

to see that no prejudice was caused to any one of the land-owners whose lands were being irrigated and he made a direction which according to the learned counsel for the respondents fully safeguards the interests of the petitioners. This has not been denied by the counsel for the petitioners. In these circumstances there would hardly be any justification for interference.

For all the reasons given above, the petition is dismissed but in the circumstances I leave the parties to bear their own costs.

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K.S.K.

CIVIL MISCELLANEOUS

*Before R. S. Narula, J.*

BALBIR SINGH,—*Petitioner*

*versus*

SIKH GURDWARAS JUDICIAL COMMISSION, AMRITSAR AND  
OTHERS,—*Respondents.*

Civil Writ No. 2115 of 1966

November 25, 1966

*Punjab Sikh Gurdwaras Act (VIII of 1925)— Ss. 76 and 142—Sikh Gurdwaras Judicial Commission—Whether can grant temporary injunction or appoint a receiver under Order 39 Rules 1 and 2 and Order 40 Rule 1 C.P.C.—Constitution of India (1950)—Article 226— Petition for a writ of certiorari—Objection as to lack of jurisdiction not taken before inferior tribunal—Whether can be allowed and to be raised in writ petition.*

*Held* that the Sikh Gurdwaras Judicial Commission is a Tribunal of special jurisdiction and cannot generally pass any order which is not authorised by one or the other provision of the Punjab Sikh Gurdwaras Act, 1925. Under section 142 of the Act any person having interest in the Gurdwaras controlled by the Committee can make a petition against any member of the Committee complaining of any alleged malfeasance, misfeasance, breach of trust, neglect of duty or abuse of power conferred on that member by the Act or even in respect of any alleged expenditure by such member for a purpose not authorised by the Act. The relief which can be granted by the Commission under that provision includes issuing a directive to such a member to do any specific act or to forbear from doing the same so long as such direction is consistent with the provisions of the Act and other laws for the time being in force. The Commission can also

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order the removal of any office-holder or member of the Committee responsible for any of the acts or omissions referred to above and may even go to the extent of disqualifying such a member, who is removed, from membership for a period not exceeding five years. But in either event, the grant of any of the reliefs envisaged by section 142 of the Act, is made conditional by that very section on the Commission being satisfied of such breach of trust or neglect of duty, etc., having been proved. It is, therefore, clear that no order under section 142 of the Act can be passed till the allegations justifying any action under that provision are proved to the satisfaction of the Commission. But this is in no way inconsistent with the Commission having authority to pass interim orders in the nature of the grant of injunction or appointment of Receiver if such power is otherwise conferred on it. Section 142 of the Act does not prohibit the grant of such interim relief nor are the provisions of Order 39 rules 1 and 2 and Order 40 rule 1 of the Code of Civil Procedure in any manner inconsistent with section 142 of the Act. On the contrary, the above said provisions of the Code are not only ancillary to section 142 proceedings under the Act, but are necessary to be invoked in suitable cases for effectively exercising the jurisdiction vested in the Commission by that section (section 142). Expression "so far as may be" used in sub-section (3) of section 76 rules out of consideration only those provisions of the Code in their application to the proceedings before the Commission, which cannot, in the nature of things, be followed by the Commission or those which have been specifically departed from in the Act. Such provisions are enumerated in the proviso to sub-section (2) of section 95 of the Act. It follows that the Commission has jurisdiction in suitable cases to issue temporary injunctions or to make interim arrangements by appointment of a Receiver on principles which are well established under the Code.

*Held*, that where there is inherent lack of jurisdiction in an inferior Tribunal and the matter is patent on the record, the failure of a party to raise objection on the point of jurisdiction would not by itself debar it from getting relief on that score in a writ petition. It is equally well settled that questions other than those relating to inherent lack of jurisdiction cannot normally be permitted to be raised for the first time in a writ petition, if such objections have not been raised before the Tribunal, whose order is impugned in the High Court. Whether on certain set of facts, a Tribunal having jurisdiction to appoint a Receiver or to issue an injunction, should or should not have passed such an order, can be looked into only by an appellate or a revisional Court, and cannot form the subject-matter of the controversy under Article 226 of the Constitution.

*Petition under Articles 226/227 of the Constitution of India for the issuance of writ of Certiorari, Mandamus or any other appropriate writ, order or direction as deemed fit by this Hon'ble Court.*

J. S. REKHI WITH B. S. SONDH, ADVOCATES, for the Petitioner.

H. S. GUJRAL WITH SUSHIL MALHOTRA, ADVOCATES, for the Respondents.

## ORDER

NARULA, J.—The inherent jurisdiction of the Sikh Gurdwaras Judicial Commission, Amritsar (hereinafter called the Commission), established under section 70 of the Sikh Gurdwaras Act, 1925 (Punjab Act 8 of 1925), (hereinafter called the Act) to issue temporary injunction (*pendente lite* under Order 39, rule 1 or 2 of the Code of Civil Procedure, has been questioned in this case by Balbir Singh, petitioner, under Article 226 of the Constitution by claiming a writ in the nature of *certiorari* to quash and set aside the order of the Commission, dated August 26, 1966 (Annexure 'F'), whereby the petitioner has been restrained from interfering in the day-to-day administration of the Gurdwara and exercising powers conferred on him as President of the Committee of management of Gurdwara Dera Sahib, Batala, during the pendency of a petition under section 142 of the Act filed by Manohar Singh, respondent No. 2.

Gurdwaras Dera Sahib and Sat Kartarian at Batala, in district Gurdaspur, have admittedly been notified as Sikh Gurdwaras under the Act and are managed by a Committee consisting of four elected and one nominated members under section 87 of the Act. Balbir Singh, petitioner and Manohar Singh, Amrik Singh and Makhan Singh, respondents Nos. 2, 3 and 5, respectively, were elected as members of the present Committee of management of the said Gurdwaras. Lal Singh, respondent No. 4, joined the Committee as a nominated member. A Chairman and a Vice-Chairman of the Committee had to be elected on October 11, 1965, in accordance with the orders of the Shromani Gurdwara Parbandhak Committee, Amritsar (hereinafter called the Board), conveyed by the General Secretary of the Board in his letter, dated October 3, 1965. The proceedings of the meeting were conducted by the Gurdwara Inspector and an executive member of the Shromani Gurdwara Parbandhak Committee, Amritsar. At the meeting, the petitioner was elected as the President and respondent No. 5 as the Vice-President. It is the admitted case of both sides that after the election, the petitioner took charge of the office of the President from the previous incumbent of that office as also the possession and custody of the Gurdwara records, documents and other articles and started paying the salaries, etc., of the staff of the Committee. On December 17, 1965, respondents Nos. 2 to 4 filed a petition under section 142 of the Act (case No. 40 of 1965), against Balbir Singh, petitioner (Annexure 'A'), claiming that Amrik Singh, respondent No. 3 and Lal Singh, respondent No. 4 had in fact been elected as the Chairman and Vice-Chairman of the Committee, respectively

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and that the petitioner had erroneously and unjustifiably started collecting rents of the Gurdwara buildings, which act of the petitioner as a member of the Committee, amounted to abuse of his power as such member and neglect of his duties. An apprehension was expressed in the petition to the effect that the Gurdwara Inspector may prepare false record of the proceedings of the election meeting. Respondents Nos. 2 to 4 prayed in the said petition to restrain the petitioner from collecting rents from the tenants in regard to the Gurdwara properties, to direct him to redeposit the rents already collected by him, to restrain him from interfering with the management of the Gurdwara affairs in any way and to allow Amrik Singh, respondent No. 3 to function as the President of the Gurdwara Committee. As a consequential relief, the removal of the petitioner as a member of the Committee and his being disqualified to become a member for another five years was prayed for on the ground that the petitioner had acted *mala fide* and had committed abuse of power and neglect of his duties as a member. Along with the petition under section 142, an application for interim relief by way of temporary injunction being issued against the petitioner was also submitted. *Ex-parte* interim injunction was issued by the Commission against the petitioner on December 17, 1965, not to act as President of the Committee. On December 27, in that year, the petitioner submitted an application for vacating the *ex-parte* temporary injunction. During the pendency of the case before the Commission, Amrik Singh, respondent No. 3, filed a suit in the civil Court at Batala; on January 22, 1966, for practically the same relief as claimed before the Commission. After hearing both sides, the Commission by its order, dated January 25, 1966 (Annexure 'B'), vacated the *ex-parte* temporary injunction with the following observations :—

"It is difficult to hold at this stage as to who was elected as President of the Committee of management of the said Gurdwara, but these facts are established beyond doubt that the respondent has taken over the charge from the outgoing President, has been paying the salaries, etc., to the employees of the said Gurdwara, maintaining attendance register of the said employees and has been collecting rents from the various tenants of the Gurdwara. This is also an admitted fact that the respondent is a duly elected member of the Gurdwara Committee and thus has a right to take part in the administration of the

Gurdwara affairs. It is nowhere alleged by the applicants that if the respondent is allowed to collect rents, the Gurdwara would suffer any irreparable injury or that the amount thus collected would be misappropriated. On the other hand, it is admitted by them that if the rents from the tenants were not collected promptly, huge arrears would pile up which would drive the Gurdwara Committee to file suits for their recovery. We also feel that the collection of rents from the tenants of the Gurdwara buildings should not be stopped as in this way Gurdwara is bound to suffer some loss.

In view of the above said fact and the peculiar circumstances of the case, we feel that the balance of convenience lies in favour of the respondent and thus he should not be restrained from collecting rents from the tenants of the Gurdwara buildings. The applicants have not made out a *prima facie* case in their favour as well.

In the light of our above-said discussion we are not inclined to continue our *ad interim* injunction order, dated 17th December, 1965 and extended later on from time to time and rather vacate the same and reject the application of the applicants.

The respondent is directed to deposit the amount of rents collected from the tenants of the Gurdwara buildings immediately after their collection in the Gurdwara funds and to keep the regular accounts."

It appears that respondents Nos. 2 to 4 lost interest in their petition before the Commission after the passing of the order, dated January 25, 1966, vacating the *ex parte* injunction against the petitioner (Annexure 'B'). In any case, they withdrew their said petition under section 142 of the Act, which was accordingly dismissed as withdrawn by order of the Commission, dated February 14, 1966 (Annexure 'C'). The application of respondent No. 3 for a temporary injunction given in the civil suit at Batala was also dismissed. Amrik Singh's appeal against the decision of the Subordinate Judge, was dismissed by the District Judge, Gurdaspur, on May 18, 1966. It was at that stage that Manohar Singh, respondent No. 2 filed a fresh petition under section 142 of the Act before the Commission on May 30, 1966, for restraining the petitioner from collecting any rents of Jagirs or receiving any Gurdwara funds

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and contributions for or on behalf of the Committee on the ground that the petitioner had ceased to be a member of the Committee on his having been removed from such membership under subsection (3) of section 95 of the Act on account of the petitioner having absented himself from three consecutive meetings of the Committee of management. Along with the main petition, an application for a temporary injunction (Annexure 'D'), was filed by Manohar Singh, respondent to restrain the petitioner from collecting any rents from the tenants and from receiving or collecting any Gurdwara funds or contributions and from interfering in the day-to-day administration of the Gurdwaras under the Committee till the disposal of the main case. Makhan Singh, respondent No. 5 (who was respondent No. 4 in the section 142 petition, before the Commission), was also desired to be restrained from collaborating with the petitioner in the day-to-day administration of the Gurdwaras under the Committee on the ground that he had also been similarly removed from membership. The application for a temporary injunction was resisted by the petitioner who filed affidavit, dated June 17, 1966 (Annexure 'E'), in reply thereto. In his reply, the petitioner referred to the dismissal of the previous application of respondents Nos. 2 to 4, under section 142 of the Act and of the refusal of the Subordinate Judge at Batala, to grant any temporary injunction against the petitioner and to the dismissal of Amrik Singh's appeal against the order of the Subordinate Judge and claimed to be the duly elected President of the Committee of management of the Gurdwaras in question. The petitioner added in the affidavit that the allegation about his having absented himself from the alleged three consecutive meetings of the Committee was absolutely incorrect and that no meeting of the Committee had been called and, therefore, no question of his removal on the alleged ground could arise. The application for temporary injunction was styled to be *mala fide*. It was also stated in the affidavit that copies of the proceedings of the alleged meetings which had been sent to the Board, had been disapproved by it in the Board's letter, dated 11th/16th May, 1966. On August 26, 1966, the Commission passed the impugned order (Annexure 'F'), under order 39, rules 1 and 2 and section 151 of the Code of Civil Procedure. After giving the history of the case and referring to the contention of the parties, the Commission held in the impugned order as below :—

"We have gone through the affidavits and other documents filed by the parties closely and thoroughly and we have come to the conclusion that the main dispute between

the parties is as to the office of the presidentship. According to the petitioner and respondents Nos. 2 and 3, the President of the Committee is respondent No. 2 and according to respondents Nos. 1 and 4, the said office-bearer is respondent No. 1, S. Balbir Singh. This disputed point is to be decided after the evidence has been adduced by both the parties. It is rather impossible and rather unfair to judge the decision in this respect at this stage. But we are convinced that dyarchy in the day-to-day administration of the Gurdwara is being purchased and due to this system, the management of the Gurdwara is suffering very badly. This is thus most deplorable.

Taking the interest of the Gurdwara in view, we have decided that some interim arrangement to stop the dyarchy and to protect the Gurdwara from being maladministrated, must be made.

We, therefore, order the respondent No. 1 not to interfere in the day-to-day administration of the Gurdwara and not to exercise any power conferred on the President, under the said Act or scheme of management settled for the said Gurdwara under the provisions of the said Act till the decision of the main case.

S. Amrik Singh, respondent No. 2, shall also not exercise such powers till the decision of the main case. We order and depute the petitioner to exercise all the powers and discharge all the duties of the President of the Committee of management conferred under the Act or scheme of management till further orders. He shall maintain proper accounts of the Gurdwara in accordance with the scheme of management and shall be answerable in this respect. He shall call the meetings of the Gurdwara Committee and execute its decision, etc., till that time. We order both respondents Nos. 1 and 2 to hand over the charge to the petitioner in their respective hands for the present."

The above-quoted order led the petitioner to move this Court under Article 226 of the Constitution on October 3, 1966. The operation of the impugned order was stayed by the Motion Bench (Dua and Pandit, JJ.) on October 5, 1966, while admitting the writ petition. The stay order was confirmed by Grover, J., on October 28,

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after hearing both sides. Respondents Nos. 2 and 4 alone have appeared to contest this writ petition. They have filed the affidavit of Manohar Singh, respondent as the common written statement of all of them. Besides taking up certain preliminary objections, to which a reference will hereinafter be made, the respondents have stated in their written statement that the petitioner falsely set up a valid meeting of the Committee said to have been held on October 11, 1965, wherein the petitioner alleges to have been elected as the President of the Committee and that in fact Amrik Singh and Lal Singh were elected as the President and Vice-President, respectively, and that the petitioner had with the connivance of Swaran Singh, Gurdwara Inspector, and Pritam Singh, Executive Member of the Board, sent a false report to the Board about the election of the petitioner as President and Makhhan Singh, respondent No. 5, as Vice-President of the Committee. They have added that the first petition under section 142 of the Act was withdrawn by them, because they had been advised to go to the civil Court for the relief sought by them. This civil suit is stated to be still pending. Manohar Singh, has also averred in his return that the second petition, under section 142 of the Act was not on the same facts as the earlier one and that the subsequent petition had been based on the petitioner having ceased to be a member of the Committee and having been removed under section 95(2) of the Act.

The first preliminary objection pressed by Mr. Harbans Singh Gujral, Advocate, for the contesting respondents, is that the questions which are sought to be raised by the petitioner in these proceedings had not been raised or pressed by him before the Commission and cannot, therefore, be allowed to be agitated here for the first time under Article 226 of the Constitution. Counsel further claims that no writ petition lies against the interim order (Annexure 'F'), as the final order which might be passed by the Commission in the main case under section 142 of the Act would be appealable to this Court.

This Court has already authoritatively decided the subject-matter of this objection. It was held in *Davindar Singh and another v. The Deputy Secretary-cum-Settlement Commissioner, Rural, Rehabilitation Department, Jullundur and others*, (1), that where there is inherent lack of jurisdiction in an inferior Tribunal and the matter is patent on the record, the failure of a party to raise objection on the point of jurisdiction would not by itself debar it from getting

(1) I.L.R. (1964) 1 Punj. 905 (F.B.)=1964 P.L.R. 555.



relief on that score in a writ petition. It is equally well-settled that question other than those relating to inherent lack of jurisdiction cannot normally be permitted to be raised for the first time in a writ petition, if such objections had not been raised before the Tribunal, whose order is impugned in the High Court.

The contentions raised by Mr. J. S. Rekhi, the learned Advocate for the petitioner are these :—

- (i) that the jurisdiction of the Commission to issue any injunction in the second petition under section 142 of the Act was barred on principles of *res judicata* or double vexation, on account of the earlier decision of the Commission itself, dated January 25, 1966, whereby such relief had been refused to all the three contesting respondents;
- (ii) the Commission being a statutory Tribunal, constituted under the Act, can exercise only those judicial and other functions, which are bestowed on it by some provision of the Act and within the circumscribed limits thereof, and as none of the provisions in the Act gives any power to the Commission to issue temporary injunctions *pendente lite* or to appoint Receivers pending the disposal of an application under section 142 of the Act, the impugned order is without jurisdiction;
- (iii) the provisions of Order 39, rules 1 and 2, and Order 40, rule 1 of the Code have not been made applicable to proceedings before the Commission under section 76 of the Act; and
- (iv) that in any event, no case for the grant of a temporary injunction or appointment of a Receiver had in the circumstances of the instant case been made out before the Commission.

I am inclined to think that the last of the above-mentioned four points cannot be raised in a writ petition as it relates more to the merits of the controversy than to the jurisdiction of the Commission. Whether on certain set of facts, a Tribunal having jurisdiction to appoint a Receiver or to issue an injunction, should or should not have passed such an order, can be looked into only by an appellate or a revisional Court and cannot form the subject-matter of the controversy under Article 226 of the Constitution. Whether on the

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facts of this case and on the allegations made before the Commission, the impugned order was justified or not, cannot, therefore, be looked into by me in these proceedings.

The question relating to the second application for injunction or Receiver being barred by *res judicata* (the first point urged by Mr. Rekhi), appears to be hit by the preliminary objection raised by Mr. Gujral, and cannot be allowed to be raised in the writ proceedings for the first time, as it does not appear to have been pressed at the hearing of the application for interim relief before the Commission. Mr. Rekhi has pointed out that objection to this effect had been taken by the petitioner in this written reply to the application for interim relief (Annexure 'E') and that it was the duty of the Commission to deal with the objection. I am afraid that in the absence of an affidavit to the effect that this question was actually argued and pressed before the Commission at the hearing of the application for interim relief, it is not open to me to allow this matter to be raised here for the first time merely on the ground that the objection had been taken in the written reply or affidavit.

This leaves me to deal with the remaining two points raised by the learned counsel for the petitioner which are the real matters on account of which the writ petition appears to have been admitted. These questions relate to the inherent jurisdiction of the Tribunal based on a true and correct interpretation of sections 76 and 142 of the Act. If the Commission had no jurisdiction to grant the temporary relief covered by the impugned order, the same has to be quashed by a writ in the nature of *certiorari* and cannot be allowed to survive this writ petition. If the impugned order is wholly without jurisdiction, it cannot be allowed to subsist merely on the ground that an appeal can be preferred against the final order, which may be passed by the Commission at the time of the disposal of the case under section 142.

Mr. Rekhi has referred to the various provisions under the Act conferring different kinds of powers on the Commission, and has argued that none of those provisions authorises the Commission to pass an order like the impugned one. He has referred particularly to sections 52(2), 95(2), 106(3 and 4), 116(4), 123(2 and 3), 124, 130(2 and 4), 135(7 and 9) and 142 of the Act. Out of and in addition to the above-said provisions, it appears to me to be necessary to quote

verbatim sections 41, 52(2), 76, 95(2), 135(7) and 142 only. These provisions are in the following terms:—

“41. The management of every Notified Sikh Gurdwara shall be administered by the Committee constituted thereof, the Board and the Commission in accordance with the provisions of this Part.”

“52(2) Any person aggrieved by the finding of the Board mentioned in sub-section (1) of this section may, within a month of the date of his knowledge of such finding, appeal to the Commission for setting aside the said finding and the order of the Commission passed in this respect shall be final:

Provided that the person against whom any such finding is given by the Board shall not cease to be a member of the Board until the order of the Commission in appeal, or, if no appeal is preferred, until the time allowed for preferring an appeal has passed.”

“76(1) The Commission shall for the purpose of deciding any matter which it is empowered to decide under the provisions of this Act have the same powers as are vested in a Court by the Code of Civil Procedure, 1908, and shall have jurisdiction unlimited as regards value throughout Punjab, and shall have no jurisdiction over any proceedings other than is expressly vested in it by this Act.

(2) A decree or order of the Commission shall be executed or otherwise given effect to by the District Court of the district in which the gurdwara in connection with which the decree or order was passed is situated, or by the District Court to which the Commission directs that any decree or order shall be sent for this purpose, as if the decree or order had been a decree or order passed by such Court.

(3) The proceedings of the Commission shall, so far as may be and subject to the provisions of this Act, be conducted in accordance with the provisions of the Code of Civil Procedure, 1908, and, save as otherwise provided by this Act, all orders of the Commission shall be final.”

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"95(2) Any person aggrieved by the finding of the Board mentioned in sub-section (1) of this section may, within a month of the date of his knowledge of such finding, appeal to the Commission for setting aside the said finding and the order of the Commission passed in this respect shall be final:

Provided that the person against whom any such finding is given by the Board shall not cease to be a member of the Committee until the order of the Commission in appeal, or, if no appeal is preferred until the time allowed for preferring an appeal has passed."

"137(7) When an application has been made to the Commission under the provisions of sub-section (6), the Commission may suspend from office, pending its decision, the person against whom the application has been made."

"142(1) Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908, or in the Specific Relief Act, 1877, any person having interest in a Notified Sikh Gurdwara may, without joining any of the other persons interested therein, make any application to the Commission against the Board, the Executive Committee of the Board or the Committee or against any member or past member of the Board, of the Executive Committee or of the Committee, or against any office-holder or past office-holder of the Gurdwara or against any employee past or present of the Board or Gurdwara in respect of any alleged malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers conferred by this Act or any alleged expenditure on a purpose not authorised by this Act and the Commission, if it finds any such malfeasance, misfeasance, breach of trust, neglect of duty, abuse of powers or expenditure proved, may consistently with the provision of this Act and of any other law or enactment in force for the time being direct any specific act to be done or forbore for the purpose of remedying the same may award damages or costs against the person responsible for the same, and may order the removal of any office-holder or member of the Board, Executive Committee, or Committee, responsible for the same and may also disqualify any member of the Board, Executive Committee, or Committee, thus removed from such membership for a period not exceeding five years from the date of such removal:

Provided that no such application shall be entertained by the Commission, if it is made more than six years after the date of the act or omission from which the right to make an application under this sub-section accrues and, in the case of an application against a member of the Board, the Executive Committee of the Board or the Committee, if it is made after such period or after six years of the date of his ceasing to be a member, whichever is later.

- (2) The Board may make a similar application to the Commission which may, in like manner, dispose of it.
- (3) The Board or any person aggrieved by an order passed by the Commission under the provisions of sub-section (1) or sub-section (2) may, within ninety days of the orders, appeal to the High Court."

It has been fairly and frankly conceded by Mr. Harbans Singh Gujral, the learned counsel for the contesting respondents, that the entire authority and jurisdiction of the Commission is derived from the provisions of the Act referred to above and from no others. It is also not disputed by learned counsel for the contesting respondents that section 142 of the Act by itself envisages only final orders being passed conditional on certain things being proved and does not authorise the passing of any interim order. His contention in support of the impugned order is, however, two-fold. It is firstly urged by Mr. Gujral that the provisions of order 39 and order 40 of the Code are deemed to have been transplanted into the Act by section 76 thereof in so far as the authority of the Commission is concerned. Once that is granted, argues Mr. Gujral, the power of the Commission to issue interim orders in terms of those provisions cannot be questioned. In the alternative, it is suggested that even if the Code of Civil Procedure were not made applicable to the Commission, it would then have, in its capacity of a judicial Tribunal, authority to frame its own rules of procedure in consonance with the principles of natural justice and fair play, and that grant of interim relief for preservation of property in dispute or for other allied purposes is a well-recognised rule of natural justice. Looking at the nature of things, argues counsel for the respondents, it would be meaningless to suggest that in a case where serious charges of misappropriation against a member of a Committee are made, the member must be allowed to continue to misappropriate the funds of the Committee till the final disposal of the petition under section

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142 of the Act and that the Commission should be held to have no power to restrain such waste or misappropriation pending the proceedings before it. He has referred in this connection to the judgment of A. N. Bhandari, C.J., (as he then was) in *Mathra Das v. Om Parkash and others* (2) wherein it was held that in the absence of a restraining provision, a Rent Controller acting under the provisions of the Rent Restriction Act is at liberty to follow any procedure that he may choose to evolve for himself so long as the said procedure is orderly and consistent with the rules of natural justice and so long as it does not contravene the positive provisions of the law.

In the view I have decided to take of the first contention of Mr. Gujral in this respect, it is not necessary to deal with the alternative proposition enunciated by him on the general principles of procedural jurisprudence. It is clear that the Commission is a Tribunal of special jurisdiction and cannot generally pass any order which is not authorised by one or the other provision of the Act. Under section 142 of the Act any person having interest in the Gurdwaras controlled by the Committee, can make a petition against any member of the Committee complaining of any alleged malfeasance, misfeasance, breach of trust, neglect of duty or abuse of power conferred on that member by the Act or even in respect of any alleged expenditure by such member for a purpose not authorised by the Act. The relief which can be granted by the Commission under that provision includes issuing a directive to such a member to do any specific act to forbear from doing the same so long as such direction is consistent with the provisions of the Act and other laws for the time being in force. The Commission can also order the removal of any office-holder or member of the Committee responsible for any of the acts or omissions referred to above and may even go to the extent of disqualifying such a member, who is removed, from membership for a period not exceeding five years.

But in either event, the grant of any of the reliefs envisaged by section 142 of the Act, is made conditional by that very section on the Commission being satisfied of such breach of trust or neglect of duty etc. having been proved. It is, therefore, clear that no order under section 142 of the Act can be passed till the allegations justifying any action under that provision are proved to the satisfaction of the Commission. But this is, in my opinion, in no way inconsistent with the Commission having authority to pass interim orders in

the nature of the grant of injunction or appointment of Receiver if such power is otherwise conferred on it. Section 142 of the Act does not prohibit the grant of such interim relief. Somewhat similar provision is made in section 92 of the Code of Civil Procedure for removal of trustees and for directing accounts and enquiries into the affairs of public trusts in case of any alleged breach of any express or constructive trust of a charitable or religious nature. While the section provides for the conditions in which it can be invoked and the relief which can be granted thereunder, it does not anywhere authorise the Court exercising powers under that provision to appoint any Receiver or to remove any trustees pending the disposal of the case. Still it has never been doubted that a Court trying a petition under section 92 of the Code of Civil Procedure can make an interim arrangement by divesting the trustee before being satisfied about the existence of conditions justifying his removal. In *C. Kuppaswami Mudaliar and others v. Y. Subramaniam Chettiar and other* (3), it was held that in a suit under section 92 of the Code, though there is no prayer to remove a trustee, a Receiver may be appointed during the pendency of the suit. The reason for presuming such an authority being vested in the Court was described by Ramesam J. in the following words:—

“The reason is, that in this class of suits, it is not merely the defendant's rights that are the subject of consideration by the Courts but the interests of a public institution of far greater importance than the defendant's rights. It may be that the power of a Temple Committee to remove a trustee appointed by them is limited, but it does not follow that a Court's power over the trustee are similarly fettered.”

The considerations which weighed with the Divisional Bench of the Madras High Court in *C. Kuppaswami Mudaliar's* case (supra), appear to be relevant even in the circumstances of the instant litigation. The Commission purports to have acted in the interest of the Gurdwaras, and if it had the authority to do so, no fault can be found with the impugned order in this respect in writ proceedings. Mr. Gujral has referred to the judgment of the Calcutta High Court in *Prince Syed Fateh Ali Mirza v. Sajjad Hossain and others* (4), where a Receiver had been appointed by a District Judge in proceedings under Bengal Wakf Act, 1934, the relevant provisions of which

(3) A.I.R. 1923 Mad. 224.

(4) A.I.R. 1937 Cal. 740.

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are somewhat similar to those of section 92 of the Code of Civil Procedure. In an appeal against that order, it was held by the Division Bench of the Calcutta High Court as follows:—

“A suit under the provisions of the Bengal Wakf Act, 1934 is very much the same as a suit under section 92. It was therefore quite open to the learned Judge to appoint a receiver in the way he did.”

The impugned order was passed in the course of the decision of a petition under section 142 of the Act. The issues involved in the main case were, mostly such as the Commission was empowered to decide under the provisions of the Act. By operation of sub-section (1) of section 76, the Commission had, therefore, the same powers in the matter of the disposal of the 142 petition as are vested in a Court by the Code of Civil Procedure. The concluding portion of sub-section (1) of section 76 of the Act is intended to convey only this that section 76 would not be deemed to have conferred on the Commission, the jurisdiction to pass any order under the Code of Civil Procedure in any proceedings other than those contemplated by the Act. This cannot help the petitioner as the Commission has undoubted jurisdiction over the proceedings under section 142 of the Act during the course for which the impugned order was passed. Reference was then made by both sides to sub-section (3) of section 76. Mr. Rekhi sought to derive strength from that provision by arguing that the Commission had only to conduct proceedings in accordance with the provisions of the Act and that no provision for passing interim orders (such as is contained in sub-section (7) of section 135 of the Act), having been made in section 142, the provisions of Orders 39 and 40 of the Code are inconsistent with section 142 of the Act and have, therefore, been specifically excluded from the purview of the jurisdiction of the Commission. I regret, I am not able to find any force in this contention as I do not think that the provisions of Order 39 rules 1 and 2, and Order 40 rule 1, are in any manner inconsistent with section 142 of the Act. On the contrary, it appears to me that the above-said provisions of the Code are not only ancillary to section 142 proceedings under the Act, but are necessary to be invoked in suitable cases for effectively exercising the jurisdiction vested in the Commission by that section (section 142). Expression “so far as may be” used in sub-section (3) of section 76 rules out of consideration only those provisions of the Code in their application to the proceedings before the Commission, which cannot



in the nature of things, be followed by the Commission or those which have been specifically departed from in the Act. Mr. Gujral has rightly argued that such provisions are contained in the proviso to sub-section (2) of section 52, and the proviso to sub-section (2) of section 95 of the Act. Whereas under the Code of Civil Procedure the operation of an order under appeal may or may not be stayed by the appellate Court, the proviso to sub-section (2) of section 52 has taken away that jurisdiction from the Commission while exercising its appellate jurisdiction, over the decision of the Board in respect of the election of a member of the Board. Similarly the proviso to sub-section (2) of section 95 has taken away the authority of the Commission to allow any member of a Committee being dethroned before the decision of an appeal pending before the Commission against the findings of the Board. A person against whose election any order has been passed by the Board continues to be a member of the Board or the Committee as the case may be during the period provided for filing an appeal against the order, and the jurisdiction of the Commission to direct otherwise after the appeal is preferred before it, is taken away by the Act. On a consideration of all the relevant sections of the Act, I am of the opinion that all the provisions of the Code of Civil Procedure apply to the proceedings before the Commission under any part of the Act, except to the extent to which the operation of any provision of the Code is excluded by the Act or to the extent to which any section or rule of the Code is inconsistent with any provision of the Act. As a necessary conclusion from this finding, it follows that the Commission has jurisdiction in suitable cases to issue temporary injunctions or to make interim arrangements by appointment of a Receiver on principles which are well established under the Code.

Mr. Rekhi referred to section 14 of the Religious Endowments Act 20 of 1863, and argued that it corresponds to section 142 of the Sikh Gurdwara Act. This Act alone cannot, however, help him as he has not been able to cite any authority to the effect that no injunction can be issued or any Receiver appointed in proceedings under section 14 of the Religious Endowments Act. He has next argued that proceedings under section 142 of the Act are in the nature of election proceedings during the trial of which an elected member can never be removed before the disposal of the election petition. I do not think the analogy to be apt, as proceedings under section 142 of the Act are more analogous to a case under section 92 of the Code than to an election petition. Moreover, in the petition under section 142 of the Act, which is now pending before the Commission, the main

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point to be decided is, whether the petitioner has been removed from membership of the Committee and under sub-section (3) or section 95 of the Act or not. The question of the petitioner having been validly elected as President of the Committee or not on the 11th of October, 1965, appears to be settled, so far as the Commission is concerned. The earlier petition of the contesting respondents questioning the factum of election, has already been dismissed by the Commission as withdrawn. No question relating to the validity of the election can be raised under section 142 of the Act. For such a purpose, specific provision is made in section 147 of the Act read with the relevant rules. The whole of the Code of Civil Procedure being applicable, the principles of *res judicata* contained in section 11, and in Order 23 rule 1 thereof, are also applicable to the proceedings before the Commission and it would not, in my opinion, be open to any of the contesting respondents, who were parties to the earlier proceedings under section 142 of the Act to raise or re-agitate any of the matters covered by the said previous application which they got dismissed.

It was lastly contended by Mr. Gujral that the Commission has been granting such interim reliefs since the Act was passed in 1925, and that it has never been held that it has no power to do so, and for this reason alone, it should be held that the Commission has such an authority. In view of the fact the main argument of Mr. Gujral (about the Commission having such authority by operation of section 76 of the Act) has prevailed with me, it is not necessary to go into this argument. Nor do I otherwise find any force in it. The last submission of Mr. Rekhi was that the power exercised by the Commission in the instant case by passing the impugned order is not one covered by Order 39 rule 1 or 2, or even by Order 40 rule 1 of the Code as the order has amounted to one for the removal of the petitioner from presidentship which authority is not given to the Commission either by the Act or by any provision of the Code of Civil Procedure. He has drawn pointed attention to the provision of sub-section (7) of section 135 of the Act which confers such a power on the Commission in case of hereditary office-holders and Ministers. I think, the argument of Mr. Rekhi is misconceived. All that the Tribunal has done is to take over the management of the Gurdwaras in question in its own hands which it has jurisdiction to do under section 41 of the Act, so long as the same is done in accordance with the other provisions of the Act. The prayer in the petition under section 142 of the Act is to hold that the petitioner has ceased to be a member of the Committee. The Commission has not allowed that prayer even for the interim

period. It has merely restrained the petitioner from interfering with the management of the Gurdwaras, and has vested the management in a third person who also happens to be a member of the Committee. Whether the person appointed by the Commission is fit one in the circumstances of the case or not, is not a matter on which I can adjudicate in these proceedings. Mr. Rekhi then submitted that I should hold that in view of the applicability of the entire Code of Civil Procedure to the proceedings before the Commission, the provisions of Order 43 rule 1 of the Code would also apply, and that it should be held that an appeal lies to this Court against the interim orders passed by the Commission. Mr. Gujral contests this proposition. It is wholly unnecessary to decide this question in the present proceedings, as admittedly no appeal has been preferred by the petitioner against the impugned order.

No other point has been argued before me in this case. The writ petition, therefore, fails and is dismissed, but without any order as to costs.

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B.R.T.

APPELLATE CIVIL

*Before S. B. Kapoor and Gurdev Singh, JJ.*

KARTAR SINGH,—*Appellant*

*versus*

GHUKAR SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 1083 of 1964

December 12, 1966

*Punjab Security of Land Tenures Act (X of 1953)—S. 19-A—Punjab Pre-emption Act (1 of 1913)—S. 4—Pre-emptor possessing more than permissible area on the date of sale sought to be pre-empted—Whether has the right of pre-emption.*

*Held*, that if on the date of sale to be pre-empted, the pre-emptor is already in possession of more than the permissible area, it is not open to him to acquire any further agricultural land by transfer, etc., without violating the provisions of section 19-A of the Punjab Security of Land Tenures Act, 1953. If at the time