sign his name. In such a situation, the statement alleged to have been given by Mahant Raghunath Dass to the Enquiry Officer appears to be a dubious document. The enquiry report contains vague findings that Mahant Raghunath Dass was acting as such since long. He did not maintain any account of the income and expenditure of the Thakar Dwara. It is also mentioned in the enquiry report that Mahant Raghunaih Dass had executed a will in favour of his younger son. In the complaint (copy of which has been placed as Annexure R-5), there is a mention that the Mahant used to take liquor inside the Thakar Dwara and thereby he hurt the sentiments of the visitors. It is also stated therein that the elder son of the Mahant should be appointed as the successor. The enquiry made into the allegations is wholly unsatisfactory and totally unreliable. It is not clear whether the statements of the persons, who had signed the complaint, were recorded in the presence of the Mahant. The finding given by the Enquiry Officer that the Mahant had not spent any money, out of the income, on the repairs of the Thakar Dwara, may or may not be correct but it was necessary to permit the Mahant to participate in the enquiry proceedings. The inculpatory statement of the Mahant, which has been denied and disowned by the Mahant, appears to be a dubious document and cannot form the basis for arriving at a finding. It was necessary to comply with the rules of natural justice and to allow the Mahant to look into the complaint which had been made by the residents of the village against him.

5. The order passed by the Financial Commissioner, whereby the properties of the Thakar Dwara have been taken over, cannot be called a valid order unless it is shown that the management alone was taken over on behalf of the Thakar Dwara. From the written statement, it is not clear whether the Slate Government has taken over possession of the properties after cancelling the Muafi or has only taken over the management of the affairs of the Thakar Dwara. The jambandis for the years 1970-71, 1980-81 and 1990-91 (copies Annexures P-2, P-3 and P-4), make it evident that the land of the Thakar Dwara has been recorded to be under self-cultivation. Copies of the khasra girdawaris for the years 1991-92 to

1995-96 also establish the cultivation by the Thakar Dwara. In these circumstances, the Stale Government cannot forfeit the rights of the Thakar Dwara and take possession of the agricultural land. As has been said earlier, the Stale Government, in a case of mis-management of a religious or charitable institution, may take over the management of the affairs of that institution in the interest of the institution and the public. At the same time, the Government should make suitable arrangements for the purposes of the religious duties also. The Financial Commissioner, while removing the Mahanl, did not lake care to appoint a suitable person who was capable of performing the religious duties and ceremonies of the Thakar Dwara. A cryptic and vague order, removing the Mahant and taking the possession of the properties, cannot be sustained. It was necessary and expedient to appoint a competent authority to take over the management and control of the affairs of the Thakar Dwara and to maintain the accounts relating to income and expenditure of the institution. The Deputy Commissioner, Patiala, in compliance of the order dated 18-3-1996 of the Financial Commissioner, directed the Tehsildar. Nabha, by his order dated 11-6-1996. to take over the possession of all the properties of the Thakar Dwara. His not clear as to what was the nature of the take over or the duration [hereof. There is no direction to the Tehsildar as to how he shall maintain the account of income and expenditure of the Thakar Dwara and how he shall control the affairs in day-to-day matters. Since nobody has been appointed in place of Mahant Raghunath Dass to perform the religious duties, the orders of the Financial Commissioner and the Deputy Commissioner appears to have been passed without appreciating the requirement of the situation. It has been admitted by the respondent that Raghunath Dass has been functioning as the Mahant after the death of the earlier Mahani, Sadhu Dass. There is, however, a vague allegation in the reply that Mahant Raghunath Dass was in illegal possession of the Thakar Dwara. This allegation does not appear to be correct as there is no evidence to show that he was a trespasser or a usurper of the office. It has been pleaded by the respondents that the Government had inherent powers to prevent the misuse of the Dharmarth properties and funds. That power, however, cannot, be exercised arbitrarily and against the rules of natural justice. Since the Mahant in office was not given reasonable opportunity during the course of enquiry and since the alleged statement of the Mahant, which is self-incriminating, appears to be a doubtful document, the finding given by the Enquiry Officer stands vitiated and cannot be made the basis for the removal of the Mahant.

6. In the result, the present writ petition succeeds and the orders of the Financial Commissioner Revenue, Punjab, dated 18-3-1996 and of the Deputy Commissioner, Patiala, dated 11-6-1996, are quashed. The State Government shall, however, be at liberty to take suitable measures for the proper management of the Thakar Dwara in the public interest after fresh enquiry. keeping in view the observations made above.

7. Petition allowed.

