

Before Dr. M. S. Sood, IAS, Joint Financial Commissioner (AR)
with the powers of Financial Commissioner (Revenue),
J&K, Jammu/Srinagar.

File No:
177/Jt. FC/AP

Date of Institution
28.04.2005

Date of Decision:
03.04.2014

Vijay Kumar s/o Late Shri Ram Saran, Brehman r/o village Omara Tehsil and District
Udhampur. Petitioner

Vs

Sudesh Kumar s/o Late Shri Ram Saran Brehman 2. Smt. Shanti Devi w/o late Shri Ram
Saran, Brehman 3. Shri Surinder Kumar s/o Late Shri Ram Saran, Brehman r's/o village
Omara Tehsil and District Udhampur 4. Dy. Commissioner, Udhampur 5. Asstt.
Commissioner (Rev), Udhampur.

.... Respondents

In the matter of:-

Revision petition against the order of Id. /Divisional Commissioner, Jammu dated
15.04.2005.

ORDER

This revision petition is directed against the order of the Ld. Divisional
Commissioner, Jammu dated 15.04.2005 passed in a appeal titled Vijay Kumar Vs
Sudesh Kumar and ors. the Ld. Divisional Commissioner, Jammu has by virtue of
said order dismissed the appeal filed by the present petitioner before him and has
upheld the order of Ld. Dy. Commissioner, Udhampur dated 14.02.2004 passed in
the matter. Aggrieved of the order of the Ld. Divisional Commissioner, Jammu the
petitioner has approached this court with an instant revision petition.

The dispute as emanating from the memo of the petition clearly relates to
the right of management of temple Shri Narisinghji Maharaj Devika [Omara]
situated at Tehsil and District Udhampur. It is stated by the petitioner that the
father of the petitioner no. 1 and respondent no. 1 & 3 was serving the aforesaid
temple as Mohatamim till his death and after his demise he left appellant and
respondent no. 2 to 3 as his legal heirs. Appellant being eldest son of the deceased
Mohatamim was eligible to be appointed as his successor of his father. However,
on the application filed by the respondent no. 1 before the Ld. Dy Commissioner,
Udhampur, he was declared as Mohatamim of the said Temple. Ld. Dy

Commissioner, Udhampur had in turn relied upon the enquiries made by Tehsildar, Udhampur and a committee constituted by him under the Chairmanship of Superintending Engineer, PWD[R&B Circle], Udhampur in the matter and passed the order on the basis of such enquiries. The petitioner herein approached Ld Divisional Commissioner in an appeal against the order of the Id. Dy. Commissioner, Udhampur who in turn dismissed the appeal and kept the order of the court below intact. The petitioner has now challenged the order of Ld Divisional Commissioner, Jammu on the grounds:

- i. That the order of the court below was passed actually by Asstt. Commissioner (Rev), Udhampur and was latter given a seal of confirmation by the Dy. Commissioner, Udhampur who himself did not pass any order.
- ii. That the order passed by Id Dy. Commissioner, Udhampur was not within the canons of law in so far as only one party was heard and considered and the order was passed by Dy. Commissioner, Udhampur without hearing the petitioner.
- iii. That the order passed by the Ld. Dy. Commissioner was without jurisdiction because nowhere in law or under rules it is provided that Dy. Commissioner is competent to appoint a Mohatamim of a religious endowment or temple. Ld Divisional Commissioner, Jammu made an apparent mistake by not considering the legal position and upheld the order of the court below although erroneously.
- iv. That the order passed by Dy. Commissioner was grounded on the recommendations made by committee headed by Superintending Engineer. The Id. Dy. Commissioner was required to hold an enquiry himself which he failed to do. The Id. Divisional Commissioner also did not consider the said fact also which against the principles of natural law and justice.
- v. That the Ailan No. 13 dated 3 Asuj, 1964 has been embedded and codified in the shape of religious endowment Act and is not in force. The court below has erred in law by relying on Ailan No. 13 while passing the order. The petitioner is not only well versed with the religious matters and the management of the temple but also is well acquainted with the day today matters relating to office which makes him suitable for holding the office.

The parties were summoned, who caused their appearance before this court through their respective counsels and argued the case. The counsel for the respondents' no. 1 & 3 also filed written submissions in the matter.

I have heard the Id counsels and perused the record. I also gone through the impugned order as well as the written submissions filed on behalf of the respondents No. 1 & 3. The matter revolves around the question of appointment of Mohatamim for the management of Temple Shri Narsingh Ji Maharaj Devika. The parties to the dispute herein are the legal heirs of actual Mohatamim Shri Ram

Saran. Petitioner being the eldest son of the deceased Mohatamim claimed the right as care taker of the temple on the basis of heredity. However, the matter to the ugly turn when the respondent no. 1 being one of the legal heirs of Shri Ram Saran approached the Id Dy. Commissioner, Udhampur for his appointment as Mohatamim which gave rise to present series of litigation. Dy. Commissioner assigned the matter to Tehsildar, Udhampur for enquiry into the matter Tehsildar after thorough enquiry submitted the matter before Asstt. Commissioner (Rev) who also recommended that the respondent no. 1 should be appointed as Mohatamim. Latter the Dy. Commissioner formed a committee under the chairmanship of S.E.(PWD) [R&B Circle], Udhampur. The said committee which comprised the Revenue Officers also recorded the statement of the bulk of inhabitants of the area and recommended for appointment of respondent no. 1 as Mohtamim. Ailan No. 13 of 3 Asuj, 1964 speaks of appointment of Mohatamim in respect of such person who actually performs the duties of care takers of the religious endowments. The said Ailan no. does away with appointment of Mohtamim on the basis of inheritance and hereditary lineage because such arrangement most of the times gives rise to dispute over the Mohtamimship. Although, Id. Dy. Commissioner has made hectic efforts to arrive at conclusion in the matter, however, there is nothing in the law books which could vest authority in him for appointing the Mohatamim. Ailan no. 13 only provides that the person who is well versed with the affairs of religious matters and is competent to take care of the religious endowment should be appointed as Mohatamim. It nowhere talks about the competence of Dy. Commissioner to appoint Mohatamim. The Id. Divisional Commissioner has ignored the said fact and passed the order without returning any findings in respect of such issue of jurisdiction. In one of the cases titled "**Bawa Seva Nand Chaila Shaker Giri Vs State of J&K & ors**" OWP 512 /2002 deciding on 14.11.2006, our Hon'ble High Court has dealt with the said issue and has observed that unless Dy. Commissioner is vested with the powers of appointment of any person as manager or Mohatamim of a temple he can not make any arrangement of that sort. Although, the respondents no. 1 & 3 have presented themselves before the Id. Dy. Commissioner in the matter but such fact does not lead to the presumption that the jurisdiction has vested in him by the act of the parties. Id. Divisional Commissioner has dealt with the case in depth but has not thrown any light on the question of jurisdiction of Dy. Commissioner. Pass the order. Therefore, the orders passed by the subordinate authorities are liable to be dismissed on such count alone. However, since the majority of the inhabitants of the area have opined in favour of appointment of respondent no.1 as Mohatamim, it shall be in the fitness of the things that the "*control and supervision*" of the Dy. Commissioner who shall allow the respondent no.1 to manage the affairs of the temple Shri Narsingh Ji Maharaj Devika till the Govt. appoints any authority.

competent to control and supervise the religious endowments and temples and passes law in that regard.

Therefore, in view of the above observations the revision petition is accepted and the orders passed by the Id. Divisional Commissioner, Jammu and Dy Commissioner, Udhampur in the matter are set aside. However, respondent no. 1 shall continue to manage the affairs of temple Shri Narsingh Ji Maharaj Devika under the control and supervision of Dy. Commissioner, Udhampur till the appropriate measures are taken by the Govt. for regulation of appointment of Mohatamim to control and supervise the religious endowments and temples.

Interim order, if any passed in the matter is vacated. Consigned to records after due completion.

Announced
03.04.2014

Sd/-
(Dr. M. S. Sood) IAS
Joint Financial Commissioner (AR)