APPELLATE CIVIL

*Before Prem Chand Pandit and S. S. Sandhawalia, JJ.*

Mahant Sahib Singh.—*Appellant.*

*versus*

SHROMANI GURDWARA PRABANDHAK COMMITTEE, AMRITSAR AND ANOTHER,—*Respondents.*

**First Appeal From Order No. 35 of 1964**

January 14, 1971.

*The Sikh Gurdwaras Act (VIII of 1925)—Sections 3 and 5—Notification declaring an institution as Sikh Gurdwara issued under section 3(2)—Statutory presumption under section 3(4)—Whether attracted—Challenge to the nature of the instituion—Whether becomes barred.*

*Held*, that the language of section 3(4) of the Sikh Gurdwaras Act, 1925 is unequivocal. It raises a statutory and a conclusive presumption that once the procedural and the ministerial acts of the publication of the notifications under section 3(2) of the Act in regard to a Gurdwara included in Schedule I, have been done, no further challenge to the nature of the institution is admissible. The last line of section 5(1) of the Act delineates the nature of a claim which can be made in respect of a notified Scheduled Sikh Gurdwara. Whilst it allows a claim regarding the right, title or interest in any property included in the notification it expressly excludes any such claim in the Gurdwara itself. When both sections 3(4) and 5(1) are read together, the object of the legislature is obvious. Once the notifications have been duly issued under section 3(2), the status of the institution being a Sikh Gurdwara is put beyond the pale of controversy, and whilst a claim to the property attached thereto remains open, any such claim to a right title or interest in the institution itself is expressly barred. Hence after the issuance of the relevant notifications under section 3(2), a conclusive presumption under section 3(4) of the Act is attracted which bars any further challenge to the nature of the institution which has been duly notified as a Sikh Gurdwara.

(Paras 8, 9 and 14)

*First Appeal from Order of the Court of the Sikh Gurdwara Tribunal Punjab at Chandigarh, dated 4th November, 1963, dismissing the petition with* costs.

M. R. MAHAJAN AND NAGINDER SINGH, ADVOCATES, for the appellant.

A. S. SARHADI ADVOCATE for the respondents.

JUDGMENT

S. S. Sandhawalia, J.—(1) The scope and the nature of the statutory presumption raised under section 3(4) of the Sikh Gurdwaras

Act, has been the primary subject of debate in this first appeal, directed against the order of the Tribunal constituted under the said Act. This issue arises from the facts detailed hereinafter.

(2) A notification declaring the institution in dispute, namely, Gurdwara Sahib Padshahi Dasmi (Gosayan) to be a Sikh Gurdwara was duly published on the 25th of August, 1959. Thereafter in pursuance of the provisions of sub-section (2) of section 3 of the Act, the Governor of Punjab published a consolidated list of rights, title and interests claimed to belong to the said Gurdwara,—*vide* the notification dated the 9th of December, 1959. The appellant Mahant Sahib Singh through his son Gursewak Singh moved a petition under section 5(1) of the Sikh Gurdwaras Act for a declaration that he being the *chela* of Mahant Lal Singh, his predecessor-in-interest was consequently the owner and manager of the property which was included in the list of properties attached to the notification abovesaid. According to this petition Dera Shri Guru Granth Sahib (Gosayan) situated in the revenue estate of Pathrala in the Bhatinda District had been founded by a Gosain Mahant. It was averred that the object of worship in this Dera was the Samadh, though it stood admitted in paragraph 2 that Guru Granth Sahib was also placed therein. This, according to the petition, had been wrongly described in the notification as Gurdwara Sahib Padshahi Dasmi (Gosayan) and that the property in fact belonged to the Dera of which Sahib Singh was the owner and the manager being the Mahant of the said Dera.

(3) The petition above-said moved by the appellant was contested on behalf of the Shiromani Gurdwara Prabandhak Committee on the assertion that the property belonged to the Gurdwara which has been scheduled and the question whether it was a Dera or a Gurdwara was no longer justiciable. It was further claimed that the properties in fact belonged to the Gurdwara which was not a Dera.

(4) Before the Tribunal the sole question agitated was whether the right, title and interest in the Gurdwara and the properties vested in the petitioner or the respondent. In dismissing the petition with costs the Tribunal, as is usual in such cases, mainly relied on the documentary evidence of the revenue records which in fact had been produced by the appellant himself. The Tribunal also closely appraised the evidence adduced by the parties and noticed on the

basis of both documentary and oral evidence that the position taken up on behalf of the appellant was inconsistent as he had described himself as the owner of the Dera whereas the revenue record produced by him did not show even a semblance of any claim as the personal owner of the properties. It was noticed that in the argument, the counsel for the petitioner had confined his claim merely to the management of the Dera. In a well reasoned judgment the Tribunal held that the only institution in dispute was the Sikh Gurdwara and as regards the claim of the personal ownership it found as follows :—

> "To conclude, there is no evidence of any kind that the petitioner is the owner in his own right to the properties which are included in the list of properties of 'Gurdwara Sahib Padshahi Dasmi (Gosayan)' at serial No. 352 in Schedule I of the Sikh Gurdwaras Act."

(5) Before us learned counsel for the appellant first led us through the documentary evidence on which primary reliance has been placed. Exhibit P. 1 is the pedigree-table relating to the Dera Guru Granth Sahib (Gosayan) which shows the devolution of the rights of managership from one Nihal Singh to ultimately the present appellant. Exhibits P. 2, P. 3 and P. 4 are copies of the mutation extracted from the relevant revenue records showing that in the column of ownership Dera Guru Granth Sahib (Gosayan) is consistently shown to be the owner in possession through the management of the predecessors-in-interest of the appellant, namely, Nihal Singh, Jiwan Singh, Jawahar Singh, Lal Singh and lastly Sahib Singh, appellant. Reference was also made to Exhibit P. 5 which is the statement of the proprietors of village Pathrala at the time of the Bandobast but counsel are agreed that this document is hardly of any relevance. We have also perused the evidence of 10 witnesses examined on behalf of the appellant including the appellant's son and general attorney P. W. 9 Gursewak Singh and the appellant himself as P.W. 10. On behalf of the respondent only two witnesses R.W. 1 Basant Singh and R.W. 2 Mehar Singh have been examined and attention was drawn to Exhibit R. 1 which is the copy of the *jamabandi* for the year 1950-51.

(6) The substratum of the argument on behalf of the appellant is the sole object of worship is the Smadh and the living Mahant. that the institution in dispute is not a Sikh Gurdwara but is a non-Sikh institution, namely, a Dera founded by a Gosain Mahant where

Categorically the nature of the institution is claimed to be a Dera of the Gosayan Sect or of Udasin Sadhs in sharp-contradiction to it being a Sikh Gurdwara. In support of this contention, learned counsel for the appellant relies upon the oral testimony of the ten witnesses produced by the appellant including himself and his son Gursewak Singh, all of whom almost by rote repeat the formula in their testimony that the only institution in dispute is known as Dera Gosayan and this is not a Sikh Gurdwara. Counsel invited us to accept this testimony and hold that the institution in dispute is in fact not a Sikh Gurdwara.

(7) In reply Mr. Sarhadi for the respondent strongly contends that the institution is a Sikh Gurdwara and has been duly notified as such. Admittedly, the institution in dispute finds mention at serial No. 352 in Schedule I of the Sikh Gurdwaras Act and further that notifications under section 3(2) declaring the same to be a Sikh Gurdwara and also the consolidated list of properties attached thereto has been duly published. On these premises learned counsel for the respondent argues that a conclusive presumption is raised under section 3(4) that the institution in regard to which the relevant notifications have been issued and published is a Sikh Gurdwara and no challenge is permitted by the statute to this status and consequently the appellant is precluded from asserting to the contrary. The evidence led on behalf of the appellant is challenged both on merits and on the ground that it is inadmissible for the purposes of showing that the disputed institution is not a Sikh Gurdwara.

(8) Ere we proceed to examine these rival contentions we deem it fit to notice that it stands admitted that the relevant notifications have been duly published and the institution has been notified as a Sikh Gurdwara. The petition filed by the appellant is under section 5(1) of the Act and the counsel for the appellant does not dispute that the provisions of section 3(4) would be attracted to the situation, the issue as already noticed being as to what is the scope or nature of these statutory provisions. We proceed, therefore, first to set down the relevant provisions which fall for interpretation :—

> "3(4) The publication of a declaration and of a consolidated list under the provisions of sub-section (2) shall be conclusive proof that the provisions of sub-sections (1), (2) and (3) with respect to such publication have been duly complied with and that the gurdwara is a Sikh Gurdwara,

and the provisions of Part III shall apply to such gurdwara with effect from the date of the publication of the notification declaring it to be a Sikh Gurdwara.

5(1) Any person may forward to the State Government through the appropriate Secretary to Government so as to reach the Secretary within ninety days or, in the case of the extended territories, within one hundred and eighty days from the date of the publication by notification of the consolidated list under the provisions of sub-section (2) of section 3, a petition claiming a right, title or interest in any property included in such consolidated list *except a right, title or interest in the Gurdwara itself.*"

As is inevitable whilst construing a statutory provision, one must first turn to the plain language of the statute. Examining first the provisions of section 3(4), the relevant words for the purposes therein are—

"The publication of a declaration and of a consolidated list under the provisions of sub-section (2) shall be conclusive proof * * that the gurdwara is a Sikh Gurdwara."

This language in my opinion is unequivocal. It raises a statutory and a conclusive presumption that once the procedural and the ministerial acts of the publication of the notifications in regard to a Gurdwara included in Schedule I have been done, no further challenge to the nature of the institution would be admissible. The intention of the legislature seems to be clear and the words used appeared to admit of no other construction.

(9) The above construction of section 3(4) receives further support from the last line of section 5(1) quoted above. This provision delineates the nature of a claim which can be made in respect of a notified Scheduled Sikh Gurdwara. Whilst it allows a claim regarding the right, title or interest in any property included in the notification it expressly excluded any such claim in the Gurdwara itself, the relevant part being—"except a right, title or interest in the Gurdwara itself". When both sections 3(4) and 5(1) are read together, as they must be, the object of the legislature is obvious. Once the notifications have been duly issued under section 3(2), the status of the institution being a Sikh Gurdwara is put beyond the

pale of controversy and whilst a claim to the property attached thereto remains open, any such claim to a right, title or interest in the institution itself is expressly barred. The view above-said receives further support when reference is made to sections 7, 8 and 10 of the statute. It is apparent therefrom that the legislature was drawing a line of distinction between Gurdwaras which had been expressly specified and included in Schedule I to the Act and those which had not been so included. As regards the latter, the statute provided that at least 50 or more adult Sikh worshippers had to move the authorities for a declaration of a non-scheduled institution to be a Sikh Gurdwara. In petitions under section 8 against such declaration, the legislature expressly gave the right to the objector to claim that the Gurdwara was not a Sikh Gurdwara. The legislature was well aware of the distinction between the claim to the status of the institution as such and the properties attached thereto. In respect of the Gurdwaras included in Schedule I, after notification under section 3(2) any further challenge to such status was barred. On the other hand as regards non-scheduled Gurdwaras such a claim challenging the nature of the institution was also left open in a petition moved by a hereditary office-holder or by 20 or more worshippers.

(10) The main argument of the learned counsel for the appellant against the conclusiveness of the presumption under section 3(4) was that in a given situation it may leave the aggrieved owner without a remedy. A gnawing fear was expresed that in an isolated case of a *mala fide* exercise of power by issuing the relevant notifications the issue would cease to be justiciable. It was argued that such a provision was of a confiscatory nature and therefore the logical and full effect should not be given to the presumption abovesaid.

(11) I do not propose to elaborate in any great detail the principle on which the presumption under section 3(4) is based. This is so because the particular argument raised by the learned counsel for the appellants appears to me to be substantially covered against him and in favour of the respondent by the binding precedent in *Mahant Lachman Dass* v. *The State of Punjab and others* (1) The reasons which impelled the legislature to enact this presumption and the objects which were sought to be achieved have been elaborated in great detail in the said decision. The historical background which

(1) I.L.R. (1968) 2 Pb. & Hr. 499.

led to and ultimately necessitated the enactment of the Sikh Gurdwaras Act, 1925, is also fully delineated therein. As the present case relates to an institution situated in an erstwhile Pepsu area, reference may be made to the background of the two amending Acts of 1959 which extended the original Act to the said areas, at pages 528 to 535 of the report. Before the Full Bench the specific argument, agitated before us, was raised and is noticed in the following terms:—

> "(4) Sub-section (4) of section 3 of the Act is violative of Article 14 as the Punjab Legislature has by enacting that provision, usurped the functions of the judiciary by giving decision of a possible dispute between the two private parties and depriving the parties themselves of their ordinary remedies available at law to get it decided whether the Gurdwara is a Sikh Gurdwara or not.
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> (5) The statutory conclusive presumptions raised under section 3(4) and 7(5) which amount to shutting out some defences otherwise available to litigants are inhibitive of Article 14. These provisions contain pieces of substantive law and not mere rules of evidence."

In answering the above-said question, the Full Bench first adverted to the meaning which should be attributed to the word 'Gurdwara' in sections 3(1) and 5(1) of the Act and held that this word refers to the institution whose name and place of residence are indicated in Schedule I, and not in the physical sense of tangible property composing of bricks and mortar. Further in the judgment, after exhaustive discussion, the Bench noticed as many as 8 criteria for a valid classification of the institution which had been originally included in Schedule I to the Act and it is necessary to notice them in *extenso*:—

> (1) As in the case of the Saurashtra Ordinance *Kathi Raning Rawat* v. *State of Saurashtra* (2) the preamble of an earlier ordinance was taken into account in addition to that of the ordinance in which the impugned provision existed, we may look to the definition of 'Gurdwara' and 'shrine' in

(2) A.I.R. 1952 S.C. 123.

the 1922 Act which had not been brought over into the 1925 Act. One of the objectives of both the Acts (as is apparent from their respective preambles) was to provide for the administration and management 'of certain Sikh Gurdwaras * * *'. Which were those certain Gurdwaras and shrines in the 1922 Act is to be seen from the definition of 'Gurdwara' and 'shrine'. 'Gurdwara' in that Act meant all Sikh places of worship erected by or in the memory of or in commemoration of any incident in the life of any of the Ten Sikh Gurus. This category of Sikh institutions is almost exactly the same as is listed in item No. (i) in sub-section (2) of section 16 of the 1926 Act. Item (ii) in sub-section (2) of section 16 relates to Gurdwaras established owing to some tradition connected with one of the Ten Sikh Gurus. Items Nos. (iii) and (v) in section 16(2) have no historical background. Item (iv) in that provision can be equated to what was defined as a 'shrine' in the 1922 Act. It appears that one of the criteria (though not the exclusive one) adopted for inclusion of certain Gurdwaras in Schedule I was that those were institutions having intimate historical connection with Sikh religion and not of the kind mentioned in items (iii) and (v) of sub-section (2) of section 16;

(2) The second criterion which becomes apparent from the historical background of Sikh Gurdwaras mentioned in the opening part of this judgment was that Gurdwaras which were indisputably owned by the Sikh congregations and in which Pujaris and Mahants had been put in by the Sikhs as mere managers, but who had started claiming them as their personal property and to which Gurdwaras Maharaja Ranjit Singh had during his reign given large estates, were included in first Schedule, so as to avoid unnecessary bickerings in the same way as the institutions included in the second Schedule were sought to be taken out of the scope of any possible claim by the Sikhs;

(3) Such of the Gurdwaras were included in Schedule I for the providing of better administration of which there was immediate need and about the Sikh nature of which institutions there was no dispute and as a matter of fact

there was agreement between the leaders of the two communties. Immediate need was felt in some cases, e.g., Gurdwara Harmindar Sahib, Akal Takht and Tarn Taran in Amritsar District where the Government had taken over possession of the Gurdwaras and was administering them, and in some other cases where the Mahants had started acting contrary to the tenants of Sikh religion and were defiling the Gurdwaras which had resulted in the massacre of the Sikhs such as at Nankana Sahib, etc.;

(4) Those Gurdwaras were included in Schedule I in respect of which the Legislature had decided after thorough enquiry and after obtaining and checking up the reports of the respective Deputy Commissioners that they were in reality places of Sikh worship which should be managed by the Sikhs;

(5) The origin and user of the Gurdwaras as per evidence collected by the State and checked up by the Legislature. In the words of Tek Chand's notes on the statement of objects and reasons, those places of worship were included in Schedule I 'about which no substantial doubt existed', that they were Sikh institutions;

(6) That historical Gurdwaras are said to be included in Schedule I is also apparent from subsequent amendment of the Act by which section 144-A was added to it, which permits the State Government to denotify or exempt any Gurdwara from the operation of all or any of the provisions of the Act on the recommendation of the S. G. P. C. on certain conditions provided that the Gurdwara is non-historical one; so that a historical Gurdwara cannot be taken out of Schedule I. The provision in section 144-A appears to have been made to rectify any possible mistake in that behalf;

(7) Those Gurdwaras were included in Schedule I which were due to their original and habitual user regarded not only by Sikhs, but also by the other communities as essentially institutions of Sikh worship;

(8) Such institutions were included in Schedule I in respect of which a delicate situation had arisen regarding possession though there was no dispute about the character of the institution about the possession of which the entire atmosphere in the State was surcharged and it was felt necessary by the Legislature after taking all possible safeguards to devise a machinery for avoiding unnecssary litigation on minor matters and to avoid agitations against the Government."

To the above must also be added the additional reasons for including in Schedule I certain Gurdwaras in Pepsu when the Act was extended to it:—

"(1) The two Patiala Gurdwaras (Panjaur and Bunga Dhamtanian near Railway Station, Patiala) and the Chajjli Gurdwara were amongst the historical Sikh Gurdwaras mentioned in the list 'A' atttached to the Report of the Advisory Committee. Mention of the two Patiala State institutions is also made in the Patiala Ruler's Farman dated December 23, 1946;

(2) Out of the historical Gurdwaras in Patiala which were listed in the Ruler's Farman only those were brought into Schedule I in respect of which there was unanimity between the two Regional Committees. Those were Gurdwaras which were under the management of the Interim Gurdwara Board ;

(3) Only those Gurdwaras, with the exception of two, were brought into Schedule I which had been recommended by the Advisory Committee appointed by the Punjab Government after thorough investigation and in respect of which the Advisory Committee was satisfied as to their character (*vide* paragraph 2 of annexure R-1);

(4) Reference to the Padshahi (of a particular Sikh Guru) in the Farman shows that only such Gurdwaras were included in the list of historical Gurdwaras mentioned in the Farman which fell in category (i) of sub-section (2) of section 16 of the 1925 Act, i.e., which Gurdwaras had been established by or in the memory of any of the Ten

Sikh Gurus or in commemoration of any incident in the life of any of them; and

(5) Besides the origin, the religious importance and the historical nature of the institution concerned, its economy was also taken into consideration. Only economically viable Gurdwaras of PEPSU area were added to Schedule I in 1959 out of historical Sikh Gurdwaras."

With the above background of the criteria which had led to the inclusion of specific institutions in Schedule I, the Full Bench expressly noticed an identical contention being raised before us as follows :—

"The fourth contention of Mr. Gupta relates to the grievance of the petitioners against the conclusive presumtion raised by section 3(4) about the Gurdwara notified under section 3(2) being a Sikh Gurdwara."

After discussion this was answered as follows:—

"If the classification of certain Gurdwaras in Schedule I is valid and intra vires, the relevant presumption under section 3(4) in respect thereof, which logically flows from the said classification cannot be held to be unconstitutional."

Finally in the context of this statutory provision it was held as follows:—

"(7) Sub-section (4) of section 3 of the Act providing for the declaration of a Gurdwara named in Schedule I to be a Sikh Gurdwara merely on the making of a proper application under section 3(1), and on the issue of a notification under section 3(2) does not violate the guarantee of equal protection of laws and does not usurp any functions of the judiciary. The said provision is, therefore, perfectly valid and constitutional;

(8)* * *

(9)* * *

(10) Sub-sections (2) and (4) of section 3 of the Act do not impose any unreasonable restrictions on the property

rights of citizens, who claim any right, title or interest in the property of the Gurdwara notified to be a Sikh Gurdwara under those provisions;"

(13) It is significant to note that it was never argued before us that the legislature was not competent to provide for irrebutable and conclusive presumptions not only as mere rules of evidence but even substantive pieces of law so long as the relevant provision is within its competence. It is not the province of this Court to enter into a desirability or otherwise of such legislation enacting a statutory presumption. The only possible attack against it can be regarding the constitutionality of such a provision which, as has already been noticed stands repelled fully by the judgment of the Full Bench.

(14) In the light of the foregoing discussion I would hold that after the issuance of the relevant notifications under section 3(2) a conclusive presumption under section 3(4) of the Act is attracted which bars any further challenge to the nature of the institution which has been duly notified as a Sikh Gurdwara.

(15) Once it is held that the nature of the institution being a Sikh Gurdwara is unassailable under the law, the appellant's case received a fatal set-back. Significantly the claim of the appellant in the pleading as also in evidence was made as a manager, Mohtimim or Pujari of the institution. Once the institution is held to be a Sikh Gurdwara and admittedly the proporty vests in such an institution, the appellant is wholly unable to show any right, title or interest therein. The Tribunal was wholly right in holding that there is not even a semblance of any right of a personal owner to the property in dispute and that finding has to be affirmed. Even the documentary evidence produced and relied upon by the appellant himself shows the ownership and possession of the property vested in the institution itself and not in any individual. In the view of the law I take, the evidence led by the appellant to the effect that the institution was not a Sikh Gurdwara is consequently of no avail to him. In this context I deem it unnecessary to advert in detail to the same to show that it is neither credible nor acceptable. The Tribunal whilst appreciating this evidence has noticed the acutely discrepant and inconsistent nature of the oral testimony and has given detailed and cogent reasons for its rejection, which I would affirm. A further patent infirmity therein is that it is contrary to the pleadings which itself had admitted that Guru Granth Sahib

was placed on the premises though in evidence this position was sought to be denied by some of the witnesses whilst it was admitted by the others.

(16) In fairness to Mr. Naginder Singh I must also notice an argument of the last resort advanced by him, namely, that the institution duly notified is different from that to which the claim is laid on behalf of the appellant. This contention is falsified by the petition moved on behalf of the appellant himself. The very opening part of this petition is in the following terms:—

> "The claim of the petitioner, as Mahant and Manager of Dera Guru Granth Sahib (Gosayan), to the said Dera, wrongly described as 'Gurdwara Sahib Padshahi Dasmi (Gusayan)' situate in revenue estate Pathrola, Tehsil and District Bhatinda and shown at Sl. No. 352 of the Schedule published under Act 1 of 1959 and the properties mentioned in the notification No. 17 dated 9th December, 1959."

Further paras 4 and 5 of this petition are in these terms:—

> "4. That the Schedule published with Act I of 1959 mentions the above property (Dera) at Sl. No. 352, wrongly describing it as Gurdwara Sahib Padshahi Dasmi (Gosayan);
>
> 5. That in fact the said Dera is not and never was, a Gurdwara and is wrongly described in the said Schedule as such."

The above averments can leave no manner of doubt that it was the appellant's case that there was the specified and solitary institution in dispute which was being misdescribed. There is not the slightest hint in the petition or in the evidence that there were in fact more than one institution in the revenue estate of Pathrala and the notification related to one whilst the claim on behalf of the appellant is being led to the other.

(17) Equally conclusive is the admission in cross-examination of the appellant himself which is in the following terms:—

> "There is no other religious institution or Dera to which land is attached. There is no other institution known as Dera Gusayan within this village except the Dera in dispute."

The above admission is conclusive and to the same effect is the evidence of other witnesses who specifically referred to the solitary institution which is in dispute between the parties.

(18) It is also noticed that Mr. Naginder Singh had fairly conceded that the word 'Gosayan' was synonymous with the tenth Guru. This further lends support to the position of the respondent that the Gurdwara is historical one founded in memory of Guru Gobind Singh.

(19) Some argument was sought to be built on the fact that in the revenue records property is shown in the name of the Dera and on this basis it was argued that a second institution which was a Dera was in existence. This contention cannot stand beyond a moment's scrutiny in view of the following observations of the Supreme Court in *Banta Singh* v. *Gurdwara Sahib Dashmi Padshahi and others* (3):—

> "On April 18, 1921, the Ruler of Patiala issued a Farman-i-Shahi which *inter alia* stated." It should also be mentioned that the land which pertains to any Dera should not be considered as the property of any Mahant, nor the same should be shown in the revenue papers as the property of the Mahant, but these should be entered as belonging to the Dera under the management of the Mahant and that the Mahants shall not be entitled to sell or mortgage the land of the 'dera'. Dera is a Gurdwara."

(20) Following the above judgment in a Division Bench of this Court to which I was a party *Mahant Pritam Dass* v. *S. G. P. C. Amritsar* (4) it has been held that the terms "Dera' and 'Gurdwara' are used inter-changeably.

This appeal must fail and is dismissed but there will be no order as to costs.

P. C. PANDIT, J.—I agree.

N. K. S.

(3) C.A. No. 446 of 1962 decided by Supreme Court.

(4) F.A.O. No. 35 of 1966 decided on 29th July, 1969.

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