section 10 and cannot cover the net profits or gains arrived at or determined in a manner other than that provided by section 10. The whole purpose of enacting sub-section (4) of section 10 appears to be to exclude from the permissible deductions under clauses (ix) and (xv) of sub-section (2) such cess, rate or tax which is levied on the profits or gains of any business, profession or vocation or is assessed at a proportion of or on the basis of such profits or gains. In other words, sub-section (4) was meant to exclude a tax or a cess or rate the assessment of which would follow the determination or assessment of profits or gains of any business, profession or vocation in accordance with the provisions of section 10 of the Act."

These observations do support the view that we have taken of the matter.

(7) For the reasons recorded above, we answer the question referred to above, in the negative, that is, in favour of the assessee and against the Department. In the circumstances of the case, however, we make no order as to costs.

B. S. G.

FULL BENCH

Before R. S. Narula, C.J., B. R. Tuli, and B. S. Dhillon, JJ.

MAHANT HARI KISHAN,—*Appellant.*

versus

THE SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR, ETC.,—*Respondents.*

F.A.O. No. 102 of 1965.

April 21, 1975.

Sikh Gurdwara Act (VIII of 1925)—Sections 2(4)(i), 2(4) (iv), 7, 8, 9 and 16—Notification under section 7—Objection under section 8 filed by a person claiming to be "hereditary office-holder"—Gurdwara Tribunal—Whether has to decide first regarding the institution being a Sikh Gurdwara before adjudicating upon the locus standi of the claimant—Claim to an "hereditary office"—Determination of—Relevant considerations for—Stated—Person shown to be

occupying the office of an institution on the prescribed date—Whether "hereditary office-holder", capable of filing objection under section 8.

Held, that when a notification under section 7 of the Sikh Gurdwara Act, 1925 is issued about an institution being a Gurdwara, the right to make objection under section 8 of the Act is conferred only on two classes of persons, namely, any "hereditary office-holder" of the Gurdwara concerned, or any twenty or more worshippers thereof, each of whom of more than twenty-one years of age and was on the commencement of the Act, a resident of a police station area in which the Gurdwara is situated. The right is restricted to these two recognised classes of persons and no other person has got any right to make any objection claiming that the Gurdwara, which is claimed to be a Sikh Gurdwara under the provisions of section 7 of the Act, is not a Sikh Gurdwara. Moreover under proviso to section 8 of the Act the Legislature has designedly and advisedly ousted the jurisdiction of the Tribunal to determine the objection which can be taken to the non-fulfilment of the qualification regarding the residence of the persons of second category, i.e., "twenty or more worshippers" within the police station area within which the Gurdwara in question is situate. A presumption has been raised that when any such petition is forwarded by the State Government, it has to be dealt with by the Tribunal as if the petition has been duly forwarded by the petitioners who are such residents. Because of this proviso, if a party opposing a petition under section 8 of the Act, takes any objection that twenty persons, who signed the petition, were not the residents of the police station area within which the Gurdwara in question is situate, this matter cannot be gone into by the Tribunal but as regards the petition by a person belonging to the first category, i.e., "hereditary office-holder", no such provision has been made by the statute, nor any presumption of its being valid on it being forwarded by the State Government to the Tribunal, has been raised in the Act. Provided. Thus it is clear that if an objection is raised that the petitioner, who claims himself to be "hereditary office-holder", is not a "hereditary office-holder", as defined under the Act, it is the bounden duty of the Tribunal to decide this question of *locus standi* of the petitioner to file a petition under section 8 of the Act. The objection as to the *locus standi* of the person who has preferred a claim under section 8 of the Act, is a question which goes to the root and the Tribunal is bound to decide the question. It is only when the Tribunal finds that the petitioner has the *locus standi* to file the claim that the other question will arise for determination by the Tribunal. The issue of *locus standi* is a preliminary issue and if raised, has to be decided first in the peculier setting of the Act. If the petitioner has *locus standi* to file the petition, the provisions of section 16 shall then be taken into consideration by the Tribunal to determine whether the institution in question is a Sikh Gurdwara or not, but if there is no competent

petition, that is, in other words, there is no valid challenge to the notification issued under section 7 within the frame work of section 8 of the Act, the provisions of section 9 are bound to be complied with. Once a notification under section 9 is issued that the institution in question is a Sikh Gurdwara, there is no question of the application of the provisions of section 16 to such a case. If in every case, whether the petition is filed by the persons competent to file the same under the provisions of section 8 or not, the Tribunal has to decide the question whether the institution in question is a Sikh Gurdwara or not, the provisions of sections 8 and 9 would be virtually rendered nugatory. Hence the Tribunal is not to decide whether the institution in question is a Sikh Gurdwara or not before adjudicating upon the *locus standi* of the person who claims himself to be the "hereditary office-holder".

Held, that from the definitions of the terms "office" and "hereditary office" given in section 2(4) (i) and 2(40) (iv) of the Act it is evident that the basic and primary definition is of the "hereditary office". It is manifest that the office as such is distinct from its present or earlier incumbent. The definition provides for scrutiny into the nature of the office and not the status of the last incumbent. It lays down that the succession to the office has to devolve in one of the two ways, i.e., hereditary right or by nomination. The definition of office further provides that the office is one which gives the legal right of management or performance of public worship or rituals or ceremonies in a Gurdwara. It is therefore obvious that the office as an institution, and its incumbents as human beings, must be viewed as distinct and separate entities. Office is an incumbency, perpetual and continuing, capable of devolving by succession on human beings who may hold the same for short durations in accordance with the principles of custom of succession of a particular Gurdwara. Hence the character and nature of the office and the mode by which the last incumbent of the office came to occupy the same, are two relevant considerations in order to find whether a person is a "hereditary office-holder".

Held, that the hereditary office-holder of a Gurdwara or an institution is clothed with very valuable rights under the provisions of the Act. The obvious intention of the Legislature is to give these rights to those incumbents of the office which had come to devolve upon the persons by a regular rule of descent or sanctified usage. It is, therefore, incumbent upon a person who claims himself to be a hereditary office-holder and whose *locus standi* is challenged to prove that there existed a well established rule of descent or a well recognised mode of succession to the office. The two modes prescribed by the Act that such an office must be one which devolves from one incumbent to another according to the hereditary rights

or by nomination have to be complied with. Hence merely by showing that on the prescribed date a person held the office of an institution, he is not entitled to be declared as "hereditary office-holder" capable of moving a petition under section 8 of the Act.

Case referred u/s 98 of the Code of Civil Procedure and clause 26 of the Letters Patent of this Court by the Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice M. R. Sharma, on 8th March, 1973 to a third Judge on account of difference of opinion. The Hon'ble the Chief Justice Mr. R. S. Narula further referred the case to a Full Bench on 13th February, 1975, for decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. R. S. Narula, the Hon'ble Mr. Justice Bal Raj Tuli and the Hon'ble Mr. Justice Bhopinder Singh Dhillon, finally decided the case on 21st April, 1975.

First Appeal from the Order of the Sikh Gurdwara's Tribunal Punjab, Chandigarh, dated 23rd February, 1965, holding that the petitioner has failed to prove that he is the hereditary office-holder of the institution in dispute and dismissing with costs his petition so far as it concern the relief u/s 8 of the Act, and also ordering that case concerning relief u/s 10 of the Act will proceed with.

K. N. Tewari, Advocate, *for the appellant.*

Narinder Singh, Advocate, *for the respondents.*

JUDGMENT

B. S. Dhillon, J,—This First Appeal from Order is directed against the unanimous order dated February 23, 1965, passed by the Sikh Gurdwara Tribunal, Punjab, Chandigarh (hereinafter referred to as the Tribunal), non-suiting the appellant on a finding that the appellant has no *locus standi* to bring the petition under section 8 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the Act). This appeal was listed for hearing before a Division Bench and the two learned Judges constituting the Bench having taken different views while deciding the appeal, the appeal was referred by the then Hon'ble Chief Justice to R. S. Narula, J. (Now Hon'ble Chief Justice), for decision under section 98 of the Code of Civil Procedure and clause 26 of the Letters Patent of this Court. However, the learned Judge felt embarrassed to hear and re-decide the appeal on a difference of opinion between the two Judges as one of the learned Judges of the Division Bench doubted the correctness of the view taken by the Full Bench of this Court in *Mahant Lachhman Dass Chela Mahant*

Ishar Dass v. *The State of Punjab and others* (1) because the learned Judge, R. S. Narula, J. (as he then was) himself was the author. In these circumstances, the learned Judge directed that the papers of the case may be placed before the then Hon'ble Chief Justice for hearing the appeal either himself or nominating some other learned Judge to hear the same. Thereupon, Harbans Singh, Chief Justice (as he then was) decided to hear the appeal himself. The appeal could not be heard for some time and was ultimately adjourned to await the decision of the Supreme Court in the appeal against the judgment of the Full Bench in *Mahant Lachhman Dass's case* (*supra*) which was pending before the Supreme Court.

(2) The Supreme Court in *Mahant Dharam Dass and others* v. *The State of Punjab and others* (2) on January 14, 1975, dismissed the appeal against the Full Bench Judgment, referred to above. It may be pointed out that in *Mahant Lachhman Dass's case* (*supra*), a Full Bench of this Court upheld the vires of the Act and the said judgment having been affirmed by the Supreme Court, the question of vires of the Act, stands finally settled by the authoritative pronouncement of the Supreme Court.

(3) This appeal then came up for hearing before Hon'ble Chief Justice R. S. Narula, on February 13, 1975, when Shri K. N. Tewari, the learned counsel for the appellant, submitted that in view of the mandatory requirement of sub-section (3) of section 34 of the Act, this appeal could not be heard at any stage by a Bench consisting of less than two Judges and that no case having been stated or any definite point of law under the proviso to sub-section (2) of section 98 of the Code of Civil Procedure, or under Rule 5 of Chapter IV-H of Volume V of the Rules and Orders of this Court, having been stated in the reference by the Division Bench, and the appeal itself having been referred to a third Hon'ble Judge for decision the same could not be heard by a Bench of less than two Judges. This contention having been raised by the learned counsel for the appellant Hon'ble the Chief Justice thought it safer that the surviving questions in the appeal as well as the third question as to whether this reference could be heard by a Single Judge, may be decided by a Full Bench of this Court. It was in these circumstances that Hon'ble the Chief Justice constituted a Full Bench and this appeal is before us.

(1) I.L.R. 1968(2) Pb. & Hr. 499.
(2) (1975)1 S.C.C. 343.

(4) The question, whether in the absence of any definite provision in the Act providing as to what would happen to an appeal which is heard by a Division Bench but is not decided by it in view of the difference of opinion between the two learned Judges of the Bench, whether further proceedings in the appeal have to be governed by section 98 of the Code of Civil Procedure or not, and whether clause 26 of the Letters Patent of this Court, has any application to the situation like the one that has arisen in the instant case, is not being decided by us in this case and may be appropriately decided in some other case as the said question of law has not been debated before us. We are, therefore, not answering this question in this judgment.

(5) The only questions which survive for decision in this appeal mentioned in the reference order dated February 13, 1975, by Hon'ble Chief Justice R. S. Narula, are as follows:—

(1) Whether the Tribunal is bound to decide if the institution in question is a Sikh Gurdwara or not before even adjudicating upon the *locus standi* of the person who claims to be a hereditary office-holder; and

(2) Whether the appellant in the present case has or has not been able to prove that he was in fact a hereditary office-holder.

(6) Question No. 1 may be dealt with first. Before referring to the relevant provisions of the Act in this connection, it will be useful to keep in view the object for which the Act was enacted. Their Lordships of the Supreme Court in *Mahant Dharam Das and others* v. *The State of Punjab and others* (2) summed up the object of the Act as follows:—

> "It must not be forgotten that the whole object of the Act was to reduce the chances of protracted litigation in a matter involving the religious sentiments of a large section of a sensitive people proud of their heritage. The long history of the struggle of the Sikhs to get back their religious shrines to which reference has been made in the Sikh historical books make it amply clear that the intensity of the struggle, sacrifice and shedding of blood had made the Government of the day realize that a speedy remedy should be devised and accordingly the procedures prescribed in sections 3 and 7 have been innovated by the Act."

(7) The scheme of the Act is that there are certain places .of worship about which no substantial doubt existed that these places of worship were Sikh Gurdwaras, and those places were forthwith placed in Schedule I, and part III of the Act, which regulates the manner of management, was made applicable to the management of such Gurdwaras and thus the procedure was devised for speedy assertion of the claims made on behalf of the shrines and the property alleged to belong to it. Secondly, the other category of institutions which were not included in Schedule I, and consequently not placed under management provided in part III of the Act, their nature could be determined in the manner provided under sections 7 to 11 of the Act.

(8) Under sub-section (1) of section 7 of the Act, any fifty or more Sikh worshippers of a Gurdwara, each of whom is more than twenty-one years of age and was on the commencement of this Act, or in the case of the extended territories from the commencement of the Amending Act, a resident in the police station area in which the Gurdwara is situated, may forward to the State Government, through the appropriate Secretary to Government, a petition praying to have the Gurdwara declared a Sikh Gurdwara within a period of 180 days from the commencement of the Amending Act.

(9) Under sub-section (3) of section 7 of the Act, on receiving a petition duly signed and forwarded under the provisions of sub-section (1), the State Government shall, as soon as may be, publish it along with the accompanying list, by notification, and shall cause it and the list to be published, in such manner as may be prescribed, at the headquarters of the district and of the tahsil and in the revenue estate in which the Gurdwara is situated, and at the headquarters of every district and of every tahsil and in every revenue estate in which any of the immovable properties mentioned in the list is situated and shall also give such other notice thereof as may be prescribed.

(10) Under sub-sertion (4) of this scetion, the State Government shall also, as soon as may be, send by registered post a notice of the claim to any right, title or interest included in the list to each of the persons named therein asbeingin possession of such right, title or interest either on his own behalf or on behalf of an insane person or minor or on behalf of the Gurdwara.

Sections 8 and 9 of the Act are as follows:—

"8. When a notification has been published under the provisions of sub-section (3) of section 7 in respect of any Gurdwara, any *hereditary office-holder* or *any twenty or more worshippers of the Gurdwara,* each of whom is more than twenty-one years of age and was on the commencement of this Act, or, in the case of the extended territories, on the commencement of the Amending Act, as the case may, be, a resident of a police station area in which the Gurdwara is situated, may forward to the State Government through the appropriate Secretary to Government, so as to reach the Secretary within ninety days from the date of the publication of the notification, a petition signed and verified by the petitioner, or petitioners, as the case may be, claiming that the Gurdwara is not a Sikh Gurdwara, and may in such petition make a further claim that any hereditary office-holder or any person who would have succeeded to such office-holder under the system of management prevailing before the first day of January, 1920, or, in the case of the extended territories, before the 1st day of November, 1956, as the case may be, may be restored to office on the grounds that such Gurdwara is not a Sikh Gurdwara and that such office-holder ceased to be an office-holder after that day;

Provided that the State Government may in respect of any such Gurdwara declare by notification that a petition of twenty or more worshippers of such Gurdwara shall be deemed to be duly forwarded whether the petitioners were or were not on the commencement of this Act or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be, residents in the police station area in which such Gurdwara is situated, and shall thereafter deal with any petition that may be otherwise duly forwarded in respect of any such Gurdwara as if the petition had been duly forwarded by petitioners who were such residents."

"9(1) If no petition has been presented in accordance with the provisions of section 8 in respect of a Gurdwara to which a notification published under the provisions of sub-section (3) of section 7 relates, the State Government shall,

after the expiration of ninety days from the date of such notification, publish a notification declaring the Gurdwara to be a Sikh Gurdwara.

(2) The publication of a notification under the provisions of sub-section (1) shall be conclusive proof that the Gurdwara is a Sikh Gurdwara, and the provisions of Part III shall apply to the Gurdwara with effect from the date of the publication of the notification."

(11) Section 10 deals with the petitions of claims to property included in a list published under sub-section (3) of section 7.

(12) Section 11 deals with the claim for compensation by a hereditary office-holder of a Gurdwara notified under section 7 or his presemptive successor.

(13) Chapter III of the Act deals with the appointment and proceedings before a Tribunal, which Tribunal is Constituted under section 12. The Tribunal, known as the Sikh Gurdwara Tribunal, is to dispose of all petitions made under sections 5, 6, 8, 10 and 11 of the Act. The other relevant section of the Act for the purposes of determination of the first question formulated above, is section 16, which is as follows:—

"16(1) Notwithstanding anything contained in any other law in force, if in any proceeding before a Tribunal it is disputed that a Gurdwara should or should not be declared to be a Sikh Gurdwara, the Tribunal, shall, before enquiring into any other matter in dispute relating to the said Gurdwara, decide whether it should or should not be declared a Sikh Gurdwara in accordance with the provisions of sub-section (2).

(2) If the Tribunal finds that the Gurdwara—

(i) was established by, or in memory of any of the Ten Sikh Gurus, or in commemoration of any incident in the life of any of the Ten Sikh Gurus and was used for public worship by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7; or

(ii) owing to some tradition connected with one of the Ten Sikh Gurus, was used for public worship predominantly by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7 ; or

(iii) was established for use by Sikhs for the purpose of public worship and was used for such worship by Sikhs, before and at the time of the representation of the petition under sub-section (1) of section 7; or

(iv) was established in memory of a Sikh martyr, Saint or historical person and was used for public worship by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7; or

(v) owing to some incident connected with the Sikh religion was used for public worship predominantly by Sikhs before and at the time of the presentation of the petition under sub-section (1) of section 7;

the Tribunal shall decide that it should be declared to be a Sikh Gurdwara, and record an order accordingly.

(3) Where the Tribunal finds that a Gurdwara should not be declared to be a Sikh Gurdwara, it shall record its finding in an order, and, subject to the finding of the High Court on appeal, it shall cease to have jurisdiction in all matters concerning such Gurdwara, provided that, if a claim has been made in accordance with the provisions of section 8 praying for the restoration to office of a hereditary office-holder or person who would have succeeded such office-holder under the system of management prevailing before the first day of January, 1920 or, in the case of the extended territories, before the first day of November, 1956, the Tribunal shall, notwithstanding such finding, continue to have jurisdiction in all matters relating to such claim, and if the Tribunal finds it proved that such office-holder ceased to be an office-holder on or after the first day of January, 1920 or, in the case of the extended territories after the first day of November, 1956, it may by order direct that such office-holder or person who would have so succeeded be restored to office."

(14) The only other relevant section of the Act is section 34 which provides that any party aggrieved by a final order passed by Tribunal determining any matter decided by it under the provisions of this Act, may, within ninety days of the date of such order, appeal to the High Court.

(15) As is clear from the Scheme of the Act, the provisions of section 8 of the Act have clearly restricted the right to make objection petitions claiming that the Gurdwara, which is claimed to be a Sikh Gurdwara under the provisions of section 7 of the Act, is not a Sikh Gurdwara. The said right has been conferred only on two classes of persons, namely, any "hereditary office-holder" of the Gurdwara concerned, or any twenty or more worshippers of the Gurdwara, each of whom is more than twenty-one years of age and was on the commencement of this Act, a resident of a police station area in which the Gurdwara is situated. Except these two recognised classes of persons, no other person has got any right to make any such objection claiming that the Gurdwara, which is claimed to be a Sikh Gurdwara under the provisions of section 7 of the Act, is not a Sikh Gurdwara. As regards "any twenty or more worshippers" the legislature has further provided under the proviso to section 8, that the State Government may in respect of any such Gurdwara declare by notification that a petition of twenty or more worshippers of such Gurdwara shall be deemed to be duly forwarded whether the petitioners were or were not on the commencement of the Amending Act residents in the police station area in which such Gurdwara is situate and a presumption has been raised that any petition duly forwarded in respect of any such Gurdwara will be deemed to be a petition made by competent persons. It would be seen that the Legislature designedly and advisedly ousted the jurisdiction of the Tribunal to determine the objection which could be taken to the non-fulfilment of the qualification regarding the residence of the persons of second category, i.e., "twenty or more worshippers," within the police station area within which the Gurdwara in question is situate but on the other hand, a presumption has been raised that when any such petition is forwarded by the State Government, it has to be dealt with by the Tribunal as if the petition has been duly forwarded by petitioners who were such residents. This presumption is only limited to the question of their residence. Thus because of this proviso, if a party opposing a petition under section 8 of the Act, takes any objection that twenty

persons, who signed the petition, were not the residents of the police station area within which the Gurdwara in question in situate, this matter cannot be gone into by the Tribunal but as regards the petition by the first category, i.e., the "hereditary office-holder", no such provision has been made by the statute, nor any presumption of its being valid on it being forwarded by the State Government to the Tribunal, has been provided for in the Statute. Thus it is clear that if an objection is raised that the petitioner, who claims himself to be a hereditary office-holder" is not a "hereditary office-holder", as defined under the Act, it is the bounden duty of the Tribunal to decide this question of *locus standi* of the petitioner to file a petition under section 8 of the Act. As has been pointed out earlier, the right to claim that the Gurdwara in question is not a Sikh Gurdwara, is vested in two categories of persons only and in none else. The objection as to the *locus standi* of the person, who has preferred a claim under section 8 of the Act, is a question which goes to the root and the Tribunal is bound to decide the question. It is only if the Tribunal finds that the petitioner has *locus standi* to file the claim that the other questions will arise for determination by the Tribunal It is clear from the provisions of section 9 that if *no petition has been presented in accordance with the provisions of section* 8 in respect of a Gurdwara to which the Notification published under subsection (3) of section 7 of the Act relates, the State Government shall, after the expiration of 90 days from the publication of such Notification, publish a Notification declaring the said Gurdwara to be a Sikh Gurdwara, so that it is clear that if none of the two categories of persons, who have *locus standi* to file the petition, has come forward to make a petition, under section 8, the Gurdwara in question shall have to be declared as Sikh Gurdwara under the provisions of section 9. Same results will follow if the petition under section 8 is made by a person who is not competent to file the same under the provisions of that section. It is further to be noted that under the provisions of section 34 of the Act, any party aggrieved by the order of the Tribunal determining any matter decided by it under the provisions of this Act, has a right, within 90 days of the date of such order, to appeal to the High Court. Thus the decision of the Tribunal that the petitioner is or is not a "hereditary office-holder" has been made appealable under the provisions of section 34 of the Act.

(16) The provisions of section 16 of the Act will not be attracted in a case where the petition is dismissed by the Tribunal holding

that the person making the petition has no *locus standi* to file such a petition keeping in view the provisions of section 8 of the Act. The provisions of section 16 will only come into play where in any proceedings before the Tribunal it is disputed that a Gurdwara can or cannot be declared to be a Sikh Gurdwara, but where there is no competent petition making challenge to the institution being declared a Sikh Gurdwara, the provisions of section 16 of the Act will not be attracted. If in every case, whether the petition is filed by the persons competent to file the same under the provisions of section 8 or not, the Tribunal has to decide the question whether the institution in question is a Sikh Gurdwara or not, the provisions of sections 8 and 9 would be virtually rendered nugatory. The issue of *locus standi* is a preliminary issue and if raised, has to be decided first in the peculiar setting of the Act. If the petitioner has *locus standi* to file the petition, the provisions of section 16 shall then be taken into consideration by the Tribunal to determine whether the institution in question is a Sikh Gurdwara or not, but if there is no competent petition, that is, in other words, there is no valid challenge to the notification issued under section 7 within the frame work of section 8, the provisions of section 9 are bound to be complied with and once a Notification having been issued that the institution in question is a Sikh Gurdwara, there will be no question of the application of the provisions of section 16 to such a case.

(17) Apart from the principles and statutory provisions discussed above, there is along and consistent line of authorities in support of the view that the issue of *locus standi* in case of a person claiming to be a "hereditary office-holder", is a preliminary issue which has to be decided before the merits of the case in question, whether the institution is a Sikh Gurdwara or not, can be gone into. In *Tehl Singh* v. *Harnam Singh and others* (3) a Division Bench of the Lahore High Court observed as follows:—

> "The appeal must fail on the short ground that Tehl Singh had to establish that he was a hereditary office-holder before he could put in a petition under section 8 of the Act. If he was not a hereditary office-holder, his petition was not competent nor is his appeal against the decision of the Tribunal."

(3) A.I.R. 1934 Lah. 98.

(18) Similarly, in *Sunder Singh and others* v. *Mahant Narain Das and others* (4), where a petition under section 8 by a person claiming himself to be a "hereditary office-holder" was being tried by the Tribunal, the Bench observed as follows:—

> "Nothing is, however, said about a petition forwarded by a hereditary office-holder under section 8 except that it must be held to have been presented in time. It follows that the *locus standi* of such a petitioner can be challenged and would have to be decided before the trial can proceed. *This position is not affected by section* 16(1) *of the Act, which can only apply to a petition, properly before the Tribunal.*" (Emphasis supplied).

(19) In *Basant Singh* v. *Kartar Singh and others* (5) a preliminary objection was taken to the competency of an appeal directed against the order of the Tribunal before a Division Bench to the effect that the appellant had not proved himself to be a "hereditary office-holder" within the meaning of section 8 of the Act, and, therefore, neither the petition nor the appeal was competent. This preliminary objection was upheld by the Bench in the following terms :— ....

> "It is evident, therefore, that neither in his pleadings nor in his statement before or after the issues, he claimed to be a "hereditary office-holder within the meaning of section 8 read with section 2(4). A person claiming a property as his private property and investing it with a sectarian character can under no straining of language be described as an office-holder attached thereto, muchless a hereditary office-holder. Moreover, if a person wishes to claim the benefit of the section, he must expressly assert that the place is a Gurdwara and that he holds any hereditary office attached to it. Not having done so, the plaintiff was not competent to lodge the petition and consequently has no *locus standi* to present the appeal."

(20) To the same effect are the observations in *Albel Singh and others* v. *Narain Dass* (6) wherein an objection was taken in the

(4) A.I.R. 1934 Lah. 920.
(5) A.I.R. 1934 Lah. 213.
(6) A.I.R. 1936 Lah. 675.

the appeal before the High Court that the Tribunal decided the issue on merits without deciding the preliminary issue whether the petitioner as a "hereditary office-holder" had *locus standi* to file the petition under section 8, which was upheld and the case was remanded to the Tribunal for a decision on the preliminary issue regarding the *locus standi* of the petitioners to present the petition.

(21) Similarly, in *Bhan Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar,* (7) a Division Bench of this Court upheld the dismissal of the petition by the Tribunal on the preliminary ground that the petitioner was not a "hereditary office-holder" and thus was not competent to maintain the petition under section 8.

(22) As regards the competency of the Legislature to enact the provisions of section 8 of the Act, the authoritative pronouncement of a Full Bench of this Court in *Mahant Lachhman Dass's case* (1) (*supra*), has been upheld by their Lordships of the Supreme Court in *Mahant Dharam Dass's case* (2) (supra). While deciding this appeal against the Full Bench decision of this Court, their Lordships of the Supreme Court, during the course of the judgment also observed as follows:—

> "It is for the Tribunal to apply the law for determining as to whether the person who challenges the notification is a hereditary office-holder and has *locus standi* to do so."

It is, therefore, clear that the question of *locus standi* of the petitioner to move the objection petition has to be determined first by the Tribunal before deciding any matter on merits keeping in view the mandatory provisions of section 8 of the Act and in case the petitioner is found not to be "hereditary office-holder", which he claimed in his petition, his petition has to be dismissed on the ground that he has no *locus standi* to approach the Tribunal. Thereafter the notification under section 9 will follow and there will be no question of determining the pleas raised in the petition and thus the provisions of section 16 of the Act will not be attracted. Thus my answer to question No. 1 is that the Tribunal is not to decide whether the institution in question is a Sikh Gurdwara or not even before adjudicating upon the *locus standi* of the person who claims himself to be the "hereditary office-holder".

(7) F.A.O. No. 115 of 1963 decided on 7th January, 1970.

(23) As regards the second question, with a view to decide whether the petitioner is a "hereditary office-holder" or not, the relevant provisions of the Act may be referred to.

(24) Section 2(4) (i) defines office while clause (iv) of section 2(4) defines "hereditary office", as under:—

> "2. In this Act, unless there is anything repugnant in the subject or context—
>
> * * * * *
>
> (4) (i) 'Office' means any office by virtue of which the holder thereof participates in the management or performance of public worship in a Gurdwara or in the management or performance of any rituals or ceremonies observed therein and 'Office-holder' means any person who holds an office.
>
> * * * * *
>
> (iv) 'Hereditary office' means an office the succession to which before the first day of January, 1920, or, in the case of the extended territories, before the 1st day of November, 1956, as the case may be, devolved, *according to hereditary right or by nomination by the office-holder for the time being*, and 'hereditary office holder' means the holder of a hereditary office." (Emphasis supplied)

(25) From these statutory provisions, it is evident that the basic and primary definition provided by the statute is of the "hereditary office". It is thus manifest that the office as such is distinct from its present or earlier incumbent. The definition, therefore, provides for scrutiny into the nature of the office and not the status of the last incumbent thereof. The definition lays down that the succession to the office has to devolve in one of the two ways, that is, by "hereditary right" or by nomination. It is first to be found whether there is an office attached to the institution concerned and secondly, whether the same devolves by a hereditary right or by nomination. The definition of office as reproduced above,, provides that the office is one which gives the legal right of management or performance of public worship or

rituals or ceremonies in a Gurdwara. It is, therefore, obvious that the office as an institution, and its incumbents as human beings, must be viewed as distinct and separate entities. Office is an incumbency, perpetual and continuing, capable of devolving by succession on human beings who may hold the same for short durations in accordance with the principles or custom of succession of a particular Gurdwara. It follows, therefore, that the character and nature of the office and the mode by which the last incumbent of the office came to occupy the same, are two relevant considerations in order to find whether a person is a "hereditary office-holder" or not.

(26) The contention of Shri K. N. Tewari, the learned counsel for for the appellant, that once he is able to show that the appellant had succeeded as the Mahant of the institution prior to November 1, 1956, and was occupying that office on that day, he must be held to be a "hereditary office-holder" capable of moving the petition under section 8 of the Act, lacks merit. As has been discussed above, in order to satisfy the ingredients of section 8, the office of the institution has to be distinctly looked into and then the question of the incumbent having occupied the same by hereditary right or by nomination, has also to be seen. If the contention of Shri Tewari is accepted, it would mean that any Chela appointed by a person calling himself a Mahant coming into illegal possession of the institution any time prior to November 1, 1956, in the case of extended territories, will be entitled to be called a "hereditary office-holder" entitled to present a petition under section 8. That clearly does not appear to be the intention of the Legislature. The definitions of the words "office" and the "hereditary office" as provided by the Legislature clearly do not visualise any such situation. It would be apparent from the bare examination of the provisions of the Act that the "hereditary office-holder" of a Gurdwara or an institution, is clothed with very valuable rights with regard thereto. The obvious intention of the Legislature was to give rights to the incumbents of this office which had come to devolve upon the persons by a regular rule of descent or sanctified usage and the rights of such persons were in fact recognised by the statute. No doubt the statute has not provided any mode by which the office may become hereditary and thus it is incumbent upon the petitioner who claims himself to be a "hereditary office-holder" and whose *locus standi* is challenged, to prove that there existed a well established rule of descent or a well-recognised mode of succession to the office

in question. The definition prescribes two modes, namely, that such an office must be one which devolves from one incumbent to another according to the hereditary right or by nomination.

(27) The abovementioned definitions were the subject-matter of interpretation in many decisions and there is a long chain of authorities holding that a person considering himself as a "hereditary office-holder" must show that not only he but his predecessor too had come into that office by a well-recognised rule of descent.

(28) Shri Tewari has strongly relied on a decision of the Lahore High Court in *Dial Singh* v. *Gurdwara Sri Akal Takhat* (8) wherein, after quoting the definition of "hereditary office", the Bench observed as follows :—

> "This does not contemplate that the office should have devolved on the applicant himself according to hereditary right or by nomination, as aforesaid, but what it means is that the office should have devolved on the person, who was holding it on the first day of January, 1920 (whether he be the applicant himself or his ancestor or Guru) by hereditary right or by nomination."

(29) The reading of the whole judgment would show that the above passage is really sought to be read by Mr. Tewari out of its context. These observations in fact were made to repel an argument that the person presenting the petition must be one upon whom the hereditary office had devolved on the prescribed date, i.e., January 1, 1920. This authority is no warrant for the proposition that ti is sufficient for the incumbent to show merely that on the prescribed date he was holding the office by hereditary right irrespective of the earlier modes of descent. This would be apparent from the subsequent part of the paragraph above quoted, which is in the following terms :

> "The wording of clause (iv) section 2(4) is plain and explicit and cannot possibly bear the interpretation sought to be put on it by the respondent. The allegation on behalf of the plaintiff is that his ancestors held the office of a Manager and a lamberdar of Sri Akal Takhat from the time of the Mughal Emperors, that succession has all

(8) A.I.R. 1928 Lah. 325.

along devolved in the male line from father to son and that, on the 1st day of January, 1920, his father Sunder Singh was the holder of this office. If he succeeds in proving these allegations, there can be no doubt whatever that Sundar Singh was an hereditary office-holder as defined in the act."

(30) Reference may usefully be made to *Gurdial Singh* v. *Central Board and Local Committee, Sri Darbar Sahib Amritsar* (9) wherein their Lordships held as follows :—

"The Legislature has purposely refrained from prescribing a particular mode of descent, the only limitation which it has laid down being that the person who held the office on the 1st January, 1920, should not have been the first incumbent of the office, but should have succeeded to the office 'by hereditary right or by nomination by the holder for the time being.' It is, therefore, clear that in cases in which special custom, regulating the rule of succession to an 'office' is set up by the claimant and it is alleged that succession had devolved according to that custom on the person who held it on 1st January, 1920, and the opposite party doubts the existence of such custom, the tribunal is bound to frame an issue on the point and try it in the ordinary way."

(31) In this very judgment, their Lordships had noticed that the definition of "hereditory office-holder" did not prescribe any particular rule of inheritance and consequently was to be determined in each case as to what was the prevailing rule of descent. Their Lordships then illustrated by giving the following instances for proving such a rule of descent :—

"To take a few examples, in some Gurdwaras the rule of primogeniture may be recognised, in others succession may be according to the personal law. To some offices females may be eligible to succeed, while they may be excluded from others. In some shrines minority might be a bar to succession, the adult male member of the family being preferred as the fittest person to perform the religious

(9) A.I.R. 1928 Lah. 337.

duties pertaining to the office, in others the minor heir may be permitted to succeed and have the duties performed through a duly qualified Sarbrah. In all such cases succession devolves by hereditary right, though the mode of hereditary descent is different in each case."

(32) Similarly, a Division Bench of this Court in *Shiromani Gurdwara Parbandhak Committee, Amritsar* v. *Mahant Nanak Saran Dass* (10) has held that a consistent rule of descent has certainly got to be established in order to enable the petitioner to come within the definition of hereditary office-holder. In *Mahant Sajan Dass* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar* (11), it was held by a Division Bench on the facts of that case that the petitioner who presented the petition under section 8, had not been able to establish a consistent rule of descent and consequently had failed to prove himself to be the hereditary office holder with the result that the dismissal of his petition was upheld.

(33) It is thus apparent that both on principle and authority, the contention of Shri Tewari, that merely by showing that on the prescribed date the petitioner held the office and, therefore, he was entitled to be declared to be a "hereditary office-holder" must fail. It is, therefore, to be held that the person claiming himself to be a "hereditary office-holder" must allege and prove the consistent rule of descent by which he or his predecessors had come to hold the office on the prescribed date.

(34) The definition of "hereditary office-holder" having been interpreted, I may now advert briefly to the facts of the present case. On October 19, 1962, the State of Punjab issued notification No. 1884—G. P. under sub-section (3) of section 7 of the Act regarding gurdwara Dharamsala Guru Granth Sahib situate within the revenue estate of village Ugoke, District Sangrur, on a petition having been presented by 54 worshippers of the said Gurdwara. The appellant, who was the petitioner before the Tribunal, forwarded two petitions to the State Government for having the said Gurdwara declared not to be a Sikh Gurdwara and both these petitions Nos. 228 and 229 of 1963 were forwarded to the Tribunal for disposal. The Shiromani Gurdwaras Parbandhak Committee, Amritsar (hereinafter referred to as the Committee), appeared in response to the notices

(10) F.A.O. No. 123 of 1964 decided on 12th March, 1970.

(11) F.A.O. No. 2 of 1965 decided on 23rd October, 1969.

sent to it and opposed the petitions filed by the appellant. The appellant in his petitions claimed himself to be a hereditary office holder within the meaning of section 2(4)(iv) of the Act. The Committee in its written statement controverted the stand of the petitioner as hereditary office-holder and averred in the written statement that the petitioner had no *locus standi* to file the petitions. It was further alleged that no custom or usage governing the succession to the Mahantship of the institution having been alleged in the petitions, the petitions, merited dismissal on these pleas. The following preliminary issue was framed in petition No. 228 of 1963:—

> "Whether the petitioner is a hereditary office holder to entitle him to bring the petition under section 8 of the Act ? O.P.P."

(35) In petition No. 229 of 1963, the following further issue, in addition to the issue of *locus standi* of the petitioner, was framed :—

> "Whether the custom or usage of succession to the office of Mahantship in this institution is by nomination of the successor by the Mahant for the time being ? O.P.P."

(36) The Tribunal did not consider it necessary to separately discuss the additional issue framed in petition No. 229 of 1963 as according to the Tribunal, the other issue, which was common to both the petitions regarding the *locus standi* of the petitioner, was comprehensive enough to contain this additional issue and this finding of the Tribunal is not being assailed before us by the learned counsel for the parties. It may be pointed out that petition No. 229 of 1963 is the verbatim copy of the other petition registered at No. 228 of 1963 and the evidence was recorded by the Tribunal with the consent of the parties regarding both the petitions in petition No. 228 of 1963.

(37) In para 2 of the petition, the appellant alleged that he was a hereditary office-holder of the said institution and being more then 21 years old, was entitled to forward this petition to the Government under section 8 of the Act.

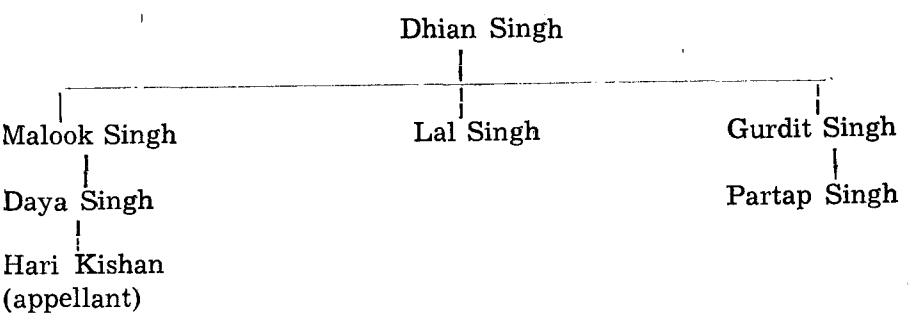
(38) In para 6 of the petition, *it is averred by the appellant that the management of the Institution is from Guru to Chela who is nominated by the deceased Guru and that the petitioner is a duly*

appointed Chela of his deceased Guru. In the written statement, a preliminary objection has been taken that the petitioner is not a hereditary office-holder and thus he has no *locus standi* to file the petitions. It is further averred that the appointment of the Mahant in this institution is in the hands of the villagers and it was denied that there was the custom of nomination by the predecessor Mahant prevailing in this Gurdwara. It was on these pleadings that the issues, which have been referred to above, were framed and the Tribunal having considered the oral as well as documentary evidence led by the parties, came to the conclusion that the petitioner was not a hereditary office-holder and, therefore, the petitions filed by him were not competent and the same were dismissed by the Tribunal by unanimous judgment under appeal.

(39) As regards the evidence led by the parties, the appellant produced Dhana Singh (P.W. 1) and he himself appeared as his own witness as P.W. 2. In addition to this oral evidence, he tendered in evidence Exhibits P. 1 to P. 8 which documents will be referred to in the later part of the judgment and closed his case. The respondent Committee examined Kehar Singh (R.W. 1) and Sher Singh (R.W. 2) and closed its case.

Exhibits P. 1 and P. 2 are the copies of the Shajra Nasab giving the genealogical table of various Mahants of the institution in dispute and from the combined reading of these documents, the following position emerges:—

Dera Baba Dhian Singh under the management of Dhian Singh.



(40) This dera was known as Dera Baba Dhian Singh, and was under the management of Dhian Singh. Shajra Nasab shows that Dhian Singh had three Chelas, namely, Malook Singh, Lal Singh and Gurdit Singh. Gurdit Singh had his Chela Partap Singh, whereas

Lal Singh had no Chela and Malook Singh had Daya Singh as his Chela. Hari Kishan appellant is Chela of Daya Singh. Hari Kishan (P.W. 2) in his statement stated that the first Mahant of this institution was Baba Dhian Singh. He was succeeded by Gurdit Singh who in turn was succeeded by Partap Singh as Mahant of this institution. Lal Singh was the Chacha Guru (Spiritual brother of Gurdit Singh) who succeeded as Mahant after Partap Singh. Lal Singh was then succeeded by Daya Singh. The appellant was appointed as Mahant in Sambat 1987 B.K. and the members of his fraternity attended his installation ceremony after the death of his Guru Daya Singh. It is in the statement of the appellant that he was appointed as Mahant by his fraternity.

(41) In order to clarify the position of the appellant, at the stage of arguments, we specifically put to Shri K. N. Tewari, the learned counsel for the appellant, as to whether the case of the appellant was that he was nominated by the office holder for the time being, but the learned counsel categorically stated repeatedly that the case of the appellant was not that he was nominated by the office-holder for the time being, and it was conceded by him that a part of the definition of the office-holder providing for nomination by the office-holder for the time being, was not applicable to the case of the appellant. The learned counsel contended that the case of the appellant was that the first part of the definition that this office of Mahantship devolved upon him according to the hereditary right, was applicable and it is within the purview of this clause alone that it may be examined whether the appellant has succeeded in satisfying its ingredients.

(42) I have already mentioned that Dhian Singh was succeeded by Gurdit Singh. Gurdit Singh died in the year 1965 B.K. and mutation No. 329, copy of which is Exhibit P. 3, shows that Partap Singh Chela, succeeded to the Mahantship of the Dera. Partap Singh appears to have died very shortly afterwards in the same year, i.e., 1965 BK., and mutation No. 334, copy of which is Exhibit P. 4, was entered in the name of Lal Singh, Chacha-Guru of Partap Singh deceased. This Lal Singh is the same person who is entered as Chela of Baba Dhian Singh, as is clear from the note in the Shajra Nasab, Exhibit P. 4 further shows that there were some other Chelas of Partap Singh and so also Lal Singh had other Guru-Bhais after the death of Partap Singh. In column 15, it was noticed that Lal Singh had, however, taken possession of the properties. The fact of Lal Singh's being in occupation of the properties is again noticed at the

time of sanctioning of the mutation. It thus appears from this document that even in the presence of some Chelas of Partap Singh and some other Guru Bhais of Lal Singh, he had taken possession of the properties of the institution and succeeded to the office of Mahantship on that score rather than on any semblance of a hereditary right.

(43) Exhibit P. 5 would show that Lal Singh during his lifetime gifted away the Mahantship to Daya Singh. Daya Singh admittedly was not the Chela of Lal Singh. The gifting away of the Mahantship was done by a will which had been accepted by Daya Singh. It is clear from Exhibit P. 5 that during his lifetime Lal Singh had put Daya Singh in possession of the properties though this is suggested to be so done for the reasons of his old age. There is nothing on the record to show whether the Guru of Daya Singh, namely, Malook Singh, was alive at that time or whether he had even died earlier when Lal Singh took possession of the properties. Exhibits P. 6 and P. 7 are the mutations which would show that after the death of Daya Singh, the right of succession was hotly contested by two rival contenders, namely, the appellant Mahant Harikishan and one Pritam Singh. The two claimants compromised the matter and agreed to divide the properties.

(44) On these facts, it was contended by Shri Tewari, the learned counsel for the appellant, that the appellant had succeeded in proving that he was a "hereditary office-holder" and was thus competent to file a petition under section 8 of the Act. I am unable to agree with this contention and I entirely agree with the view taken by the Tribunal that the appellant-petitioner has failed to prove himself to be a 'hereditary office-holder". It is well established that each institution is governed by its own usage and custom which must be specifically alleged in the pleadings and proved consistently by cogent evidence. The rule of majority of shrines is no guide and a particular custom of a particular shrine has, therefore, to be alleged and proved. Their Lordships of the Privy Council in *Committee of Management of Gurdwara Panja Sahib and another* v. *Lieutenant Sardar Mohammad Nawaj Khan and others* (12) laid down as follows in the context of the succession to religious endowments :—

> "Ascetics and religious institutions exhibit great diversity of character and Udasis in particular conform to no single type. In any case to presume that a particular Udasi

(12) A.I.R. 1941 P.C. 56.

shrine followed a certain practice because on a count of all religious institutions throughout the province the practice was found to obtain in a majority of the cases is a course of reasoning unwarranted by principle or authority."

(45) Following the above decision, S. R. Das, C. J., in *Pt. Behari Lal and others* v. *Raghu Nath Gir and others* (13), further elaborated the rule and held that there was no general custom of succession governing all religious institutions, and that each institution is governed by its own usage which has to be pleaded in the pleadings and proved consistently by cogent evidence.

(46) From the averment in the petition, it is clear that the management of the institution was alleged to be from Guru to his Chela who is nominated by the deceased Guru. There is no averment in the petition alleging any rule of descent to Chacha Guru or Bhatija-Chela. Similarly, no rule of descent in the absence of a Chela of any incumbent was even remotely suggested nor was any averment made as to what would happen in a case in which there are more than one Chelas living at the time of the death of the Guru who manages the institution.

(47) From the facts which emerge from the evidence and which have been stated above, it is clear that after the death of Partap Singh, even though his Chelas were in existence. Lal Singh, who was the Chacha-Guru, succeeded. Similarly, it is clear from Exhibit P. 4 that Guru-Bhais of Lal Singh were alive but it is not understood as to how Lal Singh succeeded in their presence and on what authority. It appears that he succeeded because he came into possession of the properties. Lal Singh admittedly was not the Chela of Partap Singh. Similarly, Lal Singh during his life time gifted away the Mahantship to Daya Singh, who admittedly was not his Chela. There is nothing on the record to show whether the Guru of Daya Singh, namely, Malook Singh, was alive at that time or whether he had even died earlier when Lal Singh took possession of the properties. The contention that the devolution from Lal Singh to Daya Singh was in accordance with the general custom of succession by Bhatija-Chela from Chacha-Guru and the contention that the succession from Partap Singh to Lal Singh was by Chacha-Guru from Bhatija-Chela and was in accordance with the general custom of succession, is really without any merit. As has been observed earlier,

(13) 1950 P.L.R. 78.

each shrine's custom has to be pleaded and proved. It is nowhere pleaded that this institution followed the General Custom of succession. In any case, the ascertion that the succession by Chacha-Guru from Bhatija-Chela and *vice-versa* is within the rule of succession from Guru to Chela, has been authoritatively negatived by a Division Bench of this Court in *Mahant Sajjan Dass's case* (11) (*supra*). In that case also the rule of succession pleaded was from Guru to Chela subject to the confirmation by the Udasi Bhekh. It was similarly contended in that case that the succession of one Braham Parkash to Kishan Dass to the office of Mahantship was by virtue of his being Bhatija-Chela and was in accordance with the general custom of sucunder :—

> "It has not been proved that Kishan Dass ever nominated Braham Parkash as his Chela. The mutation shows that Braham Parkash succeeded Kishan Dass as Bhatija-Chela. The rule of hereditary right to the office has also not been established to the effect that Bhatija-Chela is entitled to succeed."

On the above findings having been given, it was held that the succession of Bhatija-Chela was not within the rule pleaded.

(48) Furthermore, as has been seen, according to the appellant himself, Daya Singh was his predecessor as Mahant. He nowhere stated that he succeeded to Mahantship in view of any set rule as Pritam Singh also claimed himself to be a Chela of Daya Singh as is clear from the evidence. On the other hand, the appellant clearly stated in his statement that he was appointed as Mahant by his fraternity. It would thus be clear that the succession of the appellant to Mahantship after Daya Singh is not in accordance with any set rule as it is clear, according to the statement of the appellant, he was appointed as Mahant by his fraternity and not according to any set rule. In view of the above discussion, the finding of the Tribunal holding that the appellant has not been able to prove himself as a "hereditary office-holder" has to be affirmed and I accordingly affirm the same. The appellant, therefore, having no *locus standi* to file the petition under section 8 of the Act, his petitions had to be dismissed. Question No. 2 is answered accordingly.

(49) For the reasons recorded above, there is no merit in this appeal and the same is hereby dismissed with costs.

R. S. Narula, C.J.—I agree and have nothing to add.

Tuli, J.—I also agree.

K. S. K.

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