

Before J. V. Gupta, J.

MAHANT PURAN DASS CHELA MAHANT JOTI SARUP,—
Appellant.

versus

SHIROMANI GURDWARA PARBANDHAK COMMITTEE,
AMRITSAR,—Respondent.

First Appeal from order No. 189 of 1972

May 13, 1988.

Sikh Gurdwara Act (XXIV of 1925)—Ss. 2(4) (iv) and 16(2) (iii)—Character of property—Institution claimed as Udasi Dera—Succession shown from Guru to Chela and Mahant as hereditary office holder—Revenue records showing entries in the name of 'Guru Granth Sahib'—No evidence of public worship by Sikhs—Mere entries in revenue records—Whether sufficient to prove institution as Sikh Gurdwara.

Held, that since Muafi continued to Dera Lung in the name of the custodian and since the SGPC have failed to prove any of the ingredients given in section 16(2)(iii), therefore, the institution in question is not a Sikh Gurdwara. The institution continued to be an Udasi Dera only. The entry of words "Guru Granth Sahib" will not prove that the institution was established for use by the Sikhs for the purpose of public worship. Mere presence of Guru Granth Sahib in the institution, which is an Udasi institution is itself not sufficient to prove an institution as a Sikh Gurdwara.

(Paras 9 and 11)

First Appeal from the order of the Court of Shiromani Sikh Gurdwaras Tribunal, Punjab, Chandigarh, dated the 18th May, 1972, dismissing the appeal with costs.

P. K. Palli, Sr. Advocate with Mrs. Rekha Palli, Advocate, for the Appellant.

AND

H. L. Sibal, Sr. Advocate with S. C. Sibal, K. C. Puri, Advocate with Mrs. Ish Singh, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

This appeal was heard by the Division Bench of this Court consisting of Kulwant Singh Tiwana, J. and B. S. Yadav, J. Both of

them delivered their separate judgments dated 27th May, 1983. Thus there was difference of opinion. K. S. Tiwana, J. dismissed the appeal, whereas B. S. Yadav, J. accepted the same and set aside the order of the Sikh Gurdwaras Tribunal (hereinafter referred to as 'the Tribunal'). Consequently,—*vide* order dated 27th May, 1983 it was ordered by the said Division Bench that the case be placed before the Chief Justice for referring it to a third Judge. It is how this case has come up for hearing in this Court.

(2) The Punjab Government published the petition under section 7(1) of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as 'the Act') forwarded to it by sixty worshippers of Gurdwara Sahib Dera Lang Siri Guru Granth Sahib Ji (institution in dispute) situated in the revenue estate of village Sardargarh, Tehsil and District Bhatinda. In the petition the institution was claimed not to be a Sikh Gurdwara as defined in the Act. Mahant Puran Dass, who was the Mahant at that time, filed a petition under section 8 of the Act before the Tribunal and pleaded that the Dera in question was exclusively the Dera of the Udasi Sadhus. The original Dera was in village Chugha Kalan. When village Sardargarh was founded, the land of the original Dera came in its revenue limits. The Dera in village Sardargarh was founded by Udasi Sadhus and had been in their possession and management. It was practically a branch of the Dera at village Chugha Kalan. The Dera in dispute was not a place of worship for the Sikhs nor it had ever been a place of worship for the Sikhs. Mahant Puran Dass also claimed himself to be a hereditary office holder and averred that rule of succession to the said office had always been from Guru to Chela. This petition was contested on behalf of the Shiromani Gurdwara Parbandhak Committee (S.G.P.C.). It denied the contentions raised by the appellant in his petition. It claimed that the institution was a Sikh Gurdwara and practically the whole land was in the name of Guru Granth Sahib. The contention about the custom governing succession and Mahant Puran Dass being a hereditary office-holder was denied.

(3) On the pleadings of the parties, the Tribunal framed the following issues :—

- "1. Whether the petitioner is a hereditary office holder ?
OPP.
2. Whether the institution in dispute is a Sikh Gurdwara within the ambit of section 16(2)(iii) of the Sikh Gurdwara Act, 1925 ? OPR."

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After recording the evidence, learned Sikh Gurdwaras Tribunal found issue No. 1 against the appellant and came to the conclusion that the appellant had failed to prove that he was a hereditary office holder. Under issue No. 2 the Tribunal found that the institution in dispute was a Sikh Gurdwara within the ambit of section 16(2) (iii) of the Act. Consequently, the petition filed under section 8 of the Act was dismissed. Dissatisfied with the same, Mahant Puran Dass filed the present appeal in this Court.

(4) During the pendency of the appeal Mahant Puran Dass died and his *Chela* Bhagwan Dass was brought on the record. Kulwant Singh Tiwana, J. in his judgment came to the conclusion under issue No. 1 that Mahant Puran Dass did not fall within the purview of 'hereditary office holder' as given in section 2(4) (iv) of the Act and was not competent to file the petition and thus maintained the finding given by the Tribunal. On issue No. 2 also the learned Judge maintained the finding of the Tribunal and found that the institution in question was a Sikh Gurdwara as contemplated under the Act.

(5) On the other hand, B. S. Yadav, J. found under issue No. 1 that Mahant Puran Dass was a hereditary office holder of the institution in question and had *locus standi* to file the petition. Consequently, the finding of the Tribunal under issue No. 1 was upset. Under issue No. 2 the learned Judge came to the conclusion that the S.G.P.C. had failed to prove any of the ingredients given in section 16(2)(iii) of the Act. It was, therefore, held that the institution in dispute was not a Sikh Gurdwara.

(6) Learned counsel for the appellant vehemently urged that the succession being from *Guru* to *Chela*, Puran Dass was the hereditary office holder and the finding of the Tribunal in this behalf was wrong and illegal. According to the learned counsel, after the death of a Mahant, the custom prevalent amongst the Udasi Sadhus was that the previous *Mahant* used to select *Chelas* in his life-time and the *Bhek* used to nominate Mahant out of the previous *Chelas*. No nomination of a Mahant by means of a will had ever taken place in the said Dera. Thus, argued that learned counsel, that being the situation, the succession being from *Guru* to *Chela*, Puran Dass was a hereditary office holder as defined under section 2(4)(iv) of the Act. In addition to the judgments referred earlier before the Division Bench hearing the appeal, learned counsel for the appellant

also referred to a Full Bench judgment of this Court, rendered subsequently, reported as *Mahant Dharam Das Chela Karam Parkash v. Shiromani Gurdwara Parbandhak Committee, Amritsar* (1), in which it was held that if the succession to Mahantship had been from *Guru* to *Chela*, the incumbent would be hereditary office-holder of the said office, and, therefore, was competent to submit the petition under section 8 of the Act.

(7) On the other hand, learned counsel for the respondent submitted that according to the appellant, selection was to be made by the *Bhek* out of the *Chelas* of the last Mahant and, therefore, could not be said to be a succession by inheritance or, in other words, the Mahants so nominated and selected by the *Bhek* could not be said to be the hereditary office holders. According to the learned counsel, if a third agency came into being and was allowed to nominate or select the Mahant, then it could not be said to be hereditary succession.

(8) After hearing the learned counsel for the parties at length and going through the evidence on the file in this respect, I agree with the findings of B. S. Yadav, J. and come to the conclusion that Puran Dass was a hereditary office holder of the institution in question and had *locus standi* to file the petition. The findings of the tribunal in this behalf are set aside.

(9) Under issue No. 2 learned counsel for the appellant contended that the S.G.P.C. had failed to prove the necessary ingredients of section 16(2) (iii) of the Act and therefore it could not prove that the institution in dispute was a Sikh Gurdwara. According to the learned counsel, there is no evidence to show that the institution was established for use by the Sikhs for the purpose of public worship and the same was used for such worship by the Sikhs before and at the time of the presentation of the petition under sub-section (1) of Section 7 of the Act. According to the learned counsel, the institution in dispute is an Udasi institution and has been wrongly claimed to be a Sikh Gurdwara. According to the learned counsel, the institution in dispute is not a Sikh Gurdwara as claimed. In any case, argued the learned counsel, no worshipper out of the 60 persons who signed the petition under section 7 of the Act, had come forward to depose that the institution was a Sikh Gurdwara. Moreover, existence of *Samadh* was not disputed but the same was subsequently

(1) AIR 1987 Pb. and Hry. 64.

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got demolished by the Akalis. *Muafi* was granted to the institution prior to the statement of Mahant Jawahar Dass, in the year 1902. The property was shown to be the personal property of the Mahant. It was only after the statement of Mahant Jawahar Dass in the year 1902 that the property was shown to be in the name of the institution and words 'Guru Granth Sahib' were introduced. According to the learned counsel, there is no entry where the institution in dispute was shown to be a Sikh Gurdwara. It continued to be an Udasi Dera only. The entry of words 'Guru Granth Sahib' will not prove that the institution was established for use by the Sikhs for the purpose of public worship. Mere presence of Guru Granth Sahib in the institution, which is an Udasi institution, was itself not sufficient to prove that it was a Sikh Gurdwara. In support of this contention learned counsel for the appellant referred to two subsequent judgments after the decision of the Division Bench, reported as *Pritam Dass Mahant v. Shiromani Gurdwara Prabandhak Committee* (2), and *Shiromani Gurdwara Prabandhak Committee, Amritsar v. Mahant Kirpa Ram and others* (3). In *Pritam Dass Mahant's case* (supra) it was held that "the *sine qua non* for an institution being a Sikh Gurdwara is that there should be established Guru Granth Sahib and worship of the same by the congregation, and a Nishan Sahib, a flag staff with a yellow flag of Sikhism flying from it which serves as a symbol of the Sikh presence. There may be other rooms of the institution meant for other purposes but crucial test is the existence of Guru Granth Sahib and the worship thereof by the congregation and Nishan Sahib". It has been further held that "where in an institution the succession was from Guru to Chela and the founder of the institution was a Udasi Saint and there were samadhs on the premises, one of the founder and the other of his mother, and there were photos of Hindu deities in the institution then, these three facts, without anything more, would be sufficient to reject the claim that the institution was a Sikh Gurdwara. Existence of Samadhs and succession from Guru to Chela would clearly be destructive of the character of the institution as a Sikh Gurdwara because they are inconsistent with the tenets of the Sikh religion." The same proposition was reiterated subsequently in *Mahant Kirpa Ram's case* (supra).

(10) On the other hand, learned counsel for the respondent submitted that from the entries in the *jamabandis* of village Sardargarh

(2) AIR 1984 S.C. 858.

(3) AIR 1984 S.C. 1059.

from the year 1901 and 1902 onwards along with the mutation of the land from time to time after the death of the *Mahant* and the *Muafi* file it is abundantly proved that the institution was a Sikh Gurdwara and in any case when Mahant Jawahar Dass made the statement (copy Ex. R. 18) in the year 1902, the institution became a Sikh Gurdwara since then. The entries continued to be in the name of Guru Granth Sahib and the *Muafi* was also given on that account. These entries were never challenged by the subsequent *Mahants* and, therefore, from this documentary evidence it has been rightly held by the Tribunal that the institution in dispute was a Sikh Gurdwara. He referred to an unreported judgment of the Supreme Court in (*Banta Singh v. Gurdwara Sahib Dashmi Padshai and others*) (4), in order to contend that entries in the revenue records were sufficient to prove that the institution was a Sikh Gurdwara.

(11) After hearing the learned counsel for the parties on issue No. 2 and going through the relevant evidence, particularly Ex. R. 14 wherein final order of the Commissioner has been reproduced which is to the effect that the *Muafi* continued to Dera Lung in the name of the Custodian for the time being. I agree with the findings of B. S. Yadav, J., wherein it has been held that the S.G.P.C. had failed to prove any of the ingredients given in section 16(2) (iii) of the Act, and, therefore, it is held that the institution in question is not a Sikh Gurdwara.

(12) Consequently, this appeal is accepted, the order of the Tribunal is set aside and the petition filed under section 8 of the Act is allowed. There will, however, be no order as to costs.

R.N.R.

Before Sukhdev Singh Kang and S. D. Bajaj, JJ.

PUNJAB DRUGS MANUFACTURERS ASSOCIATION,—
Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 6144 of 1987.

June 3, 1988.

Constitution of India, 1950—Arts. 14 and 19(1)(g)—Supply of drugs and medicines to Government—Orders excluding contract

(4) Civil Appeal No. 446 of 1962, decided on November 9, 1964