

From this analysis of the section to me it appears clear that both the parties must be present at the passing of the decree and confirm the petition. In addition to that the Court may, if it thinks fit, make any further or necessary enquiries. No such procedure appears to have been adopted in this case, nor the same is borne out from the record. On the other hand it is clear from the records of the case that neither the appellant was personally present at any stage of the case nor was he examined by the Court.

(4) For the reasons recorded above, I allow this appeal and while setting aside the judgment and decree in question, dismiss the petition as incompetent but with no order as to costs.

N.K.S.

Before J. M. Tandon, J.

SEWAK DASS,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 637 of 1977

September 8, 1983.

Sikh Gurdwara Act (XXIV of 1925)—Section 7—Application under section 7(1) by a number of Sikh worshippers—Notification issued by the Government under sub-section (3) of section 7—Notice under section 7(4) to interested parties after the issuance of the notification—Notification—Whether valid—Notification issued long after the compliance of sub-sections (1) and (2) of section 7—Whether could be quashed on the ground of delay.

Held, that there is nothing in sub-section (4) of section 7 of the Sikh Gurdwaras Act, 1925 to suggest that service of the notice in terms thereof could be effected on the interested party only after publication of the notification under section 7(3). Thus, where the notice was served on the interested party before the publication of the notification the latter cannot be said to be invalid.

(Para 3)

Held, that under sub-section (3) of section 7 of the Act it is obligatory for the State Government to issue and publish a notification after the compliance of the provisions contained in sub-sections (1)

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and (2) have been made. The State Government does not stand absolved from its responsibility to issue the notification if it has not done soon after the compliance under sub-sections (1) and (2) of section 7 has been made. The words "as soon as may be" are advisory or directory in nature and in view of the provisions contained in sub-section (5) of section 7, the ground of delay in issuing or publishing the notification under section 7(3) for assailing it is not available.

(Paras 4 and 5)

Amended petition under Articles 226/227 of the Constitution of India praying that the petition may kindly be accepted and a writ of mandamus or prohibition or any other appropriate writ, order or direction be issued; and

- (A) *Impugned notification P-5 to the petition be quashed;*
- (B) *The proceedings before the Sikh Gurdwara Tribunal Under Sections 8 and 10 be quashed and the Tribunal be prohibited from proceeding under sections 8 and 10 of the Act;*
- (C) *Any other relief to which the petitioner is found entitled may be granted;*

P. K. Palli, Advocate, for the Petitioner.

Narinder Singh, Advocate, for Respondents Nos. 2 and 3.

JUDGMENT

J. M. Tandon, J.

(1) On February 10, 1960, 59 Sikh worshippers filed an application under section 7(1) of the Sikh Gurdwaras Act, 1925 (hereinafter the Act) in relation to a religious institution known as Dera Bairooni in village Kot Duna, Tehsil Barnala, District Sangrur. The State Government thereafter issued a notification under section 7(3) of the Act which was published on April 21, 1961. The notification was withdrawn (or cancelled) in 1964. The Shiromani Gurdwara Parbandhak Committee (hereafter called the S.G.P.C.) then filed a suit under section 28 of the Act for possession of the property of the same institution against Mahant Ram Dass in March, 1964, which was dismissed by District Judge, Barnala,—*vide* order, dated May 15, 1964 (P.2) on the ground that Mahant Ram Dass was dead since before the filing of the suit. The S.G.P.C. then again filed another

suit under section 28 of the Act against Mahant Naranjan Dass which was dismissed by District Judge, Barnala,—*vide* order, dated October 13, 1964 (P. 4) as withdrawn. The State Government issued another notification under section 7(3) of the Act on July 13, 1976, which was published on July 19, 1976. The petitioner claiming to be a Mahant of the institution has assailed this notification under section 7(3) of the Act in the present writ.

(2) The learned counsel for the petitioner has argued that the notification under section 7(3) of the Act issued and published in July, 1976 (hereinafter the Notification of 1976) is liable to be quashed on two grounds—(1) the notice in terms of section 7(4) of the Act was served on the petitioner on July 15, 1976, whereas the notification was published in gazette in terms of sub-section (3) on July 19, 1976, and (2) the application of 59 Sikh worshippers under section 7(1) of the Act was filed on February 10, 1960, whereas the impugned notification was issued and published in July, 1976. The impugned notification is highly belated.

Sub-section (4) of section 7 of the Act reads:

“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 as being in 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:

Provided that no such notice need be sent if the person named as being in possession is a person who joined in forwarding the list.”

(3) The notification under section 7(3) of the Act was published in July 19, 1976. There is nothing in sub-section (4) reproduced above to suggest that the service of the notice in terms thereof could be effected on the interested party (like the petitioner) only after publication of the notification under section 7(3). The first ground for assailing the impugned notification, therefore, cannot be sustained.

(4) The notification under section 7(3) was first issued in April, 1961, which was later on withdrawn in 1964. The S.G.P.C. then filed

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suits under section 28 of the Act which were dismissed in 1964, as indicated above. The contention of the learned counsel for the petitioner is that the words "as soon as may be" used in section 7(3) are indicative that the State Government should publish a notification thereunder soon after the provisions contained in sub-sections (1) and (2) of section 7 have been complied with. In view of the fact that the first notification was issued in April, 1961, it stands proved that the compliance of sub-sections (1) and (2) of section 7 had been made earlier to that date. The impugned notification made in 1976 is highly belated and as such is liable to be quashed. This contention is also without merit. Under sub-section (3) of section 7 it is obligatory for the State Government to issue and publish a notification after the compliance of the provisions contained in sub-sections (1) and (2) have been made. The State Government does not stand absolved from its responsibility to issue the notification under section 7(3) if it has not done soon after the compliance under sub-sections (1) and (2) of section 7 has been made. The words "as soon as may be" are advisory or directory in nature. It is, therefore, clear that the impugned notification issued in July, 1976, cannot be quashed on the ground that it is belated.

Sub-section (5) of section 7 reads:

"The publication of a notification under the provisions of sub-section (3) shall be conclusive proof that the provisions of sub-sections (1), (2), (3) and (4) have been duly complied with."

(5) In view of the provisions contained in sub-section (5) reproduced above, the ground of delay in issuing or publishing the notification under section 7(3) for assailing it is not available to the petitioner.

(6) In the result, the writ petition fails and is dismissed with no order as to costs.

N.K.S.