The Indian Law Reports

FULL BENCH

Before Mehar Singh, C.J., Prem Chand Pandit and R. S. Narula, JJ.

MAHANT LACHMAN DASS CHELA MAHANT ISHAR DASS,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

CIVIL WRIT No. 1935 OF 1962.

March 18, 1968.

Punjab Sikh Gurdwaras Act (VIII of 1925)—Ss. 3, 5, 7 to 14, 38 and Schedule I—Constitution of India (1950)—Articles 13, 14, 19 and 26—Classification of Gurdwaras under Schedule I and sections 7 to 14—Whether hit by Article 14—Section 8—Whether ultra vires *Article 14—Ss. 3(4) and 7(5)—Whether unconstitutional—Presumption under S. 3(4)—Whether valid—S. 3(2) and 3(4)—Whether hit by Article 19—Ss. 3 to 7—Whether infringe Article 26—Procedures under Chapter I and Section 38—Discrimination between—If any—Special Tribunal for adjudication appointed under the Act—Whether infringes fundamental right of a person likely to be effected by its wrong decision—Word "Gurdwara" used in the Act—Meaning of—"Gift"—In whose favour can it be made—Attack on the Constitutionality of an enactment—Matters to be considered by the Court—Stated.*

Held, that classification of Gurdwaras enumerated in Schedule I on the one hand and Gurdwaras to be dealt with under sections 7 to 14 of the Punjab Sikh Gurdwaras Act, on the other is based on intelligible differentia having clear nexus with the objects of the Sikh Gurdwaras Act, and does not, therefore, suffer from constitutional inhibition of Article 14.

Held, that section 8 of the Act is not *ultra vires* Article 14 of the Constitution.

Held, that 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.

Held, that except for the requirement of publication of the application and the list filed under section 7(1) in the official gazette, the other provisions of sub-sections (1) to (4) of section 7 of the Act are merely directory. The effect of the operation of sub-section (5) of section 7 is that the Legislature has raised the question of compliance with the said directory provisions beyond the ambit of controversy, and has barred the entertainability of any objection in that regard on proof of publication of the requisite notification in the official gazette. Shutting out of such enquiry about the fulfilment of certain preliminary, inconsequential and non-fundamental requirements not affecting the merits of the claims of an objector does not infringe Article 14 of the Constitution. Sub-section (5) of section 7 of the Act is, therefore, *ultra vires* and not unconstitutional.

Held, that the conclusive presumption raised under sub-section (4) of section 3 regarding compliance with the requirements of sub-section (1) to sub-section (3) of section 3, is also valid and constitutional, and does not violate Article 14 of the Constitution.

Held, that 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.

Held, that sections 3 to 7 of the Act do not infringe Article 26 of the Constitution, and are, therefore, perfectly valid and *intra vires* the Constitution.

Held, that there is no discrimination between Gurdwaras which are likely to become the subject-matter of litigation under section 38 of the Act on the one hand and those which are likely to be dealt with under Part I of the Act on the other as the two sets of provisions do not cover the same field and are not parallel. Section 38 can be invoked only in respect of the Gurdwaras in respect of which no declaration of being Sikh Gurdwara has been made under Part I, and only after the expiry of the period of one year during the course of which Part I proceedings can be initiated.

Held, that no complaint about infringement of fundamental rights can be made on the ground that the statute provides for adjudication by a Tribunal, the wrong decision of which may affect the property rights of the claimant.

Held, that the word "Gurdwara" used in some of the provisions of the Act has reference to the "institution" comprising the "purpose" or "ideal" which owns all the property of the Gurdwara and not in the mundane sense implying the mass of earth, and the brick and mortar thereon, which is the physical place of worship in which Guru Granth Sahib may be installed.

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Held, that gift or dedication of property can normally be made only in favour of a living or juristic person or in favour of an institution or corporation irrespective of whether such institution or corporation is a juristic person or not, but never in favour of another corporal or tangible property unless such physical property is itself impressed with a juristic personality.

Held, that a statute is presumed to be valid and constitutional, and the burden of proving that it is not so lies on the person who makes an allegation to that effect. The Court will always lean towards the constitutionality of a legislative enactment. A writ petitioner or the claimant must place before the Court the entire material on the basis of which he claims the provision of an enactment to be violative of Article 14 and cannot ask for any provision being struck down on assumed facts which are neither alleged nor proved. In order to repel an attack under Article 13 of the Constitution against any statutory provision, the Court is entitled to obtain relevant guidance (i) from preamble of the Act, (ii) from the surrounding circumstances which necessitated the legislation, (iii) from the well-known facts of which Court might either take judicial notice, or of which it is appraised by evidence in the form of affidavits or otherwise, (iv) from the legislative proceedings relating to the discussion of the Bill which was ultimately passed in the form of the Statute in question for the proper understanding of the circumstances under which the Act was passed, and the reason which necessitated it, (v) from the statement of objects and reasons for the enactment of the statute for ascertaining the conditions prevailing at the time of the impugned classification, (vi) from the history which lies behind the enactment, (vii) from the prior state of the law and the evil sought to be eradicated, (viii) from the process by which the law was evolved, and (ix) from such other material which may be reasonably deemed by the Court to be admissible for the purpose of testing the validity of the impugned statutory provisions.

Case referred by the Hon'able Mr. Justice R. S. Narula on the 9th August, 1966 *to a Division Bench for decision of an important question of law involved in the case. After considering the importance of the question of law involved in the case, the Division Bench consisting of Hon'ble the Chief Justice Mr. Mehar Singh and the Hon'ble Mr. Justice P. C. Pandit further referred the case to a Full Bench on 30th October,* 1967. *The case was finally decided by a Full Bench consisting of the Hon'ble Chief Justice Mr. Mehar Singh, the Hon'ble Mr. Justice P. C. Pandit and the Hon'ble Mr. Justice R. S. Narula, on the 18th March,* 1968.

Petition under Articles 226 *and* 227 *of the Constitution of India, praying, that an appropriate writ, order or direction be issued, declaring the provisions of the Punjab Sikh Gurdwara Act continued in Sections* 3 *to* 11, 14 *and* 38 ultra vires

of the Constitution, void and of no effect and the notification issued by respondent No. 1 be quashed.

D. C. GUPTA, M. R. MAHAJAN, K. R. MAHAJAN, I. K. MEHTA AND J. V GUPTA, ADVOCATES, for the Petitioner.

GOPAL SINGH, ADVOCATE-GENERAL (PUNJAB), R. K. GARG, B. S. KHOJI AND G. S. AULAKH, ADVOCATES, for the Respondents.

ORDER OF THE FULL BENCH

NARULA, J.—Four connected petitions (C.W. 1935 of 1962—*Mahant Lachhman Dass* v. *State of Punjab, etc.*, C.W. 1198 of 1964—*Pritpal Singh* v. *State of Punjab, etc.*, C.W. 1925 of 1964—*Mahant Gurmukh Singh* v. *State of Punjab, etc.*, and C.W. 514 of 1966—*Mahant Dharam Dass* v. *State of Punjab, etc.*) under Articles 226 and 227 of the Constitution of India involving common questions relating to the constitutionality of some provisions of the Sikh Gurdwaras Act (Punjab Act 8 of 1925), as adapted and amended up to date, will be disposed of by this judgment.

All these cases have arisen on account of and consequent upon the extension of the provisions of the Sikh Gurdwaras Act, 1925 (hereinafter called the Act) to the territories of the erstwhile Patiala and East Punjab States' Union by Sikh Gurdwaras (Amendment) Act (1 of 1959). Each one of the disputed places of worship to which these cases relate is situated in the erstwhile PEPSU territory. The brief facts of these cases leading to the hearing by the Full Bench may first be noticed.

Civil Writ 1935 of 1962 relates to Gurdwara Sahib Pinjore Padshahi Paihli situate in Pinjore, tehsil Kandaghat, which was in 1962 in the district of Patiala. By the subsequent reorganisation of Punjab in November, 1966, Pinjore has become a part of the State of Haryana. The Gurdwara in question is listed at item 249 in the first schedule to the Act. On the filing of an application under section 3(1) of the Act claiming all the rights, title and interest in the Gurdwara as well as in the immovable properties attached thereto, the State Government published notification No. 756-G.P., dated May 24, 1960, under sub-section (2) of section 3 of the Act declaring the Gurdwara to which the application related as Sikh Gurdwara, and also published a consolidated list of rights, title and interest claimed to belong to the Sikh Gurdwara by a separate notification. Mahant Lachhman Dass, petitioner, sent an application (Annexure 'A' to the writ petition) to the State Government claiming all the rights, title and interest in the property covered by the

abovesaid notifications expressly leaving out of his claim the shrine, i.e., Gurdwara itself. The State Government forwarded the notification to the Sikh Gurdwara Tribunal (respondent No. 3 in this case, hereinafter referred to as the Tribunal) for disposal. The Tribunal refused to frame any issue on the question whether the Gurdwara itself was a Sikh Gurdwara or not, in view of the provisions of sub-section (4) of section 3 of the Act. The petitioner subsequently submitted an application, dated September 11, 1962 (Annexure 'B' to the writ petition) for amending his original petition with a view to incorporate therein a plea about the Government's notification under section 3(2) of the Act, and the relevant provisions of the Act itself being *ultra vires* and violative of the fundamental rights of the petitioner, and for framing a separate issue in that behalf. The application of the petitioner was rejected by the order of the Tribunal, dated September 27, 1962 (Annexure 'C' to the writ petition) on the ground that the controversy before the Tribunal related to a residential building and some agricultural land which were being claimed by the petitioner as his property and by the Shiromani Gurdwara Parbandhak Committee (respondent No. 2 in the case) as belonging to the notified Sikh Gurdwara and that the new plea sought to be raised by the petitioner was not germane to the enquiry in controversy. The Tribunal further held in its said order that the plea as to the alleged unconstitutionality of the Act was not entertainable by it. Thereupon the present writ petition (C.W. 1935 of 1962) was filed by the petitioner to have the provisions of sections 3 to 11, 70 and 73 of the Act declared unconstitutional. On merits, the case of the petitioner is that he is an Udasi Faqir, and that the place of worship in question is of Udasi sect, the members of which are not Sikhs. The writ petition has been contested by respondent No. 2 on the one hand and respondents Nos. 1 and 3 on the other by separate returns. By my order, dated August 9, 1966, in Civil Miscellaneous 2924 of 1966, it was directed that subject to the orders of my Lord the Chief Justice, the writ petition may be heard by a Division Bench. When the petition was heard by a Division Bench comprising of my Lord the Chief Justice, and my Lord Pandit, J., along with writ petitions Nos. 1198 and 1925 of 1964, all the three cases were by order of the Bench, dated October 30, 1967, directed to be heard by a Full Bench in view of the matter being of considerable importance, and because of the further fact that Civil Writ 514 of 1966, had, at the time of its admission by Falshaw, C.J., and Mahajan, J.; been ordered to be heard by a Full Bench.

In Civil Writ 1198 of 1964 (*Pritpal Singh* v. *State of Punjab and the S.G.P.C.*), the dispute relates to the alleged place of worship known as Gurdwara Guru Granth Sahib situate in the revenue estate of Chhajli, tehsil and district Sangrur, entered at No. 304 in Schedule I to the Act. On the inclusion of the said Gurdwara in Schedule I and consequent upon an application under section 3(1) of the Act, the Punjab Government issued notification No. 64, dated December 24, 1959, (This date is taken from paragraph 3 of State's return, though the petitioner has erroneously described the notification to be of January 15, 1960), under sub-section (2) of section 3, publishing the list of the property claimed on behalf of the said Gurdwara. This list included what is claimed by the petitioner to be his residential house and land. The petitioner did not file any claim. His case is that no notice was issued to him. The State Government, thereupon, issued notification No. 2811, dated December 21, 1960, under sub-section (3) of section 5 of the Act declaring that nobody had put in a claim pertaining to the said property, and that, therefore, the claim of the Gurdwara in respect thereof was undisputed. (Petitioner has given 20th November, 1960 as this date of the Notification). Simultaneously the State Government published a notification under sub-section (2) of section 3 of the Act declaring the aforesaid place to be a Sikh Gurdwara.

The Shiromani Gurdwara Parbandhak Committee, Amritsar, referred to in this judgment as the S.G.P.C., filed a suit under section 28 of the Act for possession of the building of the Gurdwara in dispute, and the land measuring 267 Bighas and 5 Biswas attached thereto, i.e. for possession of the property which is claimed by Pritpal Singh petitioner being exclusively owned by him, in the Court of the District Judge, Sangrur. It was during the pendency of the suit that Civil Writ 1198 of 1964 was filed by Pritpal Singh in this Court on June 17, 1964, claiming that the notifications of the State Government under sections 3(2), 5(1) and 5(3) were null and void and liable to be quashed as the petitioner had never been served with any notice of the proceedings by the State Government and the petitioner had never been afforded an opportunity to contest that the institution entered at item No. 304 in schedule I to the Act as "Gurdwara Guru Granth Sahib" at Chhajli, district Sangrur, was in fact not a Gurdwara, but was the private property of the petitioner. It is also claimed in the writ petition that sections 3 to 11 and 28 of the Act are void and *ultra vires* Articles 14, 15, 19, 26 and 31 of the Constitution, and otherwise *ultra vires* the Constitution. The petitioner has prayed for the aforesaid provisions of the Act

being declared unconstitutional and for stay of the proceedings of the suit under section 28 of the Act in the meantime. Bedi, V. J., passed an interim order during the summer vacation on June 26, 1964, to the effect that no final order may be passed by the civil Court in the suit of the S.G.P.C. till the motion hearing of the writ petition. The stay order was directed to continue by the Motion Bench (Dua and Mahajan, JJ.) at the time of issuing rule in the main case on August 27, 1964. The State of Punjab has filed a return admitting the material facts, but denying the claim of the petitioner as to the unconstitutionality of the relevant provisions of the Act. On an application of the S.G.P.C., dated October 20, 1966 (C.M. 3937 of 1966), it was directed on October 25, 1966, that this writ petition may also be heard by the Bench hearing Civil Writ 1935 of 1962, as the same points were involved for adjudication in both the cases. When the case came up for hearing before the Division Bench, it was also referred to a Full Bench by the same order of reference, dated October 30, 1967.

In Civil Writ 1925 of 1964, Mahant Gurmukh Singh has claimed that Gurdwara Sahib Deva Singh Wala near Railway Station, Patiala, is housed in a room in a piece of land measuring 50 Bighas which had been set apart by Sardar Deva Singh, President of the Council of Regency, during the minority of Maharaja Rajinder Singh of the erstwhile Patiala State for the purposes of Smadh of his family and that the property being situate near the railway station he also made some arrangement for the stay of travellers in this place. The land revenue of this land was later remitted by the orders of the Maharaja, Patiala, and a monthly allowance of Rs. 42 was fixed by the then Maharaja for the institution. He has then referred to the history of descent of the Mahant at the alleged Smadh from Guru to Chela and the cremation of the members of the family of late Sardar Deva Singh in the said land and the erection of their Smadhs therein from time to time. Twenty Bighas of land out of the said property were acquired by the Patiala State Government for which a sum of Rs. 35,000 (paragraph 7 of the State's return) is lying in the Patiala State treasury as the amount claimed by the Gurdwara. (According to the petitioner a sum of Rs. 25,760 was determined to be payable as compensation for the acquired land of the Gurdwara). The mutation entry of the land which is alleged to have existed in the name of the Mahant till 1946, was later cancelled and entered in the name of a Committee, but the petitioner succeeded in having the same re-entered in his name by order of

the Financial Commissioner, dated October 22, 1959. It is then alleged that when in the Sikh Gurdwaras (Amendment) Bill, 1958, published in the *Punjab Government Gazette, Extraordinary,* dated March 28, 1958, the said property was listed at item No. 319 of the schedule attached to the bill under the description "Gurdwara Padshahi Naumi, Dhamtan' district Sangrur, along with Bunga Dhamtanian, near Railway Station, Patiala", the petitioner and some other persons raised objections against the said entry, whereupon only "Gurdwara Padshahi Naumi" at Dhamtan was included at serial No. 314 in the schedule attached to Amending Act No. 1 of 1959, and the description "at Dhamtan along with Bunga Dhamtanian near Railway Station, Patiala" was left out. The petitioner is aggrieved by a subsequent amendment made by section 7 of the Sikh Gurdwaras (Second Amendment) Act 10 of 1959, whereby the words "along with Bunga Dhamtanian", etc., were added to entry No. 314 in the first schedule to the Act. On an application of the S.G.P.C. filing a list of the said Bunga, etc., the Punjab Government issued notification under sub-section (2) of section 3 of the Act giving a complete list of the lands and buildings of the said Gurdwara wherein the property claimed by the petitioner was also included. The petitioner's application under section 5 of the Act claiming the said property to be his own was forwarded by the State Government for disposal to the Tribunal. Before the Tribunal, it was pleaded by the S.G.P.C. in reply to petitioner's application that the Tribunal had no jurisdiction to decide the question whether the institution managed by the petitioner was or was not a Sikh Gurdwara as the institution had been entered in the list of Gurdwaras in Schedule I. The Tribunal accepted the plea of the S.G.P.C. and declined to go into the matter. Thereupon the petitioner came to this Court by way of Civil Writ 1925 of 1964, on September 9, 1964, claiming that the inclusion of his property in Schedule I of the Act by section 7 of the Amending Act 10 of 1959, was illegal and *mala fide,* that the State Government had no authority to treat a private institution as a Sikh Gurdwara and that the provisions of the Act in so far as they authorised the State Government to declare certain institutions as notified Sikh Gurdwaras were *ultra vires* Articles 14 and 19 of the Constitution. At the time of issuing rule in the case on September 11, 1964, the Motion Bench (Dua and Mahajan, JJ.) stayed further proceedings before the Tribunal. Respondents Nos. 1 and 2 (the State and the Tribunal) have filed a joint written statement contesting the petition. On the application of the S.G.P.C., dated October 20, 1966 (C.M. 3936 of 1966), this petition was also ordered to be heard with Civil Writ 1935 of 1962 by order of Gurdev Singh,

J., dated October 25, 1966. It was heard by the Division Bench and referred to Full Bench by the same order, dated October 30, 1967.

The fourth petition (Civil Writ 514 of 1966) has been filed by Mahant Dharam Dass, an Udasi Sadh, claiming himself to be a Mahant of the Dera Udasi Sadhan situated in the revenue estate of village Nanhera, tehsil and district Patiala. He has claimed that the management and control of the Dera has all along been with the Udasi Bhek which is a religious denomination distinct from the Sikhs. By notification, dated February 17, 1961, under section 7(3) of the Act, issued on an application by the alleged fifty or more Sikh worshippers submitted to the Punjab Government under section 7(1) of the Act, the application and the list were published. (Copy of the notification is Annexure 'A' to the writ petition.) It is claimed by the petitioner that no notice of the application of fifty or more Sikhs was served on the petitioner, and that a notification under section 7(4) was issued, of which a copy was endorsed to him on March 2, 1961 (Copy Annexure 'B' to the writ petition) without the petitioner having been heard to contest the application under section 7(1) of the Act, and to show that in fact the persons who made the application under section 7(1) were neither fifty in number nor Sikhs nor worshippers of the institution in dispute, and they were also not of the requisite age or residents of the relevant police-station. The petitioner forwarded his application under section 8, dated March 13, 1961 (copy Annexure 'C') to the Government, wherein he included his objections against the application under section 7(1). His application was forwarded by the Government to the Tribunal. The Tribunal did not frame any issue relating to the objections against the *locus standi* of the applicants under section 7(1). Petitioner's application to the Tribunal for being permitted to raise those objections and for being permitted to challenge the validity of the notification of the Government having been dismissed by the order of the Tribunal, dated February 1, 1966 (copy of the application being Annexure 'D' and that of the order of the Tribunal being Annexure 'E' to the writ petition) the petitioner came to this Court with petition, dated March 15, 1966, impugning the relevant provisions of the Act as being violative of Articles 19 and 26 of the Constitution. The Moion Bench (Falshaw, C.J., and Mahajan, J.) admitted the petition to a Full Bench on March 17, 1966.

This is how all these four writ petitions came up for hearing before this Full Bench. In order to appreciate and deal with the

arguments advanced before us on behalf of the parties, it is necessary to take a bird's eyeview of the historical background leading to the passing of the 1925 Act, and to notice the scheme and relevant provisions of that Act as also the relevant provisions of the subsequent amending Acts.

The glimpses of historical background relating to administration of Sikh Gurdwaras hereinafter referred to are based on the authentic account thereof given by Professor Ruchi Ram Sahni a well-known historian of late 19th and early 20th century in his book captioned "Struggle for Reform in Sikh Shrines" published by the Sikh Ithas Research Board. At page 114 of his compilation, the author writes:—

> "During the time of the Sikh Gurus themselves, the Gurdwaras were either under their direct supervision and control or under their Masands (missionary agents). After the tenth Guru, when the Panth (community) was recognised, as a matter of doctrine, as the corporate representative of the Guru on earth, the conduct of the Gurdwaras naturally passed into the hands of the Panth and was exercised through Granthis and other Sewadars (incumbents) who were under the direct supervision of the local Sangats (congregations)."

"In Maharaja Ranjit Singh's time Sikhism became the State religion. Large estates were attached to the more important Gurdwaras though some Jagirs had also been granted by the more liberal among the Mughal Emperors.—Throughout the pre-British times the Sangats (congregations) were supposed to be in charge of the Gurdwaras. They exercised the right to punish any one who happened to transgress the social and religious injunctions of the faith". (From page 9 of the book).

The condition of the Gurdwaras on the advent of the British rule is described by the learned author at pages 115 and 116 in the following words :—

> "After the establishment of the British rule (1849), a radical change came about in the legal position of the Mahants in respect of the Gurdwaras. The new law in its practical working converted the Mahants, who were mere servants of the Panth, into virtual proprietors of the temples. Being no longer responsible to the community, the

> Mahants began to misappropriate the income of the Gurdwaras to their private use and alienate or sell the trust property at will. Irresponsibility and wealth inevitably resulted in immorality and the places of worship became the haunts of evil men. In these circumstances the first thought of the Sikhs was to recover control of their Gurdwaras through the law Courts, but it was not very long before they came to realize the difficulties of the new situation in which they found themselves. To the dilatory procedure of the Courts and the heavy expenses involved in litigation was added, as they now realised, the unsympathetic attitude of the Government. The officials were reluctant, they came to believe, to see the Gurdwaras pass into the hands of the Panth because nothing was likely to consolidate them so much and make them into a compact and powerful body as the control and supervision of their holy places. Round the Holy Granth and the Gurdwaras revolved the social and religious life of the whole community."

Referring to the beginning of 1919 to 1922 period, Professor Sahni states that "with rapid spread of Mahatma Gandhi's National Movement, the Sikhs were as much affected as the other communities, though their activities found their main outlet in religious rather than political awakening. At this time, the chief shrines of the Sikhs such as the Golden Temple, the Akal Takht, Tarn Taran Sahib, Baba Atal was entirely in the hands of the Government. The remaining sacred places of pilgrimage and Gurdwaras with an income of lacs of rupees were in the possession of Mahants, who by the operation of section 92, Code of Civil Procedure, had become indifferent to public opinion and entirely dependent upon the wishes of the Government. Some Mahants had become Honorary Magistrates, Kursi Nashins, Darbaris, title-holders, nominated members of Municipalities and notified areas. Most of them being unmarried and having large revenue at their disposal, without any responsibilities to the public or the slightest check or supervision on their movements and activities, squandered their huge resources in unworthy objects and not a few of them lost their characters. It is true that these vices are common to places of worship of all denominations. But as the Gurdwaras in the Punjab are visited as the places of pilgrimage by large number of Sikhs, and specially as many of them are intimately associated with the life work of the Gurus

and other heroes and martyrs, the Sikh feel the humiliation more keenly than the other communities do. They find it very difficult to put up with the pollution of their shrines taking place every day under their very eyes." (Page 60).

Reference is then made in the book to the Pujaris acting contrary to Sikh tenets by refusing to accept even offerings made by Sikhs who had been baptised from low classes (which were at that time known as the untouchables). The Sikhs resented this and insisted on Parshad offered by the low caste converts being accepted. In July, 1920, a large number of Sikhs took such low caste converts with them to the Golden Temple, Amritsar, and accepted and distributed the Parshad brought by them. The Pujaris did not tolerate this and had to go out. The Pujari at Akal Takht, on coming to know of this, himself left the Gurdwara. The Sikhs thus came into possession of the Golden Temple and Akal Takht. In January, 1921, the Gurdwaras at Tarn Taran also came under the control of the Sikhs. At that time "it was thought advisable to organise on a thoroughly representative basis a responsible Committee to manage the Gurdwaras. On coming to know of this, the Government at once constituted, through the Maharaja Patiala, a committee of 36 gentlement to devise plans for the better management of the Gurdwaras. The Sikh community interpreted this as undue interference with their wishes and intentions. They at once summoned a big gathering of men of all shades of opinion at Amritsar to consider the situation. By a method of rough selection, a committee of representatives of all schools of thought and opinion was formed under the name of a Shiromani Gurdwara Parbandhak Committee." (Pages 62-63 of the book).

At about that time the Shiromani Gurdwara Parbandhak Committee decided to take necessary steps with a view to improving and reforming the management of the Gurdwara at Nankana Sahib (the birth place of Guru Nanak). They issued a notice convening a congregation (Diwan) to be held at Nankana Sahib on the 4th and 5th March, 1921. Before the Diwan could be held, the Mahant, probably apprehending some interference with his management, began to fortify the Janam Asthan Gurdwaras. (Page 63). We are not concerned with the details of the blood curdling events which happened at Nankana Sahib on February 21, 1921, when a Jatha of Sikh worshippers who went to the shrine known as Janam Asthan (place of birth of Guru Nanak) was locked in the Gurdwara by the Mahant and was mercilessly butchered with the help of hired

assassins and the half-dead Sikhs were burnt alive. The Mahant and the hired assassins including 26 Pathans were arrested by the Government. The management of the Gurdwara was taken over for some time by the military and the police. After the withdrawal of the military and the police, the management was handed over to the "Khalsa Panth". The Governor and others went to Nankana Sahib. On March 3, 1921, Mahatma Gandhi and some other national leaders visited Nankana Sahib and condemned the brutal action of the Mahant. Subsequently a large number of Akalis were also arrested. During the pendency of the cases against them, the Government introduced its first Gurdwara Bill "and tried to rush it through the Council, but the S.G.P.C. refused to accept any bill so long as their leaders and other Akalis, who had been unjustly arrested, were not set free. The Government refused to recognise the representative character of the S.G.P.C. The committee, for various other reasons, finding its position somewhat weak, framed a constitution on a strictly elective basis, dissolved itself and made arrangements for its re-election. The election was thrown open to all Sikhs from Karachi to Kashmere and from Peshawar to Delhi by free voting. By July, 1921, a new Committee had been elected. With its representative character, its influence and prestige also increased." (Page 67 of the book). In the meantime the S.G.P.C. had been duly registered on April 13, 1921, under the Societies Registration Act, 1860.

After referring to the forcible taking of the keys of the Golden Temple by the Government from the S.G.P.C. and the arrest of a large number of Sikhs and their subsequent release and the handing back of the keys to the leaders of the Sikh community on January 20, 1922, and the re-opening of negotiations between the Government on the one hand and the S.G.P.C. on the other, the author proceeds to write :—

> "On the third April (1922), the Government again invited the S.G.P.C. to take part in the drafting of the Gurdwara Bill. On the 5th April, 1922, an extraordinary meeting of the General Committee of the S.G.P.C. met at Akal Takht to consider the general situation. The reports of maltreatment and torture of Akalis from the different parts of the Punjab and the States of Patiala and Kapurthala were presented before it. By a unanimous resolution the S.G.P.C. refused to co-operate with the Government or to discuss with them the proposed Gurdwara Bill under the circumstances deliberately created by the Government". (Pages 71-72).

It was in the above-mentioned background and in the wake of the Guru-ka-Bagh Morcha wherein hundreds of non-violent and peaceful Sikhs were mercilessly beaten by the police from day-to-day during August and September, 1922, that the first official Gurdwara Bill was introduced in the Punjab Legislative Council by Sir Fazil-i-Hussain on November 7, 1922, at the instance of the British Government and against the wishes of the Sikh community. Professor Ruchi Ram Sahni writes in his book in this connection :—

> "It is a noteworthy fact that the Gurdwara Bill introduced in the Legislative Council by Sir Fazil-i-Hussain was framed in defiance of the desires and opinion of even the moderate sections of the Sikhs who were then on the Legislative Council. They, therefore, refused to serve on the Select Committee, four of them who were actually named did not attend a single meeting and the fifth Bawa Hardit Singh Bedi". (Page 151).

The Sikh Gurdwaras and Shrines Bill received the assent of the Governor on the 24th of November, 1922, and of the Governor-General on the 8th of December, 1922. Thus it became the Sikh Gurdwaras and Shrines Act No. 6 of 1922, and was published as such in the *Punjab Gozette*, dated December 22 in that year. The preamble of the Act was in the following terms :—

> "Whereas it is expedient in connection with certain Sikh Gurdwaras and shrines to provide, in cases of dispute, for their administration and management, and to make an inquiry into matters connected therewith, and whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80-A of the Government of India Act; it is hereby enacted as follows :—.....".

In the interpretation clause, i.e., in sub section (3), (4) and (5) respectively of section 2 of the 1922 Act, "Gurdwara", "shrine" and "disputed Gurdwara or shrine" were defined as follows :—

> "(3) "Gurdwara" means a Sikh place of public worship erected by, or in memory of, or in commemoration of any incident in the life of any of the Ten Sikh Gurus.
>
> (4) "Shrine" means a Sikh place of public worship erected in the memory of a Sikh Martyr or Sikh Saint.

(5) "Disputed Gurdwara or shrine" means a Gurdwara or shrine in respect of which a declaration has been made under section 3."

Section 3 of the Act provided for the Local Government to declare by a notification any particular Gurdwara to be a disputed Gurdwara or shrine if the Government was satisfied that a dispute had arisen or was likely to arise with respect to the administration or management of, or succession to any office in, or the title to any property belonging to such Gurdwara or shrine. Section 3 further provided that such a declaration made under that provision would remain in force for a period of one year which could be extended by the Local Government from time to time subject to the extension in aggregate not exceeding one year. The effect of declaration under section 3 was two-fold as provided in section 4, namely :—

(i) upon a declaration having been made under section 3, the Gurdwara or shrine in respect of which it might be made would be deemed to have been attached by the Local Government; and

(ii) the Board of Commissioners which was to be appointed by the Government under the Act would assume the administration and management of the Gurdwaras or shrines in respect of which such a declaration might have been made and exercise such powers and perform such duties as may be conferred upon the Board of Commissioners by the Act, in respect of the said Gurdwara or shrine.

Section 5 gave the method of appointment of Commissioners, i.e., one to be nominated by the Local Government representing the Sanatan School of Sikh thought, one to be selected by the S.G.P.C., and the third was to be nominated by the Sikh members of the Punjab Legislative Council. The term of office of the Board consisting of the three Commissioners appointed in the above-said manner was to be two years as provided by section 6. The Board of Commissioners was authorised by section 12 to appoint a manager or a Committee of management for any disputed Gurdwara or shrine and to designate such manager or Committee and to delegate the Board's powers or duties to such manager or Committee. Section 13 authorised the Board to appoint such officers and servants

as may be necessary for the general administration of all the disputed Gurdwaras and shrines or of any particular one out of them.

Authority to take possession of any Gurdwara or shrine declared under section 3 was conferred on the Board by sub-section (1) of section 15. Sub-section (3) of that section authorised the Board to investigate any claim or objection which might be made by anyone objecting to the possession of the property being taken by the Board on the ground that the property in question did not belong to the disputed Gurdwara or the shrine. The decision of the Board on such a disput was made final, but finality was attached to it only for the period during which the declaration under section 3 of the Act remained in force, and was subject to the result of any suit that might have been brought in accordance with the provisions of the Act. Section 16 conferred on the Board the power to manage and administer any disputed Gurdwara or shrine in the same way as a Receiver appointed under the Code of Civil Procedure could manage the same. Duty to provide for the conduct of religious or charitable functions, ceremonies and observances in the disputed Gurdwara or shrine was also cast on the Board of Commissioners under section 17. Section 20 of the Act provided tha t when a declaration made under section 3 ceases to be in force, all arrangements made by the Board under sections 12 to 16 and 18 would, so far as they could be carried out in the absence of the Board, continue to be in force until altered (i) by the consent of the parties to the dispute, or (ii) by the order or decree of a Civil Court. Procedure for recording settlement between parties to a dispute relating to a disputed Gurdwara or shrine was laid down by section 21. Section 22 barred the institution of any suit in any civil or revenue Court in respect of any matter connected with such a Gurdwara or shrine in respect of which a declaration under section 3 had been made during the time when such declaration remained in force. In respect of any such matter to which the Mahant on the one side and any Sikh worshipper at such a Gurdwara or shrine in his capacity as such, were parties could not be either commended or continued except when such suit or proceeding was lodged or continued by or on behalf of the Board or with the consent of the Local Government. Sub-section (2) of section 22 provided for the abatement of all proceedings under Chapter XI or Chapter XII of the Code of Criminal Procedure (that is, attachment and inquiry, etc., under sections 145 to 148 and any order under section 144), in respect of a Gurdwara or shrine which had been declared to be disputed

under section 3. Section 24 of the Act made it a duty of the Board to examine and inquire, in connection with all disputed Gurdwaras and shrines, into questions relating to the origin, nature and objects of the foundation thereof; the value, title, condition, management and application of all estates, fund, property, and income pertaining or attached thereto, the law and custom regulating the succession to any office connected therewith; the nature and character of any religious or charitable duty, ceremony, or observance connected therewith; the rights of any Mahant, Granthis, Chelas, Pujaris or attendants connected therewith; the general character and management thereof, etc. The result of all such inquiries was expected to be reported by the Board to the Local Government with any recommendation which the Board might have liked to make for carrying out of the objects and intentions of the foundation of any such Gurdwara or shrine. The Board could propose to the Local Government schemes for the future administration or management of any such institution. Section 26 authorised the Local Government to make rules for the purpose of carrying into effect the provisions of the Act. The 1922 Act had to come into force "on such date as the Local Government may by notification appoint in that behalf". We were informed by the learned Advocate-General for the State of Punjab and by the counsel for the S.G.P.C. (and this was not denied by any of the counsel for the petitioners) that due to strong opposition to the Act by the Sikhs, no such notification was ever issued and the Act remained a dead law.

Then followed in August, September, 1923, the Jaito Morcha, where a large number of non-violent peaceful Sikh worshippers were shot dead under Government orders and still larger number was arrested when they went to perform religious ceremonies in the historical Gurdwara at Jaito, and held Diwan there in connection with the protest which the Sikhs wanted to lodge strongly against the alleged deposition of Maharaja of Nabha for having helped the national movement. Pandit Jawahar Lal Nehru was also arrested when he went there. What happened after that in June, 1924, is described by Professor Ruchi Ram Sahni at page 237 of his book like this :—

> "For sometime past negotiations had been going on between the Government and some of the Sikh leaders about the settlement of the Akali problem. These parleys were

being conducted through General Birdwood who is known for his popularity with the Sikh troops. The Government have now (June, 1924) issued a communique announcing that the conversations have been abandoned as no agreement has been reached as regards the preliminaries. The Sikhs, on the other hand, accuse Government of breaking their faith with them and going back upon their plighted word. This is a serious charge. The Sikhs have also issued a statement in reply to the communique of the Government in which they review the whole situation. They state that on August 17, Sardar Jodh Singh and Narain Singh, both members of the Punjab Legislative Council, met General Sir William Birdwood and Mr. Craik, Chief Secretary, Punjab Government, on the 17th April, 1924, at Government House. They also interviewed the leaders in the Lahore Fort and told them that the Government was seriously anxious to settle the Nabha, Jaito, Gurdwara Legislation and Kirpan questions, after some time, some hitch arose about the Nabha question which was then left open and the Government and the Sikh representatives proceeded to find a solution of the remaining questions. A document was actually drawn up by which the Government agreed to release the Akali prisoners including those under trial and those arrested in connection with the Jaito affairs. The Sikh Councillors brought the draft agreement to the S.G.P.C. who made some ordinary changes in it."

In the meantime in September, 1924, a serious situation was created (page 242 of Mr. Sahni's book) by the order of a Court appointing a Receiver for all the lands belonging to the Gurdwara at Nankana Sahib. As a preliminary step for considering the new situation by the S.G.P.C. they sent some Jathas to Nankana Sahib and advertised that the Sikh men, women and children should be ready for all sacrifices. During this time Mahatma Gandhi and other national leaders having been put behind the bars, the S.G.P.C. was on October 18, 1923, declared an unlawful body and a criminal case for sedition, etc., was registered against the Sikh leaders including the leading members of the S.G.P.C. Their trial which took about 18 months, came to an end on March 13, 1925, and though some of the accused were convicted, they were given merely nominal sentences of imprisonment. The attempt made by the British Government at that time to settle the dispute with the Sikh community is briefly

described by Professor Sahni in his book on page 251 in the following words :—

> "Several attempts at compromise were made through the Commander-in-Chief (Birdwood), but failed. The real solution was to give the Sikhs control over their Gurdwaras through a Bill, but as this meant giving the Sikhs a central body, which could be only the S.G.P.C., the Government was reluctant to come to terms. They tried to bolster up the Chief Khalsa Diwan or some other element, but no association of Sikhs could dare to put itself in opposition to the S.G.P.C. Ultimately the Government after trying many draft Bills brought forward a measure which provided a central body, called Board of Control, for the management and control of all the historical Gurdwaras."

As to how far the S.G.P.C. had succeeded in taking over the management of most of the Sikh Gurdwaras before the 1925 Act came into force is referred to in the following passage at pages 252 and 253 of Professor Sahni's compilation :—

> "In the prevailing condition of uncertainty and general uneasiness, the newly formed society for the management of the Gurdwaras, which had by this time provided itself with a constitution and a somewhat pompous name, had now begun to take into its own possession and control such of the Gurdwaras as they could without much difficulty. In the circumstances of the time it is not surprising that while the Shiromani Gurdwara Parbandhak Committee (written briefly S.G.P.C.) or the more religious-minded or the more prudent Mahants realising that their personal interest or the interest of the shrines in their charge lay in their seeking the protection of the Committee that has been formed specially for the purpose of managing and maintaining the Gurdwaras on lines consistent with the teachings of the Gurus and the wishes of the community, had voluntarily placed the Gurdwaras under the control of S.G.P.C., some other Mahants, on the other hand, believed that their own interests could be better served by continuing to manage the Gurdwaras on the lines on which they had hitherto been doing, namely, with the support and guidance of the local officials. It is not improbable that in some cases, at least,

some Akalis may have actually taken forcible possession of Gurdwaras. * * * * *

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Some of these places after proper inquiry were handed back to their rightful owners under the instructions of the S.G.P.C. A few of these places were not Gurdwaras at all, but simply Dharamsalas built by religious-minded Hindus who had faith in the teachings of the Gurus and where the Granth Sahib was read regularly for the spiritual benefit of all the men and women living in the neighbourhood."

Professor Sahni then states (at page 257) that "in spite of the fact, therefore, that a (Sir Fazl-i-Hussein's) Gurdwara Bill had already been passed, Sir John Meynard, then Finance Member and the most powerful man in the Legislative Council, did not take long to realise that the measure sponsored by Sir Fazil-Hussein was a good as dead."

It was in such a situation that the bill of the Sikh Gurdwaras Act, 1925, was introduced in the Punjab Council with the following aims and objects which are printed in Tek Chand's commentaries on Punjab Acts, Volume II at pages 2655 and 2656 :—

"1. The present Sikh Gurdwaras and Shrines Bill is an effort to provide a legal procedure by which such Gurdwaras and shrines as are, owing to their original and habitual use, regarded by Sikhs as essentially places of Sikh worship, may be brought effectively and permanently under Sikh control and their administration reformed so as to make it consistent with the religious views of that community. The Sikh Gurdwaras and Shrines Act, 1922, which is to be replaced by the present Bill, failed to satisfy the aspirations of the Sikhs for various reasons. One, for instance, was that it did not establish permanent committees of management for Sikh Gurdwaras and Shrines. Nor did it provide for the speedy confirmation by judicial sanction of changes already introduced by the or by an independent tribunal set up for the purpose, reforming party in the management of places of worship over which it had obtained effective control.

2. The present Bill provides a scheme of purely Sikh management, secured by statutory and legal sanction, for places of worship which are decided either by the Legislature or by an ordinary Court of law, to be in reality places of Sikh worship which should be managed by Sikhs.

3. The procedure by which a Gurdwara or shrine can be placed under such management is provided in Part I and II of the Act. Part III describes and regulates the manner of management.

4. There are three ways in which under the Bill the provisions of Part III may be made applicable to a particular Gurdwara or shrine :—

(1) Certain places of worship about which no substantial doubt exists are placed forthwith in Schedule I. For the application of Part III to one of these, all that is necessary is the speedy assertion of a claim on behalf of the shrine to the property alleged to belong to it. This assertion will be by petition to the Local Government.

(2) Whether any place not included in Schedule I should or should not be placed for management under the provisions of Part III will be determined, upon petition duly made by fifty worshippers, within a prescribed period, by a special independent tribunal subject to an appeal to the High Court. The principles to be applied by the tribunal in deciding whether Part III should be applied or not are laid down in the Bill, and upon a finding of certain facts the application of Part III will necessarily follow.

(3) The tribunal is to be appointed by the Local Government and its President will be a Judge of the High Court. It will not be permanent and if recourse is not had to it or to the Local Government within the period prescribed, the only way in which the provisions of Part III can be applied to a place of worship will be by a suit of a special nature, similar to a suit under section 92 of the Code of Civil Procedure, instituted

in an ordinary Court of Law. For such suits provision is made in Part II.

5. Besides prescribing the procedure required for the application of Part III to a place of worship, Part I includes provisions for compensating hereditary office-holders who have been removed from office after the 1st of January, 1920, or who may prefer to resign in consequence of the application of Part III to the Gurdwaras or shrines with which they were connected.

6. Once a Gurdwara or shrine has been placed for management under Part III the jurisdiction of the Courts in respect of matters relating to it will be curtailed in several directions so as to give the Central Board and Committees of management, set up under the provisions of that Part, a satisfactory measure of independent control, A temporary bar against procedure in the ordinary Courts is also provided pending adjudication by the tribunal of matters over which it is given jurisdiction. Where such matters are in dispute in pending suits they are to be transferred to the tribunal for settlement.

7. The scheme of management provided by Part III contemplates the constitution of a Central (Sikh) Board of Control consisting principally of elected members, and the formation of committees of management, describes their functions, invests them with special powers, lays down certain principles by which they are to be bound and provides for financial responsibility and audit. It also provides for the appointment of a judicial commission, consisting of three Sikhs, by which certain disputes relating to the administration of places of worship declared or held by the tribunal to be Sikh Gurdwaras or Shrines, are to be settled."

The Preamble of the 1925 Act is in the following words :—

"Whereas it is expedient to provide for the better administration of certain Sikh Gurdwaras and for inquiries into matters and settlement of disputes connected therewith, and whereas the previous sanction of the Governor-General has been obtained to the passing of this Act; it is hereby enacted as follows :—.....".

The 1925 Act came into force with effect from November 1, in that year. It repealed the 1922 Act. This Act is divided into three parts. Part I contains three Chapters. The first Chapter covers preliminary matters such as title, extent, date of commencement and definitions. Reference to relevant definitions will be made at appropriate places in this judgment. The interpretation clause, i.e., section 2 does not contain any definition of a "Sikh Gurdwara". Clause (10) of the section, however, defines a "Notified Sikh Gurdwara" as any Gurdwara "declared by notification by the Local Government under the provisions of this Act to be a Sikh Gurdwara". Chapter II, which can be called the sap of Part I, contains sections 3 to 11 which are the main impugned provisions. Schedule I to which reference is made in section 3. contains a district-wise list of certain Gurdwaras, their respective (historical) names, the name of the estates in which each of them is situate and particulars of the constituencies for election of their respective committees of management under the relevant provisions of the Act.

Sub-section (1) of section 3 provided that any Sikh or any present office-holder of a Gurdwara specified in Schedule I to the Act may forward to the Local Government a duly signed and verified list in prescribed form of all rights, titles or interests in immovable properties situated in Punjab inclusive of the Gurdwara (so as to reach the Government within 90 days from the commencement of the Act), which such person may to his knowledge claim to belong to the Gurdwara. Name of the person in possession or in actual or constructive possession of any such right, title or interest and the name of the person, if any, through whom the Gurdwara itself may be in possession of any such right, title or interest had also to be stated n the list. Sub-section (2) enjoined on the Local Government a duty to publish two notifications afer the receipt of the list referred to in sub-section (1), viz., (i) a notification declaring that the Gurdwara to which the list relates is a Sikh Gurdwara; and (ii) a notification [after the expiry of the period of 90 days referred to in sub-section (1)], of a consolidated list in which all rights, titles and interests in such properties as are described in sub-section (1), which have been included in any list duly forwarded to the Government. The consolidated list had also to be published in the prescribed manner at the headquarters of the district and of the tahsil and in the revenue estate where the Gurdwara was situated, as also at the headquarters of every district and every tahsil and every revenue estate in which any of the immovable properties mentioned in the

consolidated list was situated. Sub-section (3) required the Local Government to send by registered post a notice of the claim to any right, title or interest included in the consolidated list to each of the persons named therein as being in possession thereof. Sub-section (4) was in the following terms :—

> "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."

(Section 3 as subsequently amended will be quoted verbatim at the appropriate stage in this judgment.) In section 4 it was provided that if in respect of any Gurdwara specified in Schedule I, no list had been forwarded within time to the Local Government under sub-section (1) of section 3, the Government shall declare by notification that such Gurdwara shall be deemed to be excluded from the first Schedule. Section 5 provided for a duly signed and verified petition claiming any right, title or interest in any property included in the consolidated list (except a right, title or interest in the Gurdwara itself) being forwarded by any person to the Local Government within the prescribed time. If no such claim was made within the prescribed time by anyone, a notification specifying rights, titles or interests in the properties in respect of which no such claim had been made was to be issued by the Government under sub-section (3) of section 5. The sub-section further provided that the publication of such a notification was to be conclusive proof of the fact that no such claim had been made in respect of the property specified in the notification. Section 6 dealt with claim of a hereditary office-holder for compensation.

The next important part of this chapter starts with section 7. Section 7 authorised any 50 or more Sikh worshippers of a particular Gurdwara to submit a petition to the Local Government within one year of the commencement of the 1925 Act praying to have that particular Gurdwara declared to be a Sikh Gurdwara. The two qualifications attached to the Sikh worshippers who could make such an application were (i) that each one of them had to be more than twenty-one years of age; and (ii) they had to be the residents of the

police-station area within which the Gurdwara was situated. The first proviso to the section empowered the Local Government to condone the qualification of residence in suitable cases. In the second proviso to the section it was enacted that no application under section 7 would be entertainable with respect to any institution specified in Schedule I or Schedule II unless the institution was deemed to have been excluded from the specification in Schedule I under the provisions of section 4. Sub-section (2) of section 7 provided that a petition under sub-section (1) was to contain the name of the Gurdwara to which it related and particulars of its situation, and was to be accompanied by a list of all rights, titles or interests in the immovable properties situated in the Punjab inclusive of the Gurdwara and in all monetary endowments, etc., which the petitioners might have claimed to be belonging to the Gurdwara within their knowledge. The name of the person in whose possession any right, title or interest might be, had also to be mentioned in the application. Sub-section (3) of section 7 enjoined on the Local Government a duty to publish the petition which might have been duly signed and forwarded to the Local Government as soon as may be after its receipt, by a notification, and also to cause the petition and the list to be published at the headquarters of the district, tahsil and the revenue estate in which the Gurdwara and its properties may be situated. Under sub-section (4) the Local Government was to sent by registered post a notice of the claim to any right, title or interest included in the list submitted under sub-section (1) to each of the persons named in the list as being in possession of such right, etc. Sub-section (5) of section 7 was in these terms :—

> "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."

Section 8 of the Act stated that when a notification under sub-section (3) of section 7 had been published, any hereditary office-holder or any twenty or more worshippers of the Gurdwara with requisite qualifications of age and residence, could file a petition within ninety days from the publication of the said notification claiming that the Gurdwara was not a Sikh Gurdwara. The section further provided that in such a petition a further claim might be made that any hereditary office-holder, etc., may be restored to office

on the ground that such Gurdwara was not a Sikh Gurdwara, and that such an office-holder ceased to be an office-holder after that day. Sub-section (1) of section 9 provided that if no petition was presented in accordance with the provisions of section 8 in respect of a Gurdwara to which a notification published under sub-section (3) of section 7 related, the Local Government would after the expiration of ninety days from such publication issue a notification declaring the Gurdwara to be a Sikh Gurdwara. Sub-section (2), stated that the publication of a notification under the provisions of sub-section (1) of section 9 would be conclusive proof that the Gurdwara was a Sikh Gurdwara and that the provisions of Part III (relating to the statutory scheme of the management of Gurdwaras), would apply to the Gurdwara with effect from the date of the publication of the notification. Under sub-section (1) of section 10 any person could forward to the Local Government within ninety days from the date of the publication of the notification under section 7(3), a petition claiming a right, title or interest in any property included in the list so published. Sub-section (3) of section 10 required the Local Government to publish a notification specifying the rights, titles or interests in any properties in respect of which no claim had been made under sub-section (1) of section 10, and that the publication of such a notification would be conclusive proof of the fact that no such claim had been made in respect of any right, title or interest specified in the notification. Section 11 dealt with claim for compensation by a hereditary office-holder of a Gurdwara notified under section 7.

Chapter III of part I starting with section 12 and ending with section 37 dealt with the appointment of and proceedings before a Sikh Gurdwara Tribunal. Section 12 dealt with the constitution and procedure of the tribunal, section 13 with the manner of resolving difference of opinion and section 14 authorised the tribunal to dispose of petitions under sections 5, 6, 8, 10 or 11 which might be forwarded to the tribunal by the Local Government. Sub-section (2) of section 14 was in the following terms :—

> "The forwarding of the petitions shall be conclusive proof that the petitions were received by the Local Government within the time prescribed in sections 5, 6, 8, 10 or 11, as the case may be, and in tht case of a petition forwarded by worshippers of a Gurdwara under the provisions of section 8, shall be conclusive proof that the provisions of section 8 with respect to such worshippers were duly complied with.'

The next relevant section is section 16 which provides that 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 inquiring into any other matter in dispute relating to the said Gurdwara decide whether it should or should not be declared a Sikh Gurdwara. Sub-section (2) of section 16 lays down the qualifications requisite for a Gurdwara to be declared a Sikh Gurdwara. The sub-section (sub-section 2) is in these words :—

"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 is used for public worship by Sikhs, or

(ii) owing to some tradition connected with one of the Ten Sikh Gurus, is used for public worship predominantly by Sikhs; or

(iii) was established for use of Sikhs for the purpose of public worship and is used for such worship by Sikhs; or

(iv) was established in memory of a Sikh martyr, saint or historical person and is used for such worship by Sikhs; or

(v) owing to some incident connected with the Sikh religion is used for public worship predominantly by Sikhs;

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

Sub-section (3) of section 16 lays down that 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, the tribunal shall cease to have jurisdiction in all matters, concerning such Gurdwara subject to certain specified conditions. Section 17 enjoins on the Local Government a duty to issue a notification declaring any such Gurdwara to be a Sikh Gurdwara in respect of which the tribunal has recorded its finding to that effect. The section further provides that the effect of such a notification being issued is that the provisions of Part III of the

Act start applying to a Gurdwara declared to be a Sikh Gurdwara with effect from the date of the publication of a notification under that section.

We are not concerned for the purposes of these cases with sections 18 to 27. Section 28 then provides that when a notification has been published under sub-section (3) of section 5 or of sub-section (3) of section 10, the committee of the Gurdwara concerned may bring a suit on behalf of the Gurdwara for the possession of any property a proprietary title in which has been specified in such notification, provided that the Gurdwara concerned is entitled to immediate possession of the property in question, and is not in possession thereof at the date of the publication of such notification. Such a suit has to be instituted (sub-section 2) in the principal Court of original jurisdiction in which the property in question is situated within a period of ninety days from the date of the publication of the notification in question; or from the date of the constitution of the committee whichever is later. The sub-section further provides that if a suit is not instituted within that period no subsequent suit on behalf of the Gurdwara for the possession of the property shall be instituted in any Court except on the ground of dispossession of the Gurdwara after the date of the publication of such notification. Sub-section (3) makes special provision for a fixed court-fee of five rupees being payable on the plaint of such a suit. Reference to provisions of sections 30 to 32 shall be made at the appropriate place. These sections relate to the jurisdiction of civil Courts and the exclusion of jurisdiction of civil Courts in certain matters. Section 34 provides that any party aggrieved by a final order passed by the tribunal determining any matter decided by it under the provisions of the Act may, within ninety days of the date of such order, appeal to the High Court. A statutory provision is made in sub-section (3) of section 34 to the effect that an appeal preferred under that section has to be heard by a Division Bench of the High Court. Section 36 bars the institution of any suit in any Court to question anything purporting to be done by the Local Government, or by a tribunal, in exercise of any powers vested in it by or under the Act. Similarly section 37 bars the passing of any order or the execution of any decree inconsistent with the decision of a tribunal appointed under the Act.

That finishes Part I of the Act. Part II contains only section 38, the provisions of which will be quoted in a later part of this judgment. The section deals with recourse to ordinary Courts in

cases where action has not been taken under Part I with a view to application of provisions of Part III to a Gurdwara. Part III starts with Chapter V which compromises sections 39 to 41. Section 39 provides for a suit for relief which might have been claimed in an application made under the provisions of Part III of the Act being barred. Section 40 provides for the constitution of a Board (which was constituted and named S.G.P.C.) and for Committees of management, and for the appointment of a Judicial Commission. Section 41 then states as follows :—

> "The management of every Notified Sikh Gurdwara shall be administered by the committee constituted therefor, the Board and the Commission in accordance with the provisions of this Part."

Chapter VI deals with the constitution of the Board and its name, the constituencies for election of members of the Board, qualifications of elected members, qualifications of nominated members, and matters relating to the election of those members. Chapter VII containing sections 70 to 84 deals with the appointment, constitution, etc., of the Judicial Commission. Chapter VIII deals with Committees of Gurdwaras. The Gurdwaras mentioned in section 85(1) have to be administered and managed by the Board, i.e., by the S.G.P.C. itself. For the management by the other Committees, provision has been made in the subsequent sections of the Chapter. Chapter IX starting with section 106 and ending with section 124 deals with the funds of the Gurdwaras, etc. Chapter X commencing with section 125 and ending with section 132 deals with powers and duties of the Board. Chapter XI starting with section 133 and ending with section 140 deals with powers and duties of Committees. Chapter XII contains miscellaneous provisions out of which section 142 deals with the disputes which can be brought before the Judicial Commission for decision relating to rights or interests of persons who complain about malfeasance, misfeasance, etc., and others such disputes between members and members or relating to the committees of management etc. Section 143 provides for notice of intended applications under section 142. Section 144 bars the Government from interfering with the Gurdwaras except as provided by the Act. Section 145 cures defects in the constitution of the Board. Section 146 authorises the local Government to make rules from carrying out all or any of the purposes of the Act. We are not

concerned with the remaining sections in the Act. Schedule I contains a list of Gurdwaras in respect of which proceedings can be started under section 3(1). Schedule II contains a list of institutions in respect of which no claim for being declared Sikh Gurdwaras can be made under section 7.

Between 1925 and 1961 as many as 25 amending Acts were passed making certain changes, additions or modifications in the principal Act. Reference to the relevant amendments will be made at appropriate places. Besides these, of course amendments were made in the Act by five Adaptation of Laws Orders of 1937, 1947, 1948, 1950 and 1951.

As all the four cases before us relate to Gurdwaras or properties situated in the erstwhile PEPSU area, it is necessary to notice the historical background relating to the management of historical Sikh Gurdwaras in Patiala and East Punjab States' Union. Two amending Acts of 1959 deal with this subject and will figure in the said history. After dealing with the law relating to management of Sikh Gurdwaras in Patiala, reference will be made to the relevant provisions of the principal Act as amended in 1959 after the extension of the Act to the PEPSU area.

Before the formation of the Patiala and East Punjab States' Union on and with effect from August 20, 1948, each of the States which came into that Union was governed by a Ruler who was all in all and whose Farmans were the law in his respective territory. In Patiala there was Ecclesiastical Department under an Officer known as "Deodhi Mualla" which Department dealt with the management and administration of certain religious institutions and shrines including Sikh Gurdwaras of historical importance. On November 2, 1946, the Maharaja of Patiala issued Farman-i-Shahi No. 3 wherein reference was made to the considered policy of his Government to take steps for the amelioration of his subjects and in particular to promote their religious and cultural interests, and to the religious institutions as a whole exercising great influence in moulding the life and conduct of a community, and to the fact that this held particularly good in the case of Sikh Gurdwaras. The Farman-i-Shahi then referred to the necessity of associating the Sangat (congregation) with the management of the Gurdwaras, necessary instructions for which had been issued by the Maharaja to prepare a comprehensive legislation for the purpose. The

operative words of the Farman then followed in the following terms :—

> "We are, however, in the meantime anxious not to delay giving our intention a practical shape immediately and have, therefore, decided to appoint an interim Committee which will undertake the management of the Gurdwaras pending the passing of the legislation. The order of appointment will be issued separately. Side by side with the religious and cultural interests of our subjects, their economic amelioration has received our best care. Various schemes of far-reaching importance have been taken in hand, but we have long since felt that the difference————————".

The rest of the Farman which dealt with the intention of the Maharaja to have a Constitution for the State framed for associating the subjects more fully in the administration and for affording the subjects adequate opportunity to take their proper place in the services, is irrelevant for our purposes. The Farman was published in His Highness's Government Gazette Extraordinary, dated November 2, 1946, as Notification No. 42 of that date. This was followed by orders of the Ijlas-i-Khas No. 52 issued from the Maharaja's Palace on November 8, 1946. It referred to the declared intention of the Farman-i-Shahi No. 3, dated November 2, 1946, to appoint an interim Committee for the management of the Sikh Gurdwaras in the State and then proceeded to appoint a Committee of twelve members. It was then stated (after mentioning the names of the twelve members) that the Committee would be designated as "Interim Gurdwara Board" and would hold office during the Maharaja's pleasure, but would cease to function when the Gurdwara legislation intended to be enacted was enforced. It was directed in the Farman that the Interim Gurdwara Board would assume the functions which were till then performed in respect of Sikh Gurdwaras by the "Deodhi Department" and that the Board would exercise the power which had theretofore vested in the "Sardar Sahib Deodhi Mualla". The rest of the directions in the Farman are not relevant for our present purposes.

The last relevant law enacted by the Maharaja of Patiala was contained in Farman No. 55 issued from the Deodhi Mualla Department of His Highness which was published in the Patiala Government's Gazette, Extraordinary, dated December 23, 1946, whereby

it was notified "for the formation of the general public that the management of the following Sikh Gurdwaras has now been handed over to the Interim Gurdwara Board, Patiala". The above-mentioned operative part of the Farman was followed by a list of the Gurdwaras under the head "the list of the Historical Gurdwaras of the State". In the list, the particulars of the Sikh Guru (in terms of Padshahi) in whose memory the Gurdwara had been established and the village in which the Gurdwara was situate with the name of the tahsil in which the village happened to be, were tabulated. 108 historical Sikh Gurdwaras were enumerated in the Farman. According to the law settled by the Supreme Court in *Director of Endowments, Government of Hyderabad and others* v. *Akram Ali,* (1), the Farman of an absolute Ruler of a State like the erstwhile State of Patiala had the force of law. The Farman referred to above remained in force till the other East Punjab States were merged with Patiala and the Union known as the Patiala and the East Punjab States' Union came into being with effect from August 20, 1948.

After the merger of the East Punjab States with Patiala, the Patiala and East Punjab States Union General Provisions (Administration) Ordinance, 2005 Bk. was promulgated by the Rajpramukh. Section 3(1) of the Ordinance provided:—

> "As from the appointed day, all laws and rules, regulations, bye-laws and notifications made thereunder, and all other provisions having the force of law, in Patiala State on the said day shall apply, *mutatis mutandis,* to the territories of the State and all laws in force in the other Covenanting States immediately before that day shall cease to have effect."

Thus the Interim Gurdwara Board originally constituted for the State of Patiala continued to function even after the formation of PEPSU till the *Ijlas-i-Khas* order No. 52 was repealed by section 148-A of the Act as amended in 1959.

By virtue and by operation of the States' Reorganisation Act, 1956, the Patiala and East Punjab States Union was merged into the then existing State of Punjab. In the United Punjab, the territories which came from PEPSU were administered by the laws which were in force in that State before the appointed day, i.e., before November 1, 1956, and the Punjab laws continued in force in the remaining area.

(1) A.I.R. 1956 S.C. 60.

According to the supplementary affidavit of Shri Kehar Singh Mann, Deputy Commissioner, Gurdwaras Election, Punjab, dated January 25, 1968, filed before the Bench during the hearing of the case, some agitation was apprehended in connection with the management of the Sikh Gurdwaras in PEPSU in the beginning of the year 1958, on account of differential treatment which was being meted out to those Gurdwaras as compared with the Gurdwaras in the original State of Punjab which were being mostly administered and managed according to the provisions of Part III of the Act. By notification, dated February 1, 1957, the Government of Punjab had constituted a Committee consisting of four members of the Punjab Legislative Assembly, two members of the Punjab Legislative Council and one Jathedar Mohan Singh as convener and Shri R. S. Palta, Under-Secretary to Government, Punjab, Home Department, as Member Secretary. The terms of reference as laid down in the aforesaid Government notification were as under:—

"(i) To advise Government whether the Sikh Gurdwaras Act, 1925, should be extended to the territories of the erstwhile PEPSU State.

(ii) If the Act is to be extended as in (i) above, whether all the Gurdwaras managed by Government and the Interim Gurdwara Board should be declared Sikh Gurdwaras straightway and included in Schedule I of the Act and whether the more important Gurdwaras be included among the Gurdwaras under section 85 of the Act and brought under the direct control of the Shiromani Gurdwara Parbandhak Committee; Amritsar?

(iii) What should be the constitution of Shiromani Gurdwara Parbandhak Committee as a result of the extension of the Act as in (i) above ?

(iv) What amendments, if any, should be made in the said Act?

(v) If the Act is not to be extended as in (i) above, what changes, if any, should be made in the administration of the Gurdwaras as at present?

(vi) Other recommendations, if any, regarding the administration of the Gurdwaras in the territories of the erstwhile PEPSU State."

According to the report of the said Advisory Committee constituted by the Punjab Government which was submitted to the Government on September 14, 1957 (Annexure R-1 to the aforesaid affidavit), some time was taken by the Committee for the collection of data about the relevant Gurdwaras which were not available from the Government record and for which the staff of the S.G.P.C. and the Interim Gurdwara Board, Patiala, had to visit the Gurdwaras located in different towns and villages of the territories of the erstwhile State of PEPSU. The Secretaries of the Board, i.e., of the S.G.P.C, and of the Interim Gurdwara Board, Patiala, were also invited by the Advisory Committee to attend its meetings. The recommendations made by the Committee in paragraph 5 of its aforesaid report were to the effect that the Sikh Gurdwaras Act, 1925, as amended till then and as to be amended as a result of the recommendations made by the Advisory Committee should be extended to the territories of the erstwhile State of Patiala and East Punjab States' Union, in order to (i) create confidence amongst the Sikhs of those territories, (ii) avoid giving any impression that any discriminatory treatment in respect of their religious institutions was being meted out of them, and (iii) give equal treatment to the problems of administration of Gurdwaras in the erstwhile PEPSU territories which were the same as those of the Gurdwaras in the original State of Punjab. The Committee further recommended that some Gurdwaras mentioned in list 'A' appended to the report should be included in the first Schedule to the Act and that out of those Gurdwaras, those mentioned in list 'B' should be included in section 85 of the Act. The basis on which certain historical Sikh Gurdwaras of erstwhile PEPSU area were included in Schedule I and others not so included was mentioned in the Advisory Committee's report in the following words:—

> "All the Gurdwaras managed by Government and the Interim Gurdwara Board should not be included in Schedule I. While recommending the inclusion of Gurdwaras mentioned in the attached lists, the Committee has given due consideration to the religious and historical importance of the Gurdwaras and their economy. It was felt that the inclusion of all the Gurdwaras managed by the Interim Gurdwaras Board in Schedule I and section 85 of the Act, would be conducive to inconvenience and complications in the management of some of the Gurdwaras. The Committee has, therefore, not recommended the inclusion of some of the Gurdwaras in Schedule I."

The rest of the long report of the Advisory Committee dealt with the proposed amendment of the 1925 Act consequent on its extension to the erstwhile PEPSU area of the united Punjab. To avoid subsequent reference to the said report, it may be mentioned at this very stage that list 'A' attached to the report, is the list of 188 Gurdwaras, which were recommended to be included in Schedule I. Item No. 1 in that list related to Gurdwara Sahib, Pinjore, Padshahi Pahaili situated in village Barnala, tahsil Kandaghat, district Patiala (which is concerned in Civil Writ 1935 of 1962—*Mahant Lachhman Dass* v. *State of Punjab, etc.*). Each of the two Gurdwaras at item Nos. 165 and 166 was described as "Gurdwara Guru Granth Sahib, Chhajli" in tahsil Sunam, district Sangrur, one of which two items (serial Nos. 165 or 166) relates to Civil Writ 1198 of 1964—*Pritpal Singh* v. *State of Punjab and the S.G.P.C.* Item No. 36 in list 'A' attached to the report of the Advisory Committee relates to "Gurdwara Sahib, Padshahi Naumi (with Bunga Dhamtanian near Railway Station, Patiala)" situate in Dhamtan, tahsil Narwana, district Sangrur (out of which Bunga Dhamtanian near Railway Station, Patiala, is concerned in Civil Writ 1925 of 1964—*Mahant Gurmukh Singh* v. *State of Punjab, etc.*). In list 'B' attached to the report of the Advisory Committee, that is the list of six Gurdwaras which were recommended to be managed by the Board itself by including them under section 85 of the Act, item No. 3 was "Gurdwara Dhamtan Sahib along with Bunga Dhamtanian, near Railway Station, Patiala." The other two Gurdwaras, i.e., the Gurdwara at Pinjore, and the Gurdwara at Chhajli, were, however, not included in list 'B'. Reference to the proceedings which followed the report of the Advisory Committee, i.e., the proceedings of Regional Committees, etc., relating to the passing of the Amending Act consequent on those proceedings will be made while discussing the arguments on Article 14 of the Constitution. Suffice it to say at this stage that after receipt of the report (Annexure R-1) of the Advisory Committee, the Bill of Act 1 of 1959 was published on March 28, 1958. The aims and objects of the bill were given in the gazette notification in the following terms (published in 1959 Lahore Law Times, Part IX, page 1):—

> "Unlike Punjab where the Sikh Gurdwaras Act, 1925, was in force there was no legislation governing the administration of the Gurdwaras in the State of PEPSU. Accordingly after the integration of Punjab and PEPSU. a Committee consisting of certain M.L.A.s and M.L.C.s was constituted

to advise whether the Sikh Gurdwaras Act, 1925, should be extended to the territories of the erstwhile PEPSU State, and if so, what amendments should be made in the Act with a view particularly to the management of the more important Gurdwaras and the constitution of the new Shiromani Gurdwara Parbandhak Committee. The Advisory Committee has recommended that the provisions of the Sikh Gurdwaras Act, 1925, with suitable amendments as suggested by it, should be extended to the territories of the erstwhile PEPSU State. This Bill is designed to give effect to those recommendations."

After the introduction of the Bill in the Punjab Legislature on April 8, 1958, the Bill was referred to the Regional Committees for Punjabi Area and for Hindi Area. After lengthy deliberations, the Regional Committees gave their first reports, dated November 29, 1958, and final reports, dated December 27, 1958. Act I of 1959 was then passed and received the assent of the Governor on January 8, 1959. Besides, making provision for the extension of the 1925 Act as amended till then to the territories of the erstwhile State of PEPSU, the Amending Act 1 of 1959, defined the erstwhile PEPSU territories as "the extended territories" and made necessary consequential changes in the principal Act. By section 25 of the Act, to the list of the Gurdwaras administered by the S.G.P.C. directly under section 85, some Gurdwaras from the extended territories, were added. Provision was made for constituting the Board, i.e., the S.G.P.C. in such a way as to obtain on it the representation of the extended territories. Substantial changes were made regarding the election to the Board after the transitional period. Section 50 of Act 1 of 1959 made additions to the first Schedule. The Gurdwaras specified in Schedule 'A' annexed to Act 1 of 1959 were added to the original first Schedule to the principal Act by operation of clause (b) of section 50. These Gurdwaras mentioned in Schedule 'A' to Act 1 of 1959 included : at item No. 304 "Gurdwara Guru Granth Sahib in revenue estate of Chhajli in tahsil Sangrur," at item No. 314 "Gurdwara Padshahi Naumi", at Dhamtan, tahsil Narwana, district Sangrur, and at item No. 249 "Gurdwara Sahib, Panjaur Padshahi Pahaili," in the revenue estate of Pinjore, tahsil Kandaghat, district Patiala. As the original period of ninety days' referred to in the various sections in Part I of the Act had expired by the end of 1926, a fresh period of 180 days was provided from the date of passing of the amending Act and so on for the "extended territories." Section 148-A repealed the *Farman-i-Shahi* under which the interim Board had been operating in the PEPSU Area.

The only other and the next amending Act with which we are concerned is Punjab Act No. 10 of 1959. In the statement of objects and reasons published in the *Punjab Gazette Extraordinary,* dated March 30, 1959, for putting in the Bill of that Act, the last item alone is relevant for us, which was in the following words:—

> "The descriptions of certain Gurdwaras included in Schedule I to the Act also require minor corrections. This Bill is designed to achieve these objects."

Act 10 of 1959 received the assent of the Governor on April 19, 1959, and was published in the official gazette on April 20, 1959. By section 7(b) of this Act, it was provided that in Schedule I to the principal Act, for certain entries referred to therein, the entries enumerated in the Schedule under that section shall stand substituted. For the original item No. 314 was substituted new item described as "Gurdwara Padshahi Naumi at Dhamtan along with Bunga Dhamtanian, near Railway Station, Patiala," the residence of the "Gurdwara" being in the revenue estate of Dhamtan, in tahsil **Narwana, district Sangrur. It would be remembered that this was** the description of the historical Gurdwara given in list 'A' attached to the report of the Advisory Committee, but in the Schedule to the first amending Act, i.e., Act 1 of 1959, words "at Dhamtan along with Bunga Dhamtanian near Railway Station, Patiala" had been omitted. This, is brief, is the chronological history of the relevant laws of PEPSU area, with which we are concerned for disposing of the arguments addressed to us at the Bar.

Before dealing with the individual arguments peculiar to the respective writ petitions, it would be convenient to notice the arguments which are common to all the cases and which were addressed at great length by Mr. Dalip Chand Gupta, the learned Advocate for the petitioner in Civil Writ No. 514 of 1966. His arguments were adopted by the learned counsel for the respective petitioners in all the remaining three cases.

The principal points urged by counsel can conveniently be summarised thus:

(1) Though the 1925 Act was valid when it was passed, its impugned provisions became unconstitutional on the enforcement of the Constitution on and with effect from

January 26, 1950, as being violative of the fundamental rights guaranteed to the petitioners under Articles 14, 19 and 26 of the Constitution. The items added to Schedule I of the Act in 1959 are void *ab initio* for the same reason;

(2) The Gurdwaras listed in Schedule I to the Act have been discriminated against vis-a-vis other Gurdwaras not so listed. The classification of Gurdwaras into:—

(i) those entered in Schedule I and liable to be dealt with under sections 3 to 6 of the Act;

(ii) those not entered in the first Schedule but claimable by any fifty or more Sikh worshippers of the Sikh Gurdwaras under section 7(1) and to be dealt with under sections 7 to 17 of the Act; and

(iii) those not entered in the first Schedule and in respect of which no claim is made within the prescribed time under section 7(1) and which can, therefore, be the subject-matter of proceedings under section 38 of the Act;

is arbitrary, because:—

(a) there is no intelligible differentia between the Gurdwaras grouped together in Schedule I on the one hand and the other hand. i.e., there are no peculiar characterists the other hand, i.e., there are no peculiar characteristics which may be found in the Schedule I Gurdwaras which characteristics may not be found in the Gurdwaras left out of the Schedule; and

(b) even if some intelligible differentia could be spelt out from the historical background or other relevant data, the same have no reasonable nexus with the objects of the Act;

(3) Section 8 of the Act is void as it allows only hereditary office-holder of a particular Gurdwara to lodge a claim about that Gurdwara not being a Sikh Gurdwara. This classification is arbitrary as there is no rational basis for depriving a non-hereditary office-holder of the Gurdwara in dispute of his right to question that the particular Gurdwara is not a Sikh Gurdwara;

(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.

(5) The statutory conclusive presumptions raised under sections 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;

(6) Sub-sections (2) and (4) of section 3 of the Act impose unreasonable restrictions on the property rights of the petitioners which restrictions are violative of Article 19(1)(f) of the Constitution and are not saved by clause (5) of Article 19 as these restrictions are not in the general interest of the public;

(7) Sections 3 to 7 of the Act infringe Article 26 of the Constitution as they provide for religious institutions of non-Sikhs being handed over to the Sikhs (without the other denominations being even heard) in violation of the right of every religious denomination to maintain and administer its institutions.

Though all the above-mentioned seven points are stated to arise in three cases (C.W. 1935 of 1922, and C.Ws. 1198 and 1925 of 1964), only the fifth point (statutory bar of sub-section (5) of section 7 to question the *locus standi* of the fifty applicants under sub-section (1) of section 7) has been argued in *Mahant Dharam Dass's case* (Civil Writ 514 of 1966). Arguments before us were, by and large, directed towards the attack under Article 14 of the Constitution; and Mr. Gupta frankly stated that if the petitioners fail to establish the grounds germane to that attack, they have really no other substantial argument to advance. No separate arguments were addressed under Articles 19 and 26 though these have been briefly touched upon in the nine page synopsis of petitioners' arguments handed in by Mr. Gupta at the conclusion of his opening address.

In order to clear the ground for considering the submissions made on both sides; it appears to be necessary to first decide as to whether Mr. Gopal Singh, the learned Advocate-General for the State of Punjab, is correct or not in contending that the word "Gurdwara" has been used in the Act in three different connotation, viz:—

(i) in the sense of an institution, corporation or juristic person in the opening lines of section 3, in the heading of column 5 of the first Schedule and in various other places (to be hereinafter indicated);

(ii) as physical property comprising of a mass of earth with a building or part of a building constructed upon it, in which Guru Granth Sahib may be installed and worshipped or other religious ceremonies performed; and

(iii) at still other places, according to Mr. Gopal Singh, the expression "Gurdwara" is used in the compendious sense of denoting the physical building with the concept of the institution impressed upon it.

Whereas Mr. R. K. Garg, the learned counsel for the S.G.P.C. not only adopted this argument of the Advocate-General but strongly supported it. Mr. Dalip Chand Gupta strenuously urged that the only sense in which the word "Gurdwara" has been used in the Act (at all places including the first Schedule) is to denote physical place of worship visible to the naked eye, i.e., in the sense in which a man in the street understands when somebody says that he is going to or coming from a Gurdwara. The effect of our decision on this moot point would be that if the submission of the Advocate-General is correct, no part of the physical property of any Gurdwara (including every inch of the Gurdwara building itself) would be outside the scope of a claim under section 5 and no part of the property would be immune from adjudication by the tribunal; and the only thing for which no claim can be laid by anyone on account of the bar in the last lines of sub-section (1) of section 5 of the Act, would be in respect of the institutions enumerated in Schedule I, i.e., the abstract institutions in question to which no claim has in fact been laid in any of the cases before us.

This appears to be a convenient stage for reproducing verbatim the provisions of sections 3 to 5 of the Act as amended up to date;—

"3(1) Any Sikh or any present office-holder of a Gurdwara specified in schedule I or, added thereto by the Amend-

ing Act, may forward to the State Government through the appropriate Secretary to Government so as to reach the Secretary within ninety days of the commencement of this Act, or, in the case of the extended territories, within one hundred and eighty days of the commencement of the Amending Act, as the case may be, a list, signed and verified by himself, of all rights, titles or interests in immovable properties situated in Punjab inclusive of the Gurdwara and in all monetary, endowments yielding recurring income or profit received in Punjab which he claims to belong, within his knowledge, to the Gurdwara, the name of the person in possession of any such right, title or interest, and if any such person is insane or a minor, the name of his legal or natural guardian, or if there is no such guardian, the name of the person with whom the insane person or minor resides or is residing, or if there is no such person, the name of the person actually or constructively in possession of such right, title or interest on behalf of the insane person or minor, and if any such right, title or interest is alleged to be in possession of the Gurdwara through any person, the name of such person, shall be stated in the list, and the list shall be in such form and shall contain such further particulars as may be prescribed.

Explanation.—For the purposes of this section and all other succeeding sections, the expression "Punjab" shall mean the State of Punjab as formed by section 11 of the States Reorganisation Act, 1956.

(2) On receiving a list duly forwarded under the provisions of sub-section (1) the State Government shall, as soon as may be, publish a notification declaring that the Gurdwara to which it relates is a Sikh Gurdwara and, after the expiry of the period provided in sub-section (1) for forwarding lists shall, as soon as may be, publish by notification a consolidated list in which all rights, titles and interests in any such properties as are described in sub-section (1) which have been included in any list duly forwarded, shall be included, and shall also cause the consolidated 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 where 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 consolidated list is situated and shall also give such other notice thereof as may be prescribed.

(3) 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 consolidated 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 the person who forwarded the list in which the right, title or interest was claimed.

(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.

(4) If in respect of any Gurdwara specified in Schedule I no list has been forwarded under the provisions of sub-section (1) of section 3, the State Government shall, after the expiry of ninety days from the commencement of this Act, or, in the case of the extended territories, after the expiry of one hundred and eighty days from the commencement of the Amending Act, as the case may be, declare by notification that such Gurdwara shall be deemed to be excluded from specification in Schedule I.

(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.

(2) A petition forwarded under the provisions of sub-section (1) shall be signed and verified by the person forwarding it in the manner provided in the Code of Civil Procedure, 1908, for the signing and verification of plaints, and shall specify the nature of the right, title or interest claimed and the grounds of the claim.

(3) The State Government shall, as soon as may be, after the expiry of the period for making a claim under the provisions of sub-section (1) publish a notification specifying the rights, titles or interests in any properties in respect of which no such claim has been made; and the publication of the notification shall be conclusive proof of the fact that no such claim was made in respect of any right, title or interest specified in the notification."

The question posed in the paragraph immediately preceding the text of sections 3 to 5 of the Act has assumed importance for interpreting the true scope of the last words in sub-section (1) of section 5 to the effect that though the applicant under that sub-section may lay claim to any property of the first schedule Gurdwara notified under sub-section (2) of section 3 as a Sikh Gurdwara, he is not entitled to lay a claim to any right, title or interest "in the Gurdwara itself." According to the petitioners "Gurdwara" in the above provision means whatever tangible property may have been so described in the list accompanying the application under section 3(1) and notified under section 3(2) of the Act. According to the respondents, the word "Gurdwara" in section 5(1) stands for the abstract institution which owns the entire property of a particular Gurdwara including the place of worship itself. For the reasons hereinafter appearing I am inclined to think that the contention of the respondents in this respect is correct and that of the petitioners is misconceived.

Firstly, it is clear from the use of the word "Gurdwara" in the following provisions of the Act that the word could not have been intended to refer to the tangible physical property, i.e., the actual place of worship, visible to the eye, composed of brick and mortar, but to something which owns that place of worship [the disputed use of the word in section 5(1) has not been listed in the table below]:—

Sr. No.	*Section of the Act*	*Context*
(i)	3(1)	... "a list——of all rights—— in all monetary endowments yielding recurring income or profit——which he claims to *belong——to the* Gurdwara."

(ii) 3(1)	..	"if any such right, title or interest is alleged to be *in possession of the Gurdwara*, through any person."
(iii) 18(1)	...	"——and claimed to belong to *Notified Sikh Gurdwara*——such right, title or interest *belongs* to the Gurdwara upon proof of——"
(iv) 23	...	"out of the income *accruing to the Gurdwara*."
(v) 25	...	"out of the *income of such Gurdwara* ——"
(vi) 26	...	"——interest in immovable property *belongs to* a Notified Sikh Gurdwara ——"
(vii) 27	...	"——property has been *dedicated or gifted to a Notified Sikh Gurdwara*."
(viii) 27	...	"——partly to the Gurdwara and partly *to another institution* or to another person."
(ix) 28	...	"Gurdwara concerned *is entitled to immediate possession of the property* in question——"
(x) 30(i)	...	"——interest in any property *belongs to a Notified Sikh Gurdwara*."
(xi) 106		"*income of a Notified* Sikh Gurdwara ——"
(xii) 125	.	"——deals with the *property and income of the Gurdwara*."
(xiii) 130(1) & (4)	...	"——proper *administration of the property, endowments funds and income of a Notified Sikh Gurdwara*."
(xiv) 133		"——all properties and *income* of whatever description *belonging to the Gurdwara*——"

(xv) 138	..	"No alienation of immovable *property belonging to a Notified Sikh Gurdwara.*"
(xvi) 144	...	"——of any land or other property *granted for the support of, or otherwise belonging to any* Notified Sikh Gurdwara——".

The relevant phrases used in the above-mentioned sixteen provisions may be classified into the following seven categories:—

(a) "Belonging to the Gurdwara" (items Nos. i, iii, vi, x, xiv and xv in the table);

(b) "In *possession of* the Gurdwara" (item No. ii in the table);

(c) "Income accruing to the Gurdwara" (item No. iv) or "income or funds of a Gurdwara" (items Nos. v, xi, xii, xiii and xiv);

(d) "dedicated or gifted to a Gurdwara" (item No. vii of the table);

(e) "Possession of property by Gurdwara" (item No. ix);

(f) "Property required for the support of a Gurdwara" (item No. xvi);

(g) Equated to other institutions and persons (item No. viii).

If the expressions, "Gurdwara belonging to the Gurdwara" or "Gurdwara in possession of the Gurdwara" or "income accruing to a part of a building" or "dedication or gift made to a building" or "building possessed by a building", were appropriate and correct English, the argument advanced by the petitioners would certainly be worth considering. But to ask the question whether such expressions can have any meaning is to answer the question. A room of a building cannot own or possess property. It may itself be a part of the building and would be possessed by some person who possesses the whole property. Nor has it been known to law that any gift or dedication can be made in favour of a property. It is no doubt recognised that a gift of property can be made to an institution whether impressed on some tangible object, or not. Again funds can normally be required to support a person or an institution and not a piece of property. The use of the word "Gurdwara" in

section 27 as equated to "another institution" or "another person" shows that the word is capable of being given the meaning of the other words in whose family and environment it stands. If the word "Gurdwara" is given the meaning sought to be assigned to it by the petitioners it would have to be held that no claim to the Gurdwara building can be laid in respect of a notified Sikh Gurdwara under section 5(1) of the Act. Such an interpretation would lead to many anomalies and absurdities to some of which reference is made in a later part of the discussion on this subject. It appears to me to be beyond doubt that an owner cannot be owned in the same manner as no person can claim ownership of another person. Property cannot belong to another property. Property can belong to a person, living or juristic, to a corporation or to an institution whether artificial or real. Right to own, possess or even manage property may be claimed by or on behalf of an institution. Another owner's property may be claimed but one cannot claim the owner. The simple answer to the question—"who owns the physical Gurdwara?" in the context of section 3 and Schedule I appears to me to be—"the institution Gurdwara owns the Gurdwara of bricks and mortar situated on any piece of land." Bricks cannot own themselves. Bijan Kumar Mukerjea in "The Hindu Law of Religious and Charitable Trust" (1962—second edition) says at page 35 that "when there is specific donee, as for example when the head of a monastic establishment accepts the gift on behalf of the congregation or order, the property might vest in the order or congregation itself as a juristic person and the head of the establishment for the time being would be entrusted with the duties of managing the property and spending its income for purposes of the congregation.....
The idea of a corporate personality as distinct from that of the individual members was recognised by the Smriti writers. .....
Institution like Choultris, Dharamsalas, Satras, etc., occupy a similar position. In all these cases the beneficiaries are an indefinite number of persons who constitute either the entire public or certain sections of it. The question is, who becomes the owner of such property after the founder parts with his rights?" (Again at page 37) "Ownership, therefore, must vest in somebody. As has been pointed out already, the Roman Law recognised the foundation or institution itself as Juristic person. Under the Roman Law an individual by dedicating property for a charitable purpose could bring into existence a foundation or institution which in law would be regarded as the owner of the dedicated property.
Obviously neither a Hindu religious institution nor a Hindu idol can come within the scheme of artificial persons as framed and adopted

by English Law. The religious institutions like mutts, choultries and other establishments obviously answer to the description of foundations in Roman Law. The idea is the same, namely when property is dedicated for a particular purpose the property itself upon which the purpose is impressed (page 38) is raised to the category of a juristic person so that the property which is dedicated would vest in the person so created. And so it has been held that a Mutt is, under the Hindu law, a juristic person in the same manner as a temple where an idol is installed, ... After all, juristic personality is a mere creation of law and has its origin in a desire for doing justice by providing as it were centres for jural relations. As Salmond says 'it may be of as many kinds as the law considers proper' and the choice of the corpus into which the law shall breathe the breath of fictitious personality is more a matter of form than of substance.

According to the principles of modern jurisprudence the bearer of a right must be a person. ... ... According to them (writers like Brintz, Bekker and Duguit), the maxim "No person, no property" is not a justifiable assumption and that property may not only belong to and be held by a person it may belong to an 'aim' or 'purpose' as well, without the purpose being recognised as a juristic person. The position is that they eliminate the "person" as the bearer of a legal right from their scheme altogether . . . . . On the other hand if the state regards the foundation or institution which aims at carrying out certain objects, a legal person, the latter acting through its agents can always enforce the right. This was precisely the conception of Roman Lawyers.

The scheme of Brintz, Bekker and others, though not a tenable scheme, certainly contains some important juridical truths. .....- Though these principles are nowhere expressly discussed by the Hindu Jurists, it seems that institutions like Mutts and Satras which were not gifted to any particular donee or fraternity of monks were regarded as juristic persons in Hindu Law to which the endowed property of these institutions belonged.... ... ... What is personified here is not the entire property which is dedicated to the deity but the deity itself which is the central part of the foundation and stands as the material symbol and embodiment of the pious purpose which the dedicator has in view." Again at page 40, the learned author writes "The idol as representing and embodying the spiritual purpose of the donor is the juristic person

recognised by law and in this juristic person the dedicated property vests." At page 41, it is stated by Mukherjea—"So far as the diety stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person and the correct view is that in that capacity alone the dedicated property vests in it." At page 142, the author continues—"The Hindu idol is a juridical subject and the *pious idea* that it embodies is given the status of a legal person and is deemed capable in law of holding property in the same way as a natural person."

In *Mosque known as Masjid Shahid Ganj and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar* (2), Young, C.J., observed (at page 374) as follows:—

> "It is conceded by the respondents that a mosque as an institution (but not as a building consisting of stones, bricks and mortar) is a juristic person. According to Mahomedan law its sacred character is perpetual. Counsel for plaintiff 1, that is the mosque, could not refer us to any authority of the Indian Courts or of the Privy Council for his proposition that property dedicated to sacred uses retains its sacred character under all circumstances and for all time. He relied upon two decisions of the Courts in England reported in *Wright* v. *Ingle* (3) and *Reg* v. *Sir Trayers Twiss* (4). Those cases decided that if land was dedicated to sacred uses, only an act of Parliament could divest such land of its sacred character. In fact the position in England as indicated by these authorities would appear to be much the same as the position under Mahomedan law where that law has not been modified by statute. In these cases no question of limitation or adverse possession arose, and they do not decide that the sacred character of such property in England would prevent the title passing by adverse possession to a third party. In any event they recognise that an Act of Parliament may alter the character of such land. The Limitation Act in India is equivalent to an Act of Parliament, and it clearly deals with property dedicated to God."

(2) A.I.R. 1938 Lahore 369 (F.B.).
(3) (1885) 16 QBD 379.
(4) (1869) 4 Q.B. 407.

The distinction between the mosque as a building and the mosque as an institution was brought about by the learned Chief Justice in the following passage of his judgment (at page 375):—

> "A mosque is the house of God but is not the deity. A mosque as a building is also clearly 'property' in every sence of the word even if it be the 'property of God'. There is a clear distinction between a mosque as an institution, or as a juristic person which can own property, and a mosque as a building; the mosque as a building may be owned by the institution (juristic person) or by anyone else who may acquire adverse possession over it. A mosque as a building has every attribute of 'property', it is, for example, subject to trespass, and it has been held that a mosque is 'immovable property" and that the juristic person—that is the institution—as owner of such immovable property has a right of pre-emption under section 13, Punjab Pre-emption Act, 1905."

In an appeal against the abovesaid Full Bench judgment of the Lahore High Court it was observed by (per Sir George Rankin) the Privy Council in *Mosque known as Masjid Shahid Ganj and others* v. ***Shiromani Gurdwara Parbandhak Committee, Amritsar and another*** (5) (at pages 121 and 122):—

> "The question whether a British Indian Court will recognise a mosque as having a *locus standi in judicio* is a question of procedure. In British India the Courts do not follow the Mahomedan law in matters of procedure (cf. 7 All 822 at pp. 841-2, per Mahmood, J.) any more than they apply the Mahomedan criminal law or the ancient Mahomedan rules of evidence. At the same time the procedure of the Courts in applying Hindu or Mahomedan-law has to be appropriate to the laws which they apply. Thus the procedure in India takes account necessarilly of the polytheistic and other features of the Hindu religion and recognised certain doctrines of Hindu law as essential thereto, e.g., that an idol may be the owner of property. The procedure of our Courts allows for

(5) A.I.R. 1940 P.C. 116.

a suit in the name of an idol or deity though the right of suit is really in the shebait: 31 I.A. 203."

After referring to various previously decided cases including the earlier decision of the Lahore High Court recognising a mosque as a juristic person (*Shankar Das* v. *Said Ahmad* (6) *Jinda Ram* v. *Husain Bakhsh and Mussammat Bakhtiar* (7) and *Maula Bukhsh v. Hafiz-ud-Din and others* (8) as distinguished from the building called the mosque, Sir George Rankin continued:—

"In none of these cases was a mosque party to the suit, and in none except perhaps the last is the fictitious personality attributed to the mosque as a matter of decision. But so far as they go these cases support the recognition as a fictitious person of a mosque as an institution—apparently hypostatizing an abstration. This, as the learned Chief Justice in the present case has pointed out, is very different from conferring personality upon a building so as to deprive it of its character as immovable property."

Sir George Rankin then made it clear in a subsequent passage that the Privy Council may not be taken as having decided that a juristic personality may be extended for any purpose to Muslim institutions generally or to mosques in particular and that their Lordships of the Privy Council reserved their opinion on that point as the specific question which arose in the case before them was that suits could not competently be brought by or against institutions as artificial persons in British Indian courts as *locus standi* to institute a suit depended on the procedural law of the country. The Privy Council did not, however, overrule or differ from the observations of Young, C.J., referred to above.

The legal concept of an institution in the sense of a fictitious legal person independent of and separate from any tangible property on which the personality may or may not be impressed can also be discerned from the judgment of a Division Bench of the Calcutta

(6) 153 P.R. 1884.
(7) 59 P.R. 1914.
(8) A.I.R. 1926 Lahore 372.

High Court (Jenkins, C.J. and Mookerjee, J.) in *Bijoychand Mahatab* v. *Kalipada Chatterjee* (9); wherein it was held that the religious purpose survives even the destruction or mutilation of the image of Shiva as a new image may subsequently be established and consecrated in order that it may be worshipped as intended by the original founder.

Dealing with the question of limitation in *Sarangadeva Periya Matam and another* v. *Ramaswami Goundar (dead) by legal representatives* (10), Bachawat, J., observed (paragraph 6 of the judgment) that the Mutt is the owner of the endowed property and that like an idol the Mutt is a juristic person having the owner of acquiring, owing and possessing property and having the capacity of suing and being sued. The learned Judge held—"Being an ideal person, it must of necessity act in relation to its temporal affairs through human agency." It is well-known that unlike cases of a deity or an idol, Mutt in ordinary language signifies an abode or residence of ascetics. "In legal parlance, it connotes a monastic institution presided over by a superior and established for the use and benefit of ascetics belonging to a particular order who generally are disciples or co-disciples of the superiors." (Mukherjee at page 293). It is, therefore, clear from the authoritative pronouncement of their Lordships of the Supreme Court in *Sarangadeva Periya Matam and another* v. *Ramaswami Goundar (dead) by legal representatives* (10) (*supra*), that even a Mutt is recognised in law as an institution independent of the building or a part of building meant for the use of the Mutt and owned by the Mutt.

Mr. R. K. Garg, the learned counsel for the S.G.P.C. also invited our attention to an unreported judgment of the Supreme Court, dated December 20, 1954, in Civil Appeal No. 101 of 1952—*Mahant P. Krishna Nand Giri Goswami* v. *Hira Lal styled himself as Hiranand Giri and another* (11), wherein it was observed *inter alia* as follows:—

> "The learned Judge (of the High Court) here has mixed up the question of public character of the Mutt with the question

(9) I.L.R. (1914) 41 Cal. 57.
(10) A.I.R. 1966 S. C. 1603.
(11) C.A. No. 101 of 1952 decided on 20th Dec., 1954.

of the dedication of the building as a Mutt. It appears to us notwithstanding that there is no specific deed of endowment, the fact that the particular building has been continuously used as the residence of the brotherhood.....

and again,.....

"the only substantial question in the case is whether and to what extent the properties in suit belong to this Mutt as an institution."

From the above discussion of the law on the subject it is clear that though juristic personality carrying with it the *locus standi* to institute a suit or initiate an action in a Court of law necessarily depends on the procedural and municipal law of a country, it has all along been recognised by jurists and by the highest Courts that an institution in the sense of a fictitious corporation composed of an idea or a purpose such as a Mutt for purposes germane to the same, and such as a mosque for the purposes of Muslim worship can exist in the eyes of law wholly independently of and separate from the property belonging to such an institution, i.e. independently of the building of the Mutt or the building of the mosque itself. It is, therefore, nothing strange that the Punjab Legislature while using the word "Gurdwara" in some parts of the Act intended therein to refer to the institution of the Gurdwara and not to the physical Gurdwara of brick and mortar.

Secondly, if the word "Gurdwara" in sub-section (1) of section 5 is interpreted in the physical sense as canvassed on behalf of the petitioners, it would lead to a situation in which a claimant under section 5(1) would not be able to lay a claim to any part of the physical Gurdwara. If on account of such a description in the application under section 3(1) of the Act, the notification issued under sub-section (2) of section 3 describes the entire property, howsoever extensive, as the Gurdwara, it would not be possible for anyone to lay a claim to an inch of that property or even to a brick therein as section 5(1) bars the making of any claim in respect of any right, title or interest "in the Gurdwara itself." Once it is said that even in such a case, the Tribunal may determine the extent to which the property comprises the Gurdwara itself, it would be impossible to draw a line and to define the limit at which the Tribunal may stop such an inquiry. The only way to resolve this kind of absurdity would be to treat "Gurdwara" mentioned in sub-section (1) of section 5 as an "institution", and not as any physical property.

This distinction was clearly brought out in two decided cases to which reference has been made before us. First is the judgment of Coldstream, J. (a renowned Judge of the Lahore High Court), as President of the Sikh Gurdwara Tribunal, Lahore, dated January 29, 1929, wherein a claim was laid to the alleged Gurdwara building of Gurdwara Rupar mentioned at item No. 233 of the first Schedule to the Act. Under section 3(1), a list was duly forwarded to the Local Government claiming as property of that Gurdwara, a building in possession of one Bhagwan Dass, and notification was published under sub-section (2) declaring that the Gurdwara to which the list related was a Sikh Gurdwara. In a petition under section 5, Bhagwan Dass disputed the claim made by the Sikhs and alleged that the building in question was not a Gurdwara, but was the residential house of Bhagwan Dass. He alleged that the Sikhs had brought their claims in order to avenge themselves upon Bhagwan Dass, as the latter had set up a press in that building where he used to print religious propaganda attacking the Akalis and Sikhism. The petition of Bhagwan Dass was fowarded to the Sikh Gurdwaras Tribunal by the Local Government. The first two issues framed by the Tribunal were :—

> "(1) Is the Gurdwara, Rupar, mentioned at No. 233 in Schedule to the Act situated in the property in dispute ? If so, what part is the Gurdwara proper? and
>
> (2) Does any other part and if so, what part of the building in dispute belong to the Gurdwara?"

After referring to the evidence led by the parties at the trial before the Tribunal, it was held that the property in dispute was not proved to be Gurdwara, Rupar, at No. 233 of the Schedule. Question then arose whether such an adjudication could be made by the Tribunal or if, such a question was barred by sub-section (1) of section 5. Dealing with that aspect of the matter, Coldstream, J., observed as follows :—

> "I come now to deal with the somewhat difficult question whether the notifications by the Local Government relating to Gurdwara No. 233 have the effect as Mr. Bhagat Singh argues they have, of deciding conclusively the property in dispute is or includes a Sikh Gurdwara. It is not

denied that a Committee of Management has been duly constituted for the management of Gurdwara, Rupar, No. 233, under the provisions of part III of the Act, but the notification does not give any information identifying the property in dispute with that Gurdwara. Nor indeed would it help us if it had so identified the Gurdwara, for there is nothing in the Act to justify the view that if a Committee has been set up to manage a place which is in fact not a Sikh Gurdwara either by operation of the statute or by declaration of the Tribunal, then that place becomes a Sikh Gurdwara automatically, or the view that this Tribunal is to be guided by the opinion of the Local Government as to identity of any particular place, not clearly described by the words in the schedule, and a scheduled Gurdwara.

Under section 3(2), the Local Government issues two notifications: the first is published as may be after a list of rights, titles or interests, including the Gurdwara, has been submitted under the provisions of section 3(1). The first notification relating to Gurdwara No. 233 was No. 892, dated the 28th April, 1926. That notification did not specify what building was, or what property had been claimed to be the Gurdwara, nor has the Local Government any authority to decide which building is the shrine in the Schedule. The notification merely declared that Gurdwara No. 233 known as Gurdwara Rupar in the revenue estate of Rupar was a Sikh Gurdwara. The second notification was No. 2933, dated 9th September, 1926. This notification merely published the claim made in the list submitted under section 3(1) on behalf of the Gurdwara Rupar. I note that the list described the property wrongly as being in Mohalla Ghair Ghambirian and that the submitter was S. Bhagat Singh, the counsel for the respondents. So far as I can see section 3(2) of the Act neither gives the Local Government authority to decide what part of the property claimed is the Gurdwara itself or that the property described as the Gurdwara itself is the Sikh Gurdwara on whose behalf the claim is put forward, nor takes away the juirsdiction of the Tribunal to decide under section 14, how far the claims made in the list are true. Mr. Bhagat

Singh contends that the words "the Gurdwara to which it relates" under section 3(2) mean "the place described as the Gurdwara in the list itself." If this contention is correct then the question at issue is conclusively settled in favour of the respondent. But I do not think that the contention is correct. In my opinion the meaning of the words is "the Gurdwara in the Schedule on behalf of which the claims have been put forward." Thus the effect of the notification No. 892 of 28th April, 1926, was merely to decide for good and all that Gurdwara No. 233, whatever might be the claims submitted under section 3(1) was a Sikh Gurdwara and neither of the notifications precludes this Tribunal from deciding whether those claims are true.

Mr. Bhagat Singh finds support for his contention in the final words of section 5(1) which forbids any claim being made in a list submitted under section 3(1) in respect of a right, title or interest in the Gurdwara itself. If Mr. Bhagat Singh's argument here is well founded, section 5 read with sections 5(3) and 32, goes far practically to enable any Sikh to deprive a person of his private property merely by submitting a list under section 3(1) describing that property to be a Sikh Gurdwara mentioned in Schedule I. I cannot accept this interpretation of section 5(1). The sub-section itself certainly does not expressly authorise the Local Government to decide what building is referred to in the Schedule nor take away from the Tribunal jurisdiction to decide this question. The "Gurdwara itself" is clearly one of the properties to be claimed on behalf of the Gurdwara under section 3(1). Petitions contesting these claims are sent to the Tribunal under section 14, and it is for the Tribunal to decide what part of the property, if any; is the "Gurdwara itself" in which no right, title or interest can be claimed as private property. I myself incline to the view that the words "Gurdwara itself" at the end of sub-section 5(1) refer not to the list submitted under section 3(1) nor to any tangible property but to the institution or corporation, and that the sub-section merely forbids any private person to come forward and say that the institution (wherever it be housed and/or whichever be the building actually used for

public worship) is his private property and is not a Sikh institution. If this view is correct then this Tribunal certainly has jurisdiction to decide what specific building belongs to the institution and what is private property.

Lastly, Mr. Bhagat Singh refers us to the form I prescribed by the rules under the Sikh Gurdwaras Act published with notification No. 429S, dated the 12th October, 1925, for lists submitted under section 3(1). The rights etc. claimed are to be described in the list under five heads, the first of which is "description and boundaries of the Gurdwara itself." But this description is that of the submitter alone, based upon his own alleged knowledge. What I have said above as regards the effect of section 5(1) resulting from the acceptance of Mr. Bhagat Singh's argument, applies also to this form. I do not find justification for holding that this prescribed form either alone or read with section 5(1) disenables a private person from proving in this Tribunal that any claim made in that list on behalf of the Gurdwara is unfounded or false, so long as he does not claim as his private property the institution itself or (possibly) any tangible property that the Tribunal finds to be 'the Gurdwara itself'.

My conclusion is that the property claimed by the petitioner is not proved to be or to belong to the institution mentioned at No. 233 of the first Schedule to the Act."

The distinction between Gurdwara as an institution and the physical property known as Gurdwara was clearly brought out by Coldstream, J., with whom one other member of the Tribunal agreed in the abovesaid judgment. Though, it appears that an appeal against the abovesaid judgment of the Tribunal was preferred to the Lahore High Court, it has not been possible to ascertain the result of the same. Gurdwara Rupar, however, continues to be mentioned at item 233 of the first Schedule which shows that though the property claimed for the Gurdwara was held to belong to Bhagwan Dass, the institution known by that name has continued to exist even thereafter.

The second case in which a somewhat similar question arose and in which tacit approval of the dictum of Coldstream, J., can be said

to have been given by a Division Bench of the Lahore High Court is of (*Mahant*) *Davindar Singh* v. *Shiromani Gurdwara Parbandhak Committee and another* (12). Harrison, J., delivering the judgment of the Court for himself and Broadway, J., observed in this connection:—

> "He (the Mahant) contends that the last notification is a nullity and in no way debars him from claiming the whole of the land and buildings enclosed within the boundaries and this because under section 5(1) nobody may claim a right, title or interest in a Gurdwara and all that the notification declares is that there has been no such claim to a Gurdwara. He repeats that he does not claim a Gurdwara but he claims the area alleged by the S.G.P.C. to be a Gurdwara and this is very different matter. He concedes that the declaration under section 3(4) which constituted the first notification is conclusive proof that any Gurdwara that there may be is a Sikh Gurdwara but urges that this does not decide whether there is any such Gurdwara or not. He contends that inasmuch as section 5(1) forbids any claim to a Gurdwara, a notification can only deal with property outside the Gurdwara and, therefore, that this notification is wholly meaningless.
>
> The S.G.P.C., on the other hand, rely on the wording of the notification. They contend that it is absolutely conclusive, that the Gurdwara is fully defined and this ends the matter. The view of the Tribunal is, I understand, that nobody may claim any property which, rightly or wrongly, has been declared under section 5(3) not to have formed the subject-matter of any claim, that it is immaterial whether the claimant did so or not as nobody can go behind the notification. The obvious objection to this view is that it may perpetuate a mistake and make it impossible to correct it. It would also enable the S.G.P.C. once a Gurdwara had been notified under sub-section 2 to secure without challenge any property they wish simply by

(12) A.I.R. 1929 Lah. 603.

putting in a plan and describing the property as forming part of that Gurdwara. Mr. Petman appearing for S.G.P.C. does not go so far as to say that nobody may claim any land shown as forming portion of the compound or building of the Gurdwara in the plan submitted by the S.G.P.C. He concedes that provided the claimant admits the existence of a Gurdwara over however small an area (and a Gurdwara he defines as a building or part of a building) he may claim the remainder of the area and even of the buildings. The whole difficulty to my mind is due to the fact that 'Gurdwara' is nowhere defined. It would have been simple to say a Gurdwara is a place or a building notified as such in Schedule 2 (should be 'Schedule I'). This was not done. It is conceded by both sides that provided there be a Gurdwara it becomes a Sikh Gurdwara under certain circumstances. But what happens if the existence of a Gurdwara be questioned. If Mr. Petman's view be correct, the following result might follow.

A certain area is notified under section 3(2) as claimed by the S.G.P.C. as constituting a Gurdwara. One claimant comes forward, admits the existence of a Gurdwara in the northern half and claims the southern. Similarly, another claimant admits the existence of a Gurdwara in the southern half and claims the northern. The area now claimed regarding both portions forms the whole. No notification can issue under section 5(3) as claims have been submitted to every inch of the area and when those claims come to be investigated it is found in turn that the southern half belongs to the first and the northern to the second claimant and there is no Gurdwara at all and the fact notified in the schedule, namely, that there is a Gurdwara at this place, is definitely negatived. In a case which is still *sub-judice* in the sense that an appeal in it is pending, and which is known as the Rupar case, it was found by the majority of the Tribunal that no Gurdwara existed as described in the Schedule. The word 'Gurdwara' is clearly not limited to a Sikh institution inasmuch as Schedule 2 which, counsel agree, gives a list of the institutions which are not Sikh as opposed to Hindu includes some which are described as Gurdwaras.

The question, therefore, is narrowed down to this: can the correctness of the notification under section 5(3) be challenged; and, if so, can any individual or religious body claim any portion of the area described as a Gurdwara by the S.G.P.C., and, if it can claim any portion, can it claim the whole ?

The answer to the first portion is, I think, that so far as the notification under section 5 deals with claims to Gurdwara it is meaningless inasmuch as there can be no such claim. The test is not whether a man admits that there is a Gurdwara or not but whether he claims the Gurdwara as such, e.g., supposing there be a dispute between two sets or branches of Sikhs they cannot put in rival claims to the Gurdwara as a Sikh Gurdwara. Any body may put in a claim provided he avoids describing it as a claim to a Gurdwara. He may claim, in other words, that what the S.G.P.C. or any other religious body declares to be a Sikh Gurdwara, forms part of his private property or a part of the endowment of any institution. This is the view clearly taken by the officials responsible for the notification when they excluded 'H' (a corner of the property had been marked 'H' in the plan annexed to the Government notification under section 3(2) of the Act).

Now if he can claim a portion, is there any reason why he cannot claim the whole? The test suggested by Mr. Petman is impossible and unworkable and, inasmuch as Government has not seen fit to lay down that the Schedule is conclusive proof that there is a Gurdwara at each of the places entered therein, or that a Gurdwara is a place notified as such, there is no reason, in my opinion, why any individual should not come forward and claim the whole area described and defined in the notification; provided always that he abstains from using the word "Gurdwara" as describing and forming the subject-matter of his claim. Again, it is possible there may be some absolutely *bona fide* mistake in describing a well-known institution as falling within a revenue estate in which it is not situated and that mistake could, in my opinion, be put right by the owners of that estate representing the position and having the necessary correction

made. If a man admits a certain portion to be the Gurdwara and then claims it, his claim so far as this portion is concerned must die still-born, and strictly speaking it would not be necessary to issue any notification under section 5(3), though there could be no possible harm in doing so. To defeat his claim to what he has himself so described it would be sufficient to rely on section 5(1).

The result, therefore, will be that the appeal is accepted and the claim to the whole of the portion shown as enclosed in red boundaries in the last notification must be investigated, as also the claim to the small portion C. The costs of the appellant in this appeal will be paid by the respondent."

The Rupar case mentioned in the above-quoted passage from the judgment of the Lahore High Court is the case under item 233 of the first Schedule which was decided by the judgment of Coldstream, J., and another member of the Tribunal and to which reference has already been made. The judgment of the Division Bench of the Lahore High Court clearly supports the view that though section 5 (1) bars any claim in respect of the Gurdwara itself, every inch of the land and every part of the building of what may be described and claimed as the physical Gurdwara can be the subject-matter of a claim under section 5(1) and of adjudication by the Tribunal. This also shows that the word "Gurdwara" as used in section 5(1) was understood by the Lahore High Court to be an institution as distinguished from the physical building popularly called the Gurdwara.

Gurdwara as used at appropriate places in the Act has been referred to as an institution in various other cases decided by the Lahore High Court including the judgment of Addison and Ram Lall, JJ., in *Bawa Ishar Das and others* v. *Dr. Mohan Singh and others* (13).

Bakhshi Tek Chand, J., an illustrious Judge of the Lahore High Court when presiding over a Division Bench of that Court (Din Mohammad, J., with him) held in *Guru Amarjit Singh through Court*

(13) A.I.R. 1939 Lah. 239.

of Wards, Deputy Commissioner, Jullundur v. *Committee of Management for Gurdwara Thamji Sahib Panchvin Padshahi and Gurdwara Gangsar Panchvin Padshahi, and another* (14) at 164 as below:—

> "It is no doubt true that the Tribunal, in its judgment and decree of 19th January, 1934, purported to define the extent of the building of the Gurdwara. But these remarks in the decree were clearly obiter. That decree was passed in proceedings on the petition under section 8, in which all that the Tribunal had to decide was whether the institution, known as Gurdwara Gangsar at Kartarpur, was a Sikh Gurdwara as defined in the Act. It had, at that stage, only to determine the nature and character of the institution and not to adjudicate upon the right, title or interest of the Gurdwara in the properties mentioned in the consolidated list, inclusive of the Gurdwara building. That was a matter which had to be decided in proceedings on the petition under section 10. The remarks of the Tribunal in its judgment and decree of 19th January, 1934, defining the extent of the Gurdwara building and stating that it included the well and the two bathing places have, therefore, no legal effect as against the declaration of rights as embodied in the decree of 28th February, 1935."

The above-said passage in the judgment of Tek Chand, J., leaves no doubt in my mind that the only thing to which a claim is barred in case of Schedule I Gurdwaras by sub-section (1) of section 5 is the thing which can be the subject-matter of adjudication in cases of non-schedule I Gurdwaras under section 8 of the Act, i.e., the character of the institution itself as distinguished from any physical property claimed to be belonging to it. Learned counsel for both sides admitted before us that except in the Rupar case and in the case decided by the Lahore High Court (per Harrison, J.) in (*Mahant*) *Davinder Singh* v. *Shiromani Gurdwara Parbandhak Committee and another* (12) (*supra*), no such question has so far arisen in any other

(14) A.I.R. 1941 Lah. 161.

decided case. The judgment of the Sikh Gurdwara Tribunal (per Coldstream, J.) and of the two Division Benches of the Lahore High Court referred to above clearly support the contention of the learned Advocote-General and that of the counsel for the S.G.P.C. in this behalf.

Thirdly, when the word "Gurdwara" in section 5(1) had been interpreted as long ago as in 1929 and in 1941 in the manner indicated above, the Legislature of the State of Punjab was presumed to have been aware of the existing law as interpreted by the High Court when it extended the relevant provisions of the Act to the erstwhile PEPSU territory in 1959. For the basis of this legal proposition reference may be had to the following passage from Craies on statute Law (page 133 of the fifth edition and page 141 of the sixth edition):—

> "Likewise, if Acts are framed using the forms of words or clauses in prior Acts which have received judicial construction, unless a contrary intention appears, the Courts will presume that the Legislature has adopted the judicial interpretation, or has used the words in the sense attributed to them by the Courts. "

Fourthly, it would appear that section 5 (in case of Gurdwaras mentioned in Schedule I) corresponds to section 10 of the Act for claims to other notified Sikh Gurdwaras. But for the additional provision contained in section 8 enabling any twenty worshippers or an hereditary office-holder of a notified Sikh Gurdwara to dispute that the Gurdwara is not a Sikh Gurdwara, the procedure and scope of enquiry before the Tribunal in respect of claims to property of the Gurdwara are exactly the same in respect of the Schedule I Gurdwaras and the other Gurdwaras (Except for Schedule II institutions for which no claim can be made by or on behalf of the Sikhs). If the interpretation sought to be placed by the petitioners on the word "Gurdwara" as used in section 5(1) is adopted, the scope of claim to property and enquiry in that behalf in case of the Schedule I Gurdwaras would be narrowed down to the extent of the possibility of its becoming completely extinct, as compared to the extent of claim and scope of enquiry of notified Sikh Gurdwaras which are outside the first Schedule. This would be contrary to and inconsistent with the scheme of the Act; and there appears to me to be neither any warrant nor any justification for interpreting section 5(1) in that

manner. Whereas a claim to any part of the property of the Gurdwara including the building and land of the Gurdwara itself can admittedly be made under section 10(1) of the Act in respect of a Sikh Gurdwara notified as such under sub-section (2) of section 9, it is impossible to believe that the Legislature wanted to shut out such a claim in respect of another Gurdwara notified to be a Sikh Gurdwara under sub-section (2) of section 3.

Fifthly, it is clear from the law settled in *Guru Amarjit Singh's case* (*supra*) that no claim to any physical property can be made under section 8. That being so, claims to property can be made under section 5 in one case (in respect of Schedule I Gurdwaras), and under section 10 in the other (Gurdwaras which are neither in Schedule I nor in Schedule II) . It is not disputed that in proceedings under section 10, the physical Gurdwara itself can also be claimed. Still a claim under section 10 will be tried by the Tribunal only (i) after a conclusive declaration under section 9(2) regarding the Gurdwara being a Sikh Gurdwara is made if no objection is filed under section 8; or (ii) after such a declaration is made consequent upon the disposal of objections filed under section 8 and only in case the objections are dismissed as section 16(1) of the Act requires that if in any proceedings before a Tribunal it is disputed that a Gurdwara should or should not be declared to be a Sikh Gurdwara, the Tribunal must 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) of section 16. Thus a claim to the physical Gurdwara itself is admittedly neither inconsistent with nor precluded by a conclusive declaration under section 3(4) or section 9(2) equal to a judgment *in rem* according to the decision of a Division Bench of the Lahore High Court in (*Mahant*) *Davinder Singh* v. *Shiromani Gurdwara Parbandhak Committee and another* (12) of the Gurdwara being a Sikh Gurdwara. Same is the position *vis-a-vis* the extent of claim to property under section 5 consequent on a notification under section 3(2) which is made conclusive by sub-section (4) of section 3. In the absence of clear indication to the contrary, there is no reason to suspect that the scope of any of the two provisions (sections 5 and 10) is in any manner more restricted or extensive than that of the other. This will not be so if "Gurdwara" in section 5(1) is understood to denote the physical Gurdwara of brick and mortar.

Sixthly, in the second proviso to section 7(1) of the Act reference is expressly made to the entries in Schedule I (Gurdwaras referred to in sub-section (1) of section 3) as institutions. The Gurdwaras in Schedule I of the Act are referred to in the said proviso twice as "institutions". An application under section 3(1) can be made regarding the property of only such a Gurdwara as is listed in Schedule I. It is the application and list furnished under sub-section (1) of section 3 which is published and notified under section 3(2). Claim can be made to any and every property in the said list under section 5(1). The exception regarding the Gurdwara in that provision relates only to the concerned institution named in Schedule I, to which express reference is made at two places in second proviso to sub-section (1) of section 7.

Seventhly, it is settled rule of interpretation of statutes that if any statutory provision is susceptible of more than one meaning the interpretation which leads to harmonious construction and which would be consistent with the scheme of the Act, as also save it from being struck down as invalid or unconstitutional, should be preferred. Reading Gurdwara in section 3(1) and section 5(1) and in other places referred to in an earlier part of this judgment in the sense of an institution fulfils this requirement. Interpreting the Gurdwara in the aforesaid provisions as the physical property comprising the place of worship would be contrary to the said rule of interpretation.

Eighthly, section 28 authorises the Committee of the Gurdwara concerned to bring a suit "on behalf of the Gurdwara" for the possession of any property provided that the Gurdwara concerned "is entitled to immediate possession of the property," and is not in possession thereof at the date of publication of the notification. No suit can even in common parlance be instituted on behalf of a piece of property. A suit can be instituted either on behalf of a person who is not himself capable of suing or is under some disability, or an institution which is not permitted by the procedural law of the country to sue in its own name. The language of section 28 also, therefore, tends to support the interpretation adopted by me.

Mr. Dalip Chand Gupta raised two objections to "Gurdwara" being understood as an institution in any part of the Act. He submitted firstly, that if the Legislature intended to make the Gurdwara a juristic person, it would have so stated as it has done in

case of a suit for possession by a Committee under section 28, in the case of the Board (S.G.P.C.) under section 42, and in the case of incorporation of a Committee under section 94-A of the Act. There is no merit in this argument. It has never been said that a juristic person can be brought into existence only by an express provision in a statute. Nor is it logical to contend that the statute having talked of two kinds of juristic persons in the Act, no third juristic person can be presumed to exist for the purposes of any of the provisions of the Act. It is only when a body of living persons is grouped together and is sought to be given a separate legal entity that the statute has to say so. "To constitute creation, however, it is not necessary that any particular form of words should be used in the statute; it is sufficient if the intent to incorporate be evident. — — — — — — Where a number of persons are so constituted by Act of Parliament that they have perpetual succession, are to continue for all time, may take land, make contracts which shall be binding — — — — — and are authorised to sue or be sued in the name of their treasurer, they are in the nature of a corporation aggregate — — — — —" (Halsbury's Laws of England, Simonds Edition, page 28 paragraph 45). Moreover, it is not necessary to go into the concept of an institution being necessarily a juristic person, as the law conceives and recognises institutions without being clearly labelled as juristic persons for all purposes. The cases of mosques and Mutts have already been noticed. The institution may represent only a "purpose" or an "idea."

The second submission of Mr. Gupta was that the Act does not authorise a Gurdwara to sue or to be sued in its own name, and, therefore, it would be a fallacy to call it an institution. The argument is on the face of it fallacious. Reference has already been made to the judgment of their Lordships of the Privy Council in *Mosque known as Masjid Shahid Ganj and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar and another* (5), wherein it has been emphasised that the authority to sue or be sued in its own name depends in the case of an institution on the procedural law of the country. It is not necessary that every legally recognised institution must be authorised to sue or to be sued in its own name. The mere fact that an institution does not enjoy the right to sue or to be sued in its own name cannot be used as premises for inferring therefrom that the institution does not exist in the eye of law. If this were so, it would be possible to

contend that a minor or an insane person does not exist in the eye of law, as such persons are incapable of suing or being sued by themselves, and must come to Court through a next friend. Who can or cannot sue in his own name is a subject dealt with by the relevant provisions of the Code of Civil Procedure in this country. Capacity or incapacity to sue in one's own name does not, in my opinion, have anything to do with the existence or recognition of a legal person or an institution. I do not, therefore, and any merit even in the second objection of Mr. Gupta in this behalf.

For all the eight reasons recorded above, and particularly in view of the law settled by the Lahore High Court in (*Mahant*) *Davindar Singh* v. *Shiromani Gurdwara Parbandhak Committee and another* (12) and in *Guru Amarjit Singh's case* (14) I would hold that the word "Gurdwara" in sub-section (1) of section 5 of the Act as well as in sub-section (1) of section 3 of the Act refers to the institution whose name and place of residence are indicated in Schedule I and not in the physical sense of tangible property called the Gurdwara.

The necessary corollary from this finding is that no claim to any right, title or interest in any part of the property belonging to the institution of a notified Sikh Gurdwara is barred by or outside the scope of section 5 of the Act; and the only bar is to claim the statutory fictional institution itself which is also called "Gurdwara", and which is claimed by any Sikh or any office-holder of a Gurdwara under section 3(1) to own the physical Gurdwara and the property attached to it. According to this construction of section 5(1) (which construction was placed on the provision as long ago as in 1929, and never dissented from since then), there is no discrimination between the scope of rights of claimants to the property of the Gurdwaras including the land and building of the Gurdwara concerned irrespective of whether the Gurdwara in question is one listed in Schedule I or not so listed, i.e., between sections 3 to 5 proceedings on the one hand and sections 7 to 10 proceedings on the other.

Before proceeding further it appears to be necessary to take notice of two other matters. The first matter is that counsel for the respective petitioners in each of the four cases before us expressly conceded—

(i) that they did not challenge the legislative competence of the Punjab Legislature to have enacted the Amending

Act of 1959 and that every provision in the principal Act of 1925 and in all the Amending Acts passed prior to 1959 was legal and valid;

(ii) that all possible proceedings under sections 3 to 6 on the one hand and sections 7 to 17 on the other hand to be initiated within specified periods not extending beyond one year of the coming into force of the Act; and so all those cases under the Act before its amendment by Act 1 of 1959 stood finally completed and disposed of before the coming into force of the Constitution and are accordingly beyond question and outside the pale of possible attack under Article 13 of the Constitution;

(iii) that the *vires* of section 38 of the Act (which provision is substantially analogous to section 92 of the Code of Civil Procedure) are not in dispute. In fact the maximum claim of the petitioners has been that they should all be governed by section 38;

(iv) that cases of (*Mahant*) *Davinder Singh* (12) and *Guru Amarjit Singh* (14) have been correctly decided and the ratio of those judgments represents the correct state of law ;

(v) that the petitioners did not find any fault with either the Constitution of or the procedure for trial of disputes followed by the Sikh Gurdwaras Tribunal, which Tribunal is of a higher status than of an ordinary civil Court (being presided over by a sitting Judge of the High Court. and comprising of two other members qualified to be appointed as High Court Judges—*vide* section 12) and its procedure being same as provided in the Code of 1908, particularly when an appeal against its decision lies as a matter of right to a Division Bench of the High Court (section 34); and

(vi) that except in the case of *Lachhman Dass* (C.W. 1935 of 1962), none of the petitioners has even by implication claimed or is even now claiming any right, title or interest in the Gurdwara itself in its institutional sense. The extent to which such a claim is said to have been made in *Lachhman Dass's case* will be referred to while dealing with the individual cases.

The second matter relates to an objection of a somewhat preliminary nature raised by the learned Advocate-General and further pressed by Mr. R. K. Garg about the plea of the constitutional inhibition of Article 14 not being entertainable in any of the four cases before us, in the absence of the necessary and definite pleas supported by the requisite material and averments. No attack on any statutory provision can be founded on the ground of alleged violation of the equal protection clause (Article 14) on vague and indefinite allegations. In Dharam Dass's petition (C.W. 514 of 1966), there is not even a vague reference to the equal protection clause. Even Article 14 is not mentioned anywhere in that petition. In all the other three cases there is no complaint about any other definite person exactly similarly situated as the respective petitioners having been placed by the Act in a more beneficial position than the petitioner in question by the alleged and impugned classification. In such a situation the State and the other concerned respondents are extremely handicappd for no fault of theirs when they are called upon to meet challenges based on conjectures and surmises which may have no existence in the realm of reality. The burden of proof of an alleged violation of Article 14 lies heavily on the petitioners as every statutory provision has to be presumed to be *intra vires* the Constitution till it is shown to be otherwise. Adopting any other course would open the floodgates of unnecessary and futile litigation which would involve useless waste of valuable time and energies of the State and the High Court without any ultimate gain to the citizens. Besides referring to the relevant observations in *Charanjit Lal Chowdhry* v. *The Union of India and others* (15), at 59, reliance has been placed by the learned counsel for the respondents in support of these propositions on the following pronouncements of their Lordships of the Supreme Court:—

(1) In *V. S. Rice and Oil Mills and others* v. *State of Andhra Pradesh, etc.* (16), at 1788, per P. B. Gajendragadkar, C.J.; **(paragraph 22):—**

"This Court has repeatedly pointed out that when a citizen wants to challenge the validity of any statute on the ground that it contravenes Article 14, specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned statute is based on discrimination and that such discrimination

(15) A.I.R. 1951 S.C. 41.
(16) A.I.R. 1964 S.C. 1781.

is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute. Judged from that point of view, there is absolutely no material on the record of any of the appeals forming the present group on which a plea under Article 14 can even be raised. Therefore, we do not think it is necessary to pursue this point any further."

(2) In *Cochin Devaswom Board, Trichur* v. *Vamana Setti and another* (17) at 1987 per Shah, J. (paragraph 15):—

"The Board only pleaded that by the enactment of the Act there was discrimination between Jenmies in the three regions. In the absence of any plea and proof about relative fertility of the soil, nature of crops raised, extent of holdings, historical development of the kanam-tenure and the terms on which the kanam-tenants hold land from the Jenmies, it would be impossible to decide whether the Jenmies in the three regions are similarly circumstanced and that the Legislature has made an unlawful discrimination by providing a different tariff of payments. A person relying upon the plea of unlawful discrimination which infringes a guarantee of equality before the law or equal protection of the laws must set out with sufficient particulars his plea showing that between the persons similarly circumstanced, discrimination has been made which is founded on no intelligible differentia. If the claimant for relief establishes similarity between persons who are subjected to a differential treatment it may lie upon the State to establish that the differentiation is based on a rational object sought to be achieved by the Legislature. In the present case the pleading of the Devaswom Board is wholly insufficient to discharge the onus of proving similarity of status between the Jenmies in the three regions, and the findings recorded by the High Court which are not challenged before us clearly show that there is a difference between the relations

(17) A.I.R. 1966 S.C. 1980.

governing the Jenmies and the kanam-tenants in the three regions. The plea about infringement of the fundamental right under Article 14 of the Constitution must, therefore, fail."

The objection of respondents in this behalf in so far as it aims at excluding from consideration the agument advanced on behalf of the petitioners under Article 14 of the Constitution appears to me to be well-founded. As, however, this objection was raised by the respondents at a somewhat late stage in this litigation, and as almost three weeks of the Court were taken in the hearing of these cases by the Full Bench, and more particularly because these questions are being raised in a large number of cases from time to time, we have considered it fit to deal with and dispose of all the arguments addressed before us on their merits.

Field is now clear for dealing with the seven contentions raised by Mr. Gupta which have already been enumerated in an earlier part of this judgment. As discrimination is mainly alleged between the set of cases governed by sections 3 to 6 on the one hand and the other set of cases liable to be dealt with under sections 7 to 17 on the other, it is necessary to read those provisions. Sections 3 to 5 have already been quoted in this judgment. Sections 7 to 10 and 16 and 17 are now set out :—

"7. (1) 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 so as to reach the Secretary within one year from the commencement of this Act or within such further period as the State Government may by notification fix for this purpose, a petition praying to have the Gurdwara declared to be a Sikh Gurdwara :

Provided that the State Government may in respect of any such Gurdwara declare by notification that a petition 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 :

Provided further that no such petition shall be entertained in respect of any institution specified in Schedule I or Schedule II unless the institution is deemed to be excluded from specification in Schedule I under the provisions of section 4.

(2) A petition forwarded under the provisions of sub-section (1) shall state the name of the Gurdwara to which it relates and of the district, tahsil and revenue estate in which it is situated, and shall be accompanied by a list, verified and signed by the petitioners, of all rights, titles or interests in immovable properties situated in Punjab inclusive of the Gurdwara and in all monetary endowments yielding recurring income or profit received in Punjab, which the petitioners claim to belong within their knowledge to the Gurdwara : the name of the person in possession of any such right, title or interest, and if any such person is insane or a minor, the name of his legal or natural guardian, or if there is no such guardian, the name of the person with whom the insane person or minor resides or is residing, or if there is no such person, the name of the person actually or constructively in possession of such right, title or interest on behalf of the insane person or minor, and if any such right, title or interest is alleged to be in possession of the Gurdwara through any person, the name of such person shall be stated in the list; and the petition and the list shall be in such form and shall contain such further particulars as may be prescribed.

(3) 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 give such other notice thereof as may be prescribed :

Provided that such petition may be withdrawn by notice to be forwarded by the Board so as to reach the appropriate Secretary to Government, at any time before publication, and on such withdrawal it shall be deemed as if no petition had been forwarded under the provisions of sub-section (1).

(4) 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 .

(5) 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.

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 comencement of this Act, or, in the case of the exended 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 such 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, afer the expiration of ninety days from the date of such notifiction, 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.

10. (1) Any person 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 a notification under the provisions of sub-section (3) of section 7, a petition claiming a right, title or interest in any property included in the list so published.

(2) A petition forwarded under the provisions of sub-section (1) shall be signed and verified by the person forwarding it

in the manner provided by the Code of Civil Procedure, 1908, for the signing and verification of plaints, and shall specify the nature of the right, title or interest claimed and the grounds of the claim.

(3) The State Government shall, as soon as may be, after the expiry of the period for making a claim under the provisions of sub-section (1) publish notification, specifying the rights, titles or interests in any properties in respect of which no such claim has been made, and the notification shall be conclusive proof of the fact that no such claim was made in respect of any right, title or interest specified in the notification,

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 presentation 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 76 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 nn 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.

17. When a Tribunal has, under the provisions of sub-section (2) of section 16, recorded a finding that a Gurdwara should be declared to be a Sikh Gurdwara and no appeal has been instituted against such finding within the period prescribed by section 34; or when an appeal has been instituted and dismissed; or when in an appeal against a finding that a Gurdwara should not be declared to be a Sikh Gurdwara the High Court finds that it should be so declared, the Tribunal or the High Court, as the case may be, shall

inform the State Government through the appropriate Secretary to Government, accordingly, and the State Government shall, as soon as may be, publish a notification declaring such Gurdwara to be a Sikh Gurdwara, and the provisions of Part III shall apply thereto with effect from the date of the publication of such notification."

Discrimination having further been alleged as against claims triable under section 38, the provisions of that section may also be noticed:—

"(1) Notwithstanding anything contained in this Act or any other Act or enactment in force any two or more persons having interest in any Gurdwara in respect of which no notification declaring the Gurdwara to be a Sikh Gurdwara has been published under the provisions of this Act, may, after the expiry of one year from the commencement of this Act or, in the case of the extended territories, from the commencement of the Amending Act, as the case may be, or of such further period as the State Government may have fixed under the provisions of sub-section (1) of section 7, and after having obtained the consent of the Deputy Commissioner of the district in which such Gurdwara is situated, institute a suit, whether contentious or not, in the principal Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the Gurdwara is situated praying for any of the reliefs specified in section 92 of the Code of Civil Procedure, 1908, and may in such suit pray that the provisions of Part III may be applied to such Gurdwara.

(2) The Court in which a suit is instituted under the provisions of sub-section (1) shall decide whether the Gurdwara is or is not a Gurdwara as described in sub-section (2) of section 16, and if the Court decides that it is such a Gurdwara and is also of opinion that, having regard to all the circumstances, the Gurdwara is one to the management of which the provisions of Part III should be applied, the Court shall by public advertisement and in such other manner as it may in each case direct, call upon any person having interest in the Gurdwara to appear and show cause why the provisions of Part III should not be so applied, and shall in its order fix a date not less than one month

from the date of the order on which any person appearing shall be heard.

(3) Upon the date fixed under the provisions of sub-section (2) or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the person or persons, if any, appearing, and if the Court is satisfied that the provisions of Part III can be applied to the management of the Gurdwara without prejudice to any existing order or decree relating to the Gurdwara and conferring on any person or declaring any person to be entitled to any right, in respect of the administration or management thereof, the Court shall pass a decree that the said provisions shall apply to the management of the Gurdwara.

(4) Upon such decree being passed and subject to any order that may be passed on appeal against or in revision of the decree the provisions of Part III shall apply to such Gurdwara as if it had been declared by notification under the provisions of this Act to be a Sikh Gurdwara.

(5) When under the provisions of sub-section (3) the provisions of Part III have by decree been applied to the management of a Gurdwara any hereditary office-holder of such Gurdwara who within twelve months after the date of the decree has resigned office or been removed from office otherwise than in accordance with the provisions of section 134 or under the provisions of section 142 or a presumptive successor of such office-holder, may within ninety days from the date of the resignation or removal, as the case may be, of such office-holder, present a petition to the Court which passed the decree claiming to be awarded compensation on the ground that he has suffered or will suffer pecuniary loss owing to a change in the management of such Gurdwara, and the Court may, notwithstanding the fact that such office-holder has voluntarily resigned, pass a decree awarding him compensation as if such office-holder had been unlawfully removed from his office.

(6) The provisions of sections 22, 23, 24 and 25 shall, so far as may be, apply to proceedings under the provisions of

sub-section (5) and to proceedings arising therefrom, as if the Court was a Tribunal."

The first contention which is in general terms does not need any independent discussion. It would succeed or fall with the decision of the other points raised by counsel.

Under the second contention the Legislature has been accused of having resorted to arbitrary classification having no rational nexus with the objects of the Act. Discrimination has been complained of in respect of proceedings under Chapters II and III on the one hand (relating to adjudication by the Sikh Gurdwara Tribunal) and proceedings under section 38 on the other (recourse to ordinary Courts). The attack in this behalf appears to be wholly misconceived. Whereas a claim under sub-section (1) of section 3 can be made in respect of the extended territories (with which alone we are concerned in these cases) within 180 days of the commencement of the relevant Amending Act of 1959, and under section 7 within one year from the said date, section 38 comes into operation only after the expiry of the period of one year from the aforesaid date, or even after such further period as the State Government may have fixed under the provisions of sub-section (1) of section 7. Moreover, a claim under section 38 can be made only in respect of such a Gurdwara of which no notification declaring it to be a Sikh Gurdwara has been published under any provision of the Act. Section 38 does not, therefore, appear to occupy any competing field with the proceedings under the second and third Chapters of the Act. Section 38 comes in when sections 3 to 17 have already gone out. The two sets of provisions operate at different times and operate against different sets of properties. So long as section 38 does not come into operation, the other provisions apply equally to all concerned, within the respective fields of Chapters II and III. When section 38 comes into operation, (i.e., after one year of the passing of the Amending Acts of 1959, and in respect of Gurdwaras which have not by then been dealt with and declared to be Sikh Gurdwaras under the Act), it applies equally to all concerned. Section 38 starts with the usual non-obstante clause. This provision does not, therefore, appear to aim at any kind of arbitrary discrimination. So far as the provisions of the section itself are concerned, they are, as stated already in another connection, analogous to section 92 of the Code of Civil Procedure except that the power of the Court to frame any suitable scheme of management in a suit under section 92 of the Code has been replaced in

section 38 by a duty to impose the scheme of management detailed in Part III of the Act in a case where the Court finds that the institution in question is a Sikh Gurdwara, in an action under section 38 of the Act. The suit under section 38 lies to the ordinary civil Court. All that the Court has to adjudicate upon in such a suit, if otherwise competent, is to decide whether the institution in question is a Sikh Gurdwara within the scope of section 16(2) of the Act or not. For the foregoing reasons the complaint of the petitioners having been discriminated against *qua* those whose claims can be tried under section 38 of the Act does not appear to fall within the constitutional inhibition of Article 14.

This takes me to the alleged discrimination between the institutions listed in Schedule I on the one hand and those not so listed on the other. As between Schedule I cases (sections 3 to 6) and other cases referable to the Tribunal (Sections 7 to 10) arbitrary classification resulting in invidious discrimination in the following two respects was canvassed on behalf of the petitioners other than Dharam Dass :—

(a) Whereas in sections 7 to 10 proceedings, claim under section 10 can be made to the building and land of the Gurdwara itself, such a claim is barred by section 5(1) in respect of the Gurdwaras in the first Schedule; and

(b) whereas in the case of proceedings commencing with an application under section 7 an objection can be raised under section 8 to the effect that the institution in question is not a Sikh Gurdwara, the raising of such an issue in proceedings commencing with section 3(1) is barred by sub-section (1) of section 5.

Regarding (a) above, it has already been held by me that in fact there is no such discrimination and that in either of the cases (section 5 and 10) claim can be made to every bit of the property listed in the relevant notification including the land and the building of the Gurdwara itself. So far as the other point is concerned, i.e., the attack covered by (b) above, the Legislature has no doubt made classification, and, therefore, the two questions regarding the presence of some intelligible differentia, and if so its nexus with the objects of the Act in relation thereto, do call for decision.

For conisdering the arguments relating to the existence or otherwise of intelligible differentia in the above-mentioned classification, (point (b)) ground has to be cleared by deciding the dispute mooted between the parties as to the material which can be looked into by a Court for that purpose. Whereas Mr. Gupta wanted to confine us for this enquiry to the four corners of the relevant sections of the Act, the learned Advocate-General and Mr. Garg rightly contended on the authority of *Jyoti Pershad and others* v. *Administrator for the Union Territory of Dehli and others* (18), at 1609, that a Court may obtain relevant guidance in this respect from "the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits."

Mr. Garg then invited our attention to the following observations in *Charanjit Lal Chowdhury* v. *The Union of India and others* (15), at 45 (paragraph 12):—

> "Now the petitioner has made no attempt to discharge the burden of proof to which I have referred, and we are merely asked to presume that there must necessarily be other Companies also which would be open to the charge of mismanagement and negligence. The question cannot, in my opinion, be treated so lightly. On the other hand, how important the doctrine of burden of proof is and how much harm can be caused by ignoring it or tinkering with it, will be fully illustrated, by referring to the proceedings in the Parliament in connection with the enactment of the Act, where the circumstances which necessitated it are clearly set out. I am aware that legislative proceedings cannot be referred to for the purpose of construing an Act or any of its provisions, but I believe that they are relevant for the proper understanding of the circumstances under which it was passed and the reasons which necessitated it,"

and in *Ameerunnissa Begum and others* v. *Mahboob Begum and others* (19), at 85 :—

> "It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of

(18) A.IR. 1961 S.C. 1602.
(19) A.I.R. 1953 S.C. 91.

human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of perosns and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not *'per se'* amount to discrimination within the inhibition of the equal protection clause."

In *M. K. Ranganathan and another* v. *Government of Madras and others* (20,) it was held that reference can be made by a Court to the statement of objects and reasons for the enactment of a statute for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy.

In *Sardar Sarup Singh and others* v. *State of Punjab and others* (21), it was held by the Constitution Bench of the Supreme Court that in determining the constitutionality of a statute the Court cannot be called upon to embark on an enquiry into public policy or investigate into questions of political wisdom or even to pronounce upon motives of the Legislature in enacting a law which it is otherwise competent to make.

The history which lies behind an enactment may be looked into and is admissible to find out the meaning of law. The recourse to prior state of law, the evil sought to be eradicated, the process by which the law was evolved, are admissible to find out the meaning of the Act (*The State of West Bengal and another* v. *Nripendra Nath Bagchi* (22), *in A. K. Gopalan* v. *State of Madras* (23), the Supreme Court held that historical matters like reports, etc., may be considered. In that case legislative proceedings were referred to for understanding the circumstances under which the relevant Act was passed.

It appears to be unnecessary to multiply judicial pronouncements in this connection. Suffice it to say that in order to lean towards the constitutionality of a statute and to find its historical background,

(20) A.I.R. 1955 S.C. 604.
(21) A.I.R. 1959 S.C. 860.
(22) A.I.R. 1966 S.C. 447.
(23) A.I.R. 1950 S.C. 27.

this Court is entitled to seek light and information from every admissible source in the light of the above-mentioned pronouncements of te Supreme Court.

Now that I am on the verge of discussing to rival arguments of counsel in regard to the impugned classification, it may be profitable to notice some of the well-settled propositions of law relevant in this respect:—

(i) "The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;"

(*Charanjit Lal Chowdhury* v. *The Union of India and others,* (15).

(ii) "A law may be constitutional even though it relates to a single individual where on account of some special circumstances or reasons applicable to him and not applicable to others that single individual may be treated as a class by himself."

(*Charanjit Lal's case,* (15); supra);

(iii) "If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. (observation of Prof. Willis in his "Constitutional Law"—First edition—page 579, approved by the Supreme Court in (*Charanjit Lal's case* (15);

(iv) "Two conditions must be fulfilled (in order to sustain the validity of classification) namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."
Per S. R. Das; J.; in The State of West Bengal v. *Anwar Ali Sarkar and another* (24); at 93);

(v) "Classification—means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily." (Per Mahajan; J.; in *the State of West Bengal* v. *Anwar Ali Sarkar and another* (24) (supra) ;

(24) A.I.R. 1952 S.C. 75.

(vi) "A legislature for the purpose of dealing with the complex problems that arise out of an infinite variety of human relations, cannot but proceed upon some sort of selection or classification of persons upon whom the legislation is to operate. The consequence of such classification would undoubtedly be to differentiate the persons belonging to that class from others, but that by itself would not make the legislation obnoxious to the equal protection clause." (Per B. K. Mukherjee, J., in *Kathi Raning Rawat* v. *State of Saurashtra* (25), at 131;

(vii) "Equality prescribed by the Constitution would not be violated if the statute operates equally on all persons who are included in the group, and the classification is not arbitrary or capricious, but bears a reasonable relation to the objective which the legislation has in view." (*Kathi Raning Rawat's case* (25); (supra);

(viii) "The Legislature is given the utmost latitude in making the classification and it is only when there is a palpable abuse of power and the differences made have no rational relation to the objectives of the regulation, that necessity of judicial interference arises." [*Kathi Raning Rawat's case* (25).].

The alleged discrimination with which we are concerned under the contention in hand is of opportunity such as that provided by section 8 (to question the nature of the institution) not having been provided by the Legislature in the case of the first Schedule institutions. It may be borne in mind that merely listing of the institutions in question in Schedule I does not amount to their being declared as Sikh Gurdwaras and does not result in the dispossession of anyone who may claim to hold possession of a Gurdwara as a non-Sikh one. It has already been noticed that it is only on an application being duly made under sub-section (1) of section 3 that any institution named in the first Schedule can be declared to be a Sikh Gurdwara. Consequent on such a declaration if any objection is made to the property of the institution under section 5(1), the same is referred for adjudication to the Tribunal under section 14. It has further been held by

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

Tek Chand, J. in *Sahib Singh* v. *Bhagat Singh* (26); that even if the claim of a third person under section 5 of the Act is dismissed by the Tribunal, the order of dismissal is not tantamount to a declaration that the properties in question belong to the Gurdwara. If on the disposal of the claim sent to the Tribunal under section 14, the claimant does not voluntarily hand over the properties in dispute to the Committee of Management of the institution, the Committee concerned has to bring a suit under section 28 of the Act on behalf of the Gurdwara for the possession of any property the proprietary title in which has been specified in the notification. Such a suit is to be instituted in the principal Court of original jurisdiction in which the property in question is situate, within a period of ninety days from the date of publication of the relevant notification. If in such a suit someone objects to parting with possession though he had not filed any claim under section 5 within time, the Court has to decide such a claim if the claimant is able to satisfy the Court that his failure to make the claim under section 5 was owing to the fact that the person who might have made the claim had no knowledge of the existence of the right, title or interest, or of the fact that such right, title or interest had been included in the list published under the provisions of sub-section (2) of section 3 of the Act. On so showing the claimant can join issues on merits again in the civil Court. It is in this background that the rival contentions of the parties on the question of the classification in dispute have to be weighed.

The question of reasonable differentia has also to be divided into two parts, viz., (i) as in 1925 when the principal Act was passed so as to decide whether section 3(1) and Schedule I of the Act became unconstitutional on January 26, 1950, or not; and (ii) as in 1959, when the provisions of the Act were extended to the erstwhile PEPSU area and the three Gurdwaras in question in the three writ petitions (other than that of Dharam Dass) were included in the first Schedule. After a careful consideration of all the arguments advanced by the learned counsel for the parties before us I am of the definite view that even if we assume that some institutions similarly circumstanced as those in Schedule I have in fact been left out of it, the existence of the following differentia for classification of certain Gurdwaras in Schedule I as compared to others which were not so included furnishes rational basis for such classification :—

(1) As in the case of the Saurashtra Ordinance [*Kathi Raning Rawat* v. *State of Saurashtra* (25)], the preamble of an earlier ordinance was taken into account in addition to

(26) A.I.R. 1933 Lah. 798.

that of the ordinance in which the impugned provision existed, we may look to the definition of "Gurdwara" and "shrine" in 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 1925 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 the 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 communities. Immediate need was felt in some cases, e.g., Gurdwara Harmandar 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 tenets 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 institutions 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 unnecessary litigation on minor matters and to avoid agitations against the Government.

The factum of certain Gurdwaras having been originally Sikh institutions before the advent of the British rule has already been adverted to while quoting passages from Professor Ruchi Ram Sahni's book. Reference to bestowing of large estates on the Sikh Gurdwaras by Maharaja Ranjit Singh has also been given from the same compilation. I will now quote below extracts from some of the speeches made by members of the Punjab Legislative Council in 1925 when the bill of the 1925 Act was introduced, and from the debates in connection therewith to substantiate some of the points enumerated above :—

(i) From the speech of the mover of the bill (page 1205 of the Punjab Legislative Council proceedings, 1925)

"I must take up this first opportunity to congratulate the members of the Select Committee for the goodwill, cordiality and expedition which they have brought to bear on their deliberations of such an historic and momentous piece of legislation. Fully representative of all shades of opinion as this committee was, they approached this Bill with a full sense of responsibility and handled it like practical statesmen and thrashed it thoroughly from different standpoints without any prejudice. The members have fully responded to my appeal made at Lahore at the time of the introduction of this measure and have regardless of their comforts and convenience finished their labours in time. My sincere and hearty thanks are due to all of them and especially to Kanwar Dalip Singh and Mr. Beazley. Both Kanwar Dalip Singh, the legal luminary of the Lahore Bar, and Mr. Breazly, the talented author, have rendered a special and valuable assistance in this cause. The intelligent and tactful way in which the proceedings were conducted by Mian Sir Fazl-i-Husain, the President, is also to a great extent responsible for this success."

(ii) (From the same speech at page 1206) :

"Originally 232 *Gurdwaras about which no doubt existed as to their being Sikh Gurdwaras were entered in Schedule I, and*

they were to be notified as such immediately on the office-holder or any Sikh having interest forwarding a list of properties which he claimed to belong to the Gurdwara within ninety days of the commencement of the Act. In the case of places of worship not specified in Schedule I, any fifty or more Sikh worshippers of certain qualifications laid in clause 7 could petition the Government for its declaration as a Sikh Gurdwara. No petition could, however, be entertained about institutions specified in Schedule II unless the majority of its worshippers had signed it. * * * * *

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As regards the first method, the only change is in the number of Gurdwaras of Schedule I. Seventeen original Gurdwaras having been excluded, 29 more have been added. All the disputed items were thoroughly discussed in the Select Committee. *The district officers were asked to make exhaustive enquiries after consulting the local people and submit detailed report about them.* The district officers took great pains and forwarded comprehensive reports after a sifting enquiry. To them was added the *judicial and historical material* that was made available by the members."

(iii) (From the same speech at page 1208) :

"The report of the Select Committee like the original Bill is of a compromising nature. Full efforts have been made therein to satisfy all the interested parties. The Bill was, therefore, thoroughly discussed in all its aspects. No interest was ignored or remained unrepresented. No doubt Mahants have been deprived of certain vested interests which they had so long usurped in defiance of the wishes of the community and against the commands of the Sikh religion, but they should have no ground to complain when a liberal provision for their compensation has been made and that too has been further extended to their hereditary successor."

(iv) (From the speech of Dr. Gokul Chand Narang at page 1209) :

"I submit that the Bill lays down a principle as to which there cannot be and could never be any difference of opinion, namely, that all religious places should be controlled by

the members of the community to which *those religious places belong,* and in so far as this Bill is fundamentally based upon that principle, I, like some friends of mine, extended it my hearty welcome. Moreover, we all have been feeling the keenness of the situation which was created by the Gurdwara reform movement in the province. We were all conscious that, that was a position which was neither to the liking of the Sikhs themselves nor to the liking of the Government and which involved indirectly other communities also into complications and trouble and the whole province into unnecessary and avoidable expense. I am, therefore, doubly glad that this measure has been brought forward, and I trust that it would not only vindicate the principle to which I referred first *but would also put an end to the situation which nobody liked.*"

(v) (From the speech of Sardar Narain Singh at page 1218) :

"The grants of land were of course intended for the support of the institution; and under Sikh rule if a Sadh misbehaved he was at once turned out. But at the regular settlement the incumbent was in every case returned as owner of the land, which was at the same time exempted from revenue for the period of settlement. The result of this has been that the Sadh has in most cases taken a wife, closed the *dharamsala* to the public, and he or his children are now mere landed proprietors, with a very comfortable house built at the public expense. In some cases the Sadh has not actually married, but taken to evil courses; and the people are powerless to prevent his misappropriating the receipts. Mr. Walkar quotes instances in which a *dharmsala* of great repute has thus been ruined by a profligate Sadh, who retained the land and house; and the villagers have actually had to create another endowment and build a new *dharmsala.* There was a very famous alms-house at Jassowal with endowments which amounted to several hundred acres, most of them unfortunately held revenue free in perpetuity; and this has now fallen into the hands of a worthless character and is closed to the public."

"This quotation makes it more than clear what was the state of affairs prevailing in those days and I think it unnecessary to dilate on this point any longer.

"It is well-known to all that individual efforts to reform the Gurdwaras began to be made long ago and not a few of the Sikhs sought the help of the Courts to remedy the state of affairs, but their efforts ended in failure and the technicalities of the law then obtaining stood in the way of any reform being effected."

(At pages 1219 and 1220) :

"The framers of the law being foreigners never cared for and paid no regard to the just religious demands of the Sikh community. This brought about discontent amongst the Sikhs in general and to bring about reforms they held a big Diwan at Amritsar in which a committee of 175 selected Sikhs (including 35 Government nominees) was formed which was given the name of Shiromani Gurdwara Parbandhak Committee. Then followed the reign of terrorism and from 1921 onward, the Sikhs suffered innumerable hardships. In January, 1921, the Mahants at Sri Tarn Taran received the Sikh reformers with swords and bombs. It was followed by the *well-known* massacre *of the Sikhs at Nankana Sahib in which* 130 *non-violent, peace-loving Sikhs were burnt alive.* The Sikhs then gave proof of their earnestness for religious reforms when they willingly offered themselves for arrest at Guru-ka-Bagh and many of them were subjected to very inhumane and cruel treatment. The whole difficulty was that the Government thought that the movement was a political one, while the Sikhs were only after religious reform and that was evidenced by the fact that almost all the true Sikhs joined the movement. It appears that after the Nankana tragedy, the Government realised that the Sikhs were engaged in a religious movement and accordingly *handed over the charge of that Gurdwara to the Sikhs.* But the Government did not yet completely rid themselves of their suspicions, because soon after that many arrests were made and Sardar Sundar Singh, Ramgarhia, was ordered to hand over the keys of Sri Darbar Sahib. Thereupon the selected leaders like Sardar Kharak Singh and Sardar Mehtab Singh raised their voice and objected to the keys being taken over by the Government. This made the Government feel once more that the demands

of the Sikh community were just and accordingly the keys were handed back to the Sikhs for the second time. But all of a sudden, the Government took to wholesale repression in 1922 and nearly 1,700 Sikhs were arrested within a week or so. About 6,000 Sikhs were arrested in Guru-ka-Bagh, *out of which* 1,063 *were beaten* senseless. At this time Sir Ganga Ram intervened and through his pleadings the situation was calmed temporarily. But the Sikhs had still many troubles in store. At the Railway Station of Panja Sahib (Hasan Abdal) *many devoted Sikhs were crushed under the train* out of their love to serve the starving Akali prisoners with food. At Bhai Pheru 6,018 Akalis have given definite proof of the Sikh religious sentiment by voluntarily going into the prisons. On another occasion the Sikhs were stopped from proceeding to Gurdwara Gangsar. The situation there was aggravated when the Maharaja of Nabha was dethroned. But the Sikhs were after religious reforms and no power on earth could crush their zeal and enthusiasm. They began to proceed to that Gurdwara in groups of 25, taking a pledge of perfect non-violence at Sri Akal Takht. Then Government once again misunderstood the attitude of the Sikhs and thought that they were bent upon taking possession of the Nabha State. The consequence was that wholesale arrests began to be made and the affairs became all the more complicated. To provide further proof of their earnestness about the Gurdwara reforms, the Shiromani Gurdwara Parbandhak Committee began to send Jathas to Sri Gangsar, each consisting of 500 Sikhs. The firing upon the first Shahidi Jatha and the cruelties done to the subsequent Jathas are too well-known to everybody to require any details from me."

(vi) (From the speech of Malik Firoz Khan Noon at pages 1223 and 1224) :

"I do feel that we owe a duty to the Council to explain the changes that we have carried out in Schedules I and II. I had the honour of acting on that Select Committee and I think we must explain to the House *as to why a large number of Gurdwaras have been added to Schedule I and*

another large number of Gurdwaras have been taken away from Schedule II. If you will permit me, Sir, I will explain in a few words the difference between the two Schedules. I find from my conversations with intelligent and highly educated gentlemen outside the Council that the public do not realise the difference that there is between the two Schedules. Schedule I means this, that if you put a Gurdwara into *Schedule I, as far as the disputes connected with that Gurdwara are concerned, they come to an end and that Gurdwara is shorn of all litigation,* of all civil decrees and of all pending litigation and it is handed over to the Sikh community and nobody can contest the ownership of that Gurdwara. That is the effect of putting a Gurdwara into Schedule I. *As far as the property connected with that particular Gurdwara mentioned in Schedule I is concerned that will of course come before the Tribunal* whether there is anybody to contest the ownership of that property or not. So, Sir, it will be clear that if a Gurdwara is put in Schedule I, it means that nobody can claim it and it goes over to the Sikh community. Therefore, *if any additions have to be made in the number of Gurdwaras that are mentioned in Schedule I they must be made after full and careful consideration and if there are very cogent reasons in favour of their inclusion in Schedule I, they can be included.* It will be noticed from the Select Committee Report that we have added no less than 29 Gurdwaras to Schedule I and 17 have been taken away from Schedule I, with the result that the position is that where there were originally 232 Gurdwaras in Schedule I, there are now 244 Gurdwaras. As far as these 29 new additions are concerned, perhaps in the ordinary course you will feel surprised at the action of the Select Committee in including them in Schedule I. By including them in Schedule I, we are sitting as a sort of Privy Council and adjudicating upon the civil rights of people who are not there to represent themselves. But you will notice, Sir, *that in all these cases where new Gurdwaras have been added to Schedule I, we received reports from the Deputy Commissioners of the particular districts where these Gurdwaras are situate; we thoroughly considered these reports and it is only after a careful and thorough examination that we included them in Schedule I,* That is one thing.

Secondly, there were a large number of Hindu members present in the Select Committee who could, if they wanted, have defined any particular Gurdwara. If they willingly agreed to its inclusion in Schedule I, it means that there is nothing to be said against its inclusion and, therefore, we can clear conscience easily put these Gurdwaras into Schedule I." * * * * *

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"I am glad to say that the spirit of give and take that prevailed these enabled us *to arrive on practically all questions at an unanimous conclusion.* The result, as the House will observe, is that the Select Committee has taken away these 105 Gurdwaras from Schedule II because the persons who were competent to speak on these Gurdwaras and who ought to have supported their retention in that Schedule were more or less unanimous with the rest of the committee as far as their exclusion was concerned. I am saying this merely to show the goodwill and the spirit that prevailed in the Select Committee between the various members that were sitting on that body and deliberating on this Act."

(vii) (From the speech of aPndit Nanak Chand at pages 1250 and 1251) :

"Then, Sir, with regard to one matter which was touched by my learned friend Shaikh Muhammad Sadiq with regard to Dr. Gokul Chand Narang's position, I have to state this that whatever he did today was the deliberate decision of the Hindu party as a whole. The Hindu and Sikh members met and decided not to move their amendments and *if there was any difference with regard to the individual cases, that is with regard to cases included in Schedule I, that was to be decided by a joint committee appointed by the Hindus and the Sikhs sitting together* and, therefore; we have nominated three members from our side and three members from the Sikh side; *to take the evidence and to decide whether any particular Gurdwara or temple is to be excluded or included in Schedule No.* 1. Therefore, I wish to make it clear that whatever Dr. Gokul Chand has

done with regard to this matter he has done so in obedience to the wishes and the decisions of the Hindu party."

[The significant sentences have been underlined by me (in italics here).]

The above passages from the Legislative Assembly debates regarding the basis of inclusion of Gurdwaras in Schedule I in the 1925 Act throw sufficient light on the relevant differentia and the political situation in the Province at that time. These speeches also show the sensitive field in which the Legislature was operating at that time, the basis of classification of Sikh institutions in Schedule I, and the fact that extensive enquiries had been made into the nature of the institutions before they were so included. One thing on which there appears to be no doubt was that only such institutions were included in Schedule I, about which all communities were agreed that on account of their historical origin and user and undisputed sanctity to the Sikh community, they were exclusively Sikh insitutions.

Now I come to the basis on which some of the Gurdwaras of the erstwhile PEPSU area were brought in the first Schedule in 1959. Mr. Dalip Chand Gupta referred to the judgment of the Supreme Court in *Jia Lal* v. *The Delhi Administration* (27), and argued that though classification made in the Act in respect of the first Schedule in 1925 was no doubt based on at least some intelligible differentia, the same ceased to hold the field in 1959 in the same manner as the reasonableness of the geographical differentia which justified different provisions for prosecutions under the Arms Act in 1878, were held to have ceased to be good in *Jia Lal's case* (supra). Counsel is no doubt right that in addition to the original grounds on which the classification was made in the principal Act in 1925, some reasonable differentia *qua* the Gurdwaras included in the first Schedule from the PEPSU area in 1959 as distinguished from other Gurdwaras of that area left out of the Schedule should be discernible from the relevant material available to the Court, I have already referred to the history of the management of Sikh Gurdwaras in Patiala before its merger with other East Punjab States in 1948, and in PEPSU after such merger.

(27) A.I.R. 1962 S.C. 1781.

Even at the cost of a little repetition it is necessary to recapitulate the said history with a little more detail, in its chronological order :—

(i) *Pre-1946 period.*—Historical Sikh Gurdwaras and Government-owned Gurdwaras in Patiala managed by the Ecclesiastical Department of the ruler (Deodhi Department);

(ii) *November* 2, 1946.—Farman-i-Shahi No. 3 issued by the Ruler of Patiala referring to steps being taken for the preparation of a comprehensive legislation for associating the Sikh congregation with the management of the Gurdwaras, and having decided in the meantime to appoint an interim committee to undertake the management of the Gurdwaras pending the passing of the intended legislation;

(iii) *November* 8, 1946.—Order No. 52 of the Ijlas-i-Khas of the Maharaja of Patiala in pursuance of the declared intention of Farman-i-Shahi No. 3, dated November 2, 1946, actually appointing a committee of twelve members and designating it as "Interim Gurdwara Board" to function till the enactment of the intended legislation, and to assume the functions which were till then performed in respect of Sikh Gurdwaras by the Deodhi Department;

(iv) *December* 23, 1946.—Ruler of Patiala's Farman No. 55, issued from the Deodhi Mualla Department of his Highness (published in the Government Gazette, dated December 23, 1946), for the information of the general public that the management of the "Historical Gurdwaras of the State" listed in the Farman had been handed over to the Interim Gurdwara Board, Patiala. The particulars of the Sikh Guru (in terms of Padshahi) in whose memory the particular historical Gurdwara had been established were given against each of the 108 items of Historical Gurdwaras in the Farman;

(v) *August* 20, 1948.—Merger of Patiala with the other East Punjab States and formation of the PEPSU—promulgation of the Patiala & East Punjab States Union General Provisions (Administration) Ordinance, 2005 Bk. by the

Rajpramukh, under section 3(1) of which all laws, rules and regulations, and notifications, etc., of Patiala became *mutatis mutandis* the law for the whole of the PEPSU. At that time (according to the records produced by the State and the correctness of which has not been denied by the petitioners), there were 721 Gurdwaras in PEPSU categorised as below:—

(a) 38 Gurdwaras owned and administered by the Government;

(b) 41 Gurdwaras administered by the Interim Gurdwara Board under the Farman-i-Shahi of Patiala; and

(c) 642 Gurdwaras administered by local committees or individuals;

(vi) *November* 1, 1956.—Merger of PEPSU with the then State of Punjab by the States Reorganisation Act, 1956; By operation of section 119 of the States Reorganisation Act, 1956, the 1925 Act applied to the pre-merger Punjab area and the PEPSU law based on the Patiala ruler's Farman continued to hold the field in the erstwhile PEPSU area;

(*vii*) *February* 1, 1957.—The Punjab Government constituted the Advisory Committee, the terms of reference of which have been enumerated in an earlier part of this judgment, the second term of reference being whether on extension of the 1925 Act to the erstwhile PEPSU area all the Gurdwaras managed by the Government and the Interim Gurdwara Board should be declared Sikh Gurdwaras straightaway and included in Schedule I of the Act or not;

(viii) *September* 14, 1957.—The Advisory Committee appointed by the Government submitted its report (Annexure 'R-1' to the affidavit of Kehar Singh, dated January 25, 1968) to the Government recommending extension of the provisions of the 1925 Act to the erstwhile PEPSU area and further recommending that 188 out of 721 Gurdwaras in the erstwhile PEPSU area be included in Schedule I to the 1925 Act. The report mentioned that the Committee had given

due consideration to the "religious and historical importance of the Gurdwaras and their economy" in selecting them for inclusion in Schedule I, but that those out of the Gurdwaras managed by the Interim Gurdwara Board were not included in Schedule I the inclusion of which would have been "conducive to inconvenience and complications" in their management. 188 Gurdwaras were enumerated in list "A" attached to the report of the Advisory Committee. This list included the Pinjore Gurdwara at item No. 1, the Chhajli Gurdwaras at items Nos. 165 and 166, and the Bunga Dhamtanian near Railway Station, Patiala, at item No. 36; i.e., to say each of the three Gurdwaras which are the subject-matter of the writ petitions other than that of Dharam Dass was included in this list. The Punjab Government decided to accept the recommendations of the Advisory Committee except in respect of the two Gurdwaras which were excluded from the list;

(ix) *March* 28, 1957.—The Bill of Act 1 of 1959 was published in the official gazette. The official statement of its objects and reasons has already been reproduced. In short the bill was "designed to give effect to" the recommendations of the Advisory Committee;

(x) *April* 8, 1958.—The bill of Act 1 of 1959 introduced in the Punjab Vidhan Sabha and referred to the Punjabi and Hindi Regional Committees;

(xi) *November* 29, 1958.—Report of the Hindi Regional Committee suggesting no change in the list contained in Schedule 'A' attached to the report of the Advisory Committee;

(xii) *November* 29, 1958.—Report of the Punjabi Regional Committee suggesting addition of six more Gurdwaras to Schedule I;

(xiii) *December* 23, 1958.—The Bill was recommitted by the Vidhan Sabha to the Regional Committees;

(xiv) *December* 27, 1958.—Report of the Hindi Regional Committee suggesting exclusion of five items (with which we

are not concerned) and amendment in items Nos. 319 and 360 (with which also we are not concerned). The report also suggested inclusion of three items in the Schedule;

(xv) *December* 27, 1958.—Report of the Punjabi Regional Committee suggesting exclusion of four Gurdwaras out of which two were common with those suggested to be excluded by the Hindi Regional Committee and suggesting amendment in the same two items in respect of which the Hindi Committee had suggested the amendment. The Punjabi Committee also suggested the inclusion of the same additional Gurdwaras in the list as suggested by the Hindi Committee;

(xvi) *December* 31, 1958 : On consideration of the reports of the Hindi and Punjabi Regional Committees, Act 1 of 1959 was passed by the Punjab Vidhan Sabha after excluding from Schedule I the items objected to by the Hindi Committee and after including therein only two out of the items asked for being included therein;

(xvii) *January* 8, 1959.—Act 1 of 1959 received the assent of the Governor.

Some of the speeches made by the members in the Punjab Vidhan Sabha during the debates on the Sikh Gurdwaras Bill of 1958 were read before us *in extenso* by the learned counsel for both sides from the "Punjab Vidhan Sabha Debates, Volume III, No. 1, dated December 22, 1958". It is unnecessary to quote any of those lengthy speeches in this judgment. Only two aspects touched in the speeches need passing reference. First relates to the mention of a threatened fast unto death by Master Tara Singh for averting which appeals were made by some members which would show that threat to breach of peace in the State, though from an entirely different quarter, was surcharging the atmosphere of the State in 1958 also. The second matter which is relevant to the speeches in the Assembly Debates relates to the reference to the thorough enquiry made into the historical and religious nature of the institutions included in Schedule I, and to only those Gurdwaras having been included in the said Schedule on which there was unanimity between the two Regional Commitees.

I have already referred to the provisions of Punjab Act 10 of 1959 by which certain amendments in the matter of elections to the Board and Committees were made with which we are not concerned and in which certain amendments in some items in Schedule I were made by section 7 of the Amending Act by which Bunga Dhamtanian near Railway Station, Patiala, was added to item No. 314 so as to conform the entry of the name of the Gurdwara in column 5 of the Schedule to the entry relating to the said Gurdwara as it originally occurred in the Report of the Advisory Committee. None of the other provisions in the second Amending Act, i.e., Act 10 of 1959, is relevant for our purposes. The notified object of the second Amending Act was *inter alia* to make certain corrections in the relevant entries in the Schedule.

From a consideration of the abovesaid history and the other relevant material to which reference has already been made, it appears that the following intelligible differential are clearly discernible from the available material to justify the inclusion of certain Gurdwaras in Schedule I and exclusion of others therefrom by the 1959 Act:—

(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" attached 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.

As already observed, the inclusion of the "Bunga Dhamtanian near Railway Station, Patiala", was stated in the objects and reasons of Act 10 of 1959 to be necessitated to correct a mistake and to bring the relevant entry in conformity with the original entry relating to that Gurdwara in the Report of the Advisory Committee.

It is, therefore, clear that besides the general basis of classification available to the Legislature in 1925, special and further valid and intelligible grounds of difference justified the inclusion of certain Gurdwaras of the PEPSU area in the first Schedule to the Act. I would, therefore, hold that there is force in the second contention of the learned counsel. The classification covered by point (b) urged by Mr. Gupta is not violative of Article 14. It has not been shown that all the institutions included in Schedule I are not similarly circumstanced and entitled to be treated by the same set of statutory provisions. Nor has it been shown that any institution left out of Schedule I is exactly similarly circumstanced as those included in the Schedule. Mr. Gupta seemed to assume that classification can be valid only if no one having same characteristics and qualities is left out of the class concerned. This argument is misconceived. Classification need not be all embracing (*Sakhawant Ali* v. *State of Orissa* (28) at 169). The law laid down by the Supreme Court in *Mahant Moti Das and others* v. *S. P. Sahi.* The Special Officer in charge of *Hindu Religious Trust and others* (29), to the effect that merely because the Bihar Hindu Religious Trust Act (1 of 1951) left out of

(28) A.I.R. 1955 S.C. 166.

(29) A.I.R. 1959 S.C. 942.

its ambit Sikh and Jain Trust, the classification made by it was not hit by Article 14, as Hindus, Sikhs and Jains were not alike in the details of their faiths is also relevant in this respect.

After referring to the decisions of the Supreme Court in *Charanjit Lal Chowdhury* v. *The Union of India and others* (15), (Paragraph 62), and in *State of Uttar Pradesh* v. *Deoman Upadhyaya* (30), (Paragraph 14), to the effect that pronouncements of American Courts on the 14th Amendment Clause of the American Constitution are relevant for determining the scope of the corresponding provision contained in Article 14 of our Constitution, Mr. Garg placed before us certain passages from large number of the pronouncements of the Supreme Court of U.S.A., out of which some are reproduced below:—

(i) "It is enough to say that we have tried, so far as that Amendment is concerned, to declare in words, and the cases illustrate by examples, the wide range which legislation has in classifying its objects. To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of Government are practical ones and may justify, if they do not require, rough accommodations,—illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the 14 Amendment." (*Hetropolis Theatre Company* v. *City of Chicago and Ernest J. Magerstadt* (31)—partly quoted at page 309 of "Tagore Law Lecture (1939) delivered in July, 1955—"From Marshall to Mukherjea"—Studies in American and Indian Constitutional Law by William O. Douglas.") .

(ii) "Classification must have relation to the purpose of the legislature. But logical appropriateness of the inclusion or

(30) A.I.R. 1960 S.C. 1125:

(31) 57 Law Ed. 730 at 734=228 U.S. 61 at 69-70.

exclusion of objects or persons is not required. A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion, even though it results in 'ill-advised, unequal, and oppressive legislation'. *Mobile County* v. *Kimball* (32). And this necessarily on account of the complex problems which are presented to the Government. Evils must be met as they arise and according to the manner in which they arise. The right remedy may not always be apparent. Any interference, indeed, may be asserted to the evil, may result in evil. At any rate, exact wisdom and nice adaptation of remedies are not required by the 14th Amendment, nor the crudeness nor the impolicy nor even the injustice or state laws redressed by it." (*Health & Milligan Manufacturing Company* v. *J. H. Worst, Director of the North Dakota Government Agricultural Experiment Station* (33).

(iii). "It may be that the Act in imposing upon the County of Mobile the entire burden of improving the river, bay, and harbor of Mobile is harsh and oppressive, and that it would have been more just to the people of the County if the Legislature had apportioned the expenses of the improvement, which was to benefit the whole State, among all its counties. But this Court is not the harbor, in which the people of a city or county can find a refuge from ill-advised, unequal and oppressive state legislation. The judicial power of the Federal Government can only be invoked when some right under the Constitution, laws, or treaties of the United States is invaded. In all other cases, the only remedy for the evils complained of rests with the people, and must be obtained through a change of their representatives. They must select agents who will correct the injurious legislation, so far as that is practicable, and be more mindful than their predecessors of the public interests."

(*County of Mobile, State of Alabama* v. *Seth N. Kimbal* (34), at 242);

(32) 102 U.S. 691, 26 L.Ed. 238.
(33) 52 Law. Ed. 236 at 244.
(34) 26 Law Ed. 238.

(iv) "He complains also that prosecutions for violations of county gambling restrictions are subject to the Act, while violation of comparable state gambling restrictions are not. In our opinion such differences are not fatal to the legislative scheme. We do not sit as a super-legislature or a censor.

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It is equally clear, although less usual, that a state legislature may itself determine such an issue for each of its local sub-divisions, having in mind the needs and desires of each."

(*Julius Salsburg* v. *State of Maryland* (35), at 287-288);

(v) "But the appellant contends that the statute violates the 14th Amendment because it imposes restrictions upon the rate-making power of the commission in respect of the particular contracts of appellant herein involved, which, it is said, are not imposed in the case of contracts of other utility corporations. In other words, it is urged that the act singles out the appellant for special restraint in this respect, and is, therefore, unequal. While its meaning is not free from doubt, we do not so construe the act. The rule is fundamental that if a statute admits of two constructions, the effect of one being to render the statute unconstitutional and of the other to establish its validity, the Courts will adopt the latter. * * * *

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The reasons which influenced the classification are not disclosed on the face of the act, but the mere absence of such disclosure will not justify the Court in assuming appropriate reasons did not in fact exist. The presumption is that the action of the legislature—which applies alike to all falling within the class—was with full knowledge of the conditions, and that no arbitrary selection of persons for subjection to the prescribed rule was intended."

(35) 98 Law. Ed. 281.

(*Arkansas Natural Gas Company* v. *Arkansas Railroad* Commission (36) at 710);

(vi) "Again, if an evil is specially experienced in a particular branch of business, the Constitution embodies no prohibition of laws confined to the evil, or doctrinaire requirement that they should be couched in all-embracing terms. It does not forbid the cautious, advance, step by step, and the distrust of generalities which sometimes have been the weakness, but often the strength, of English legislation. *Otis* v. *Parker* (37). And if this is true, then, in view of the possible teachings to be drawn from a practical knowledge of the business concerned, it is proper that Courts should be very cautious in condemning what legislatures have approved."

(*Beryl F. Carroll, Auditor of State of the State of Iowa* v. *Greenwich Insurance Company of New York* (38), at 250);

(vii) "If the legislature shares the now prevailing belief as to what is public policy, and finds that a particular instrument of trade war is being used against that policy in certain cases, it may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses, and it may do so none the less that the forbidden act does not differ in kind from those that are allowed. * * * * * *
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The 14th Amendment does not prohibit legislation special in character. *Magoun* v. *Illinois Trust & Saving Bank* (39). It does not prohibit a state from carrying out a policy that cannot be pronounced purely arbitrary, by taxation or penal laws. * * * * *
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If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the 14th Amendment allows it to be dealt with, although otherwise and merely

(36) 67 Law Ed. 705.
(37) 187 V. S. 606, 610, 611, 47 L. Ed. 323, 328, 23 Sup. Ct. Rep. 168.
(38) 50 Law Ed. 246.
(39) 170 U. S. 283, 294, 42 L. Ed. 1037, 1043, 18 Sup. Ct. Rep. 594.

logically not distinguishable from others not embraced in the law."

[*Central Lumber Company* v. *State of South Dakota* (40) at 169.]

In Kedar Nath Bajoria v. *The State of West Bengal* (41), Patanjali Sastri, C.J., observed that Article 14 does not insist on legislative classification being scientifically perfect or logically complete. Supreme Court refused to accept the suggestion that the classification made in the Criminal Law Amendment (Special Courts) Act (21 of 1949) was based on no intelligible principle or was arbitrary. The learned Chief Justice observed:—

"The argument overlooks the distinction between those cases where the Legislature itself makes a complete classification of persons or things and applies to them the law which it enacts, and others where the Legislature merely lays down the law to be applied to persons or things answering to a given description or exhibiting certain common characteristics, but being unable to make a precise and complete classification, leaves it to an administrative authority to make a selective application of the law to persons or things within the defined group, while laying down the standards or at least indicating in clear terms the underlying policy and purpose, in accordance with, and in fulfilment of, which the administrative authority is expected to select the persons or things to be brought under the operation of the law."

Bearing the above distinction in mind, it is significant to note that in the Sikh Gurdwaras Act, the impugned classification has been made by the Legislature itself, and the matter of classification has not been left to the executive Government, Mahajan, J., in *Harnam Singh and others* v. *Regional Transport Authority, Calcutta Region and others* (42); observed that it had been repeatedly pointed out by the Supreme Court that in construing Article 14 the Courts should

(40) 57 Law Ed. 164.
(41) A.I.R. 1953 S.C. 404.
(42) A.I.R. 1954 S.C. 190.

not adopt a doctrinaire approach which might well choke all beneficial legislation and that legislation which is based on a rational classification is permissible. A law applying to a class is constitutional if there is sufficient basis or reason for it. In other words, a statutory discrimination cannot be set aside as the denial of equal protection of the laws if any state of facts may reasonably be conceived to justify it.

Repelling the attack on the *vires* of section 34-A (1) and (2) of the Banking Companies Act as being violative of Article 14 of the Constitution, *Ayyangar; J.; held in All-India Bank Employees' Association* v. *The National Industrial Tribunal (Bank Disputes), Bombay; and others* (43), at 184; that the fact that all banking companies were not hit by the provision was no ground for holding the legislation invalid.

In *Anant Prasad Lakshminiwas Ganeriwal* v. *State of Andhra Pradesh and others* (44), the constitutionality of different though parallel laws relating to Hindu Religious endowments in different areas of the State of Andhra Pradesh was sustained on the ground that the differentiation arose from historical reasons.

After a careful consideration of all the law cited above and the facts and circumstances already referred to, I am of the opinion that the case falls within category (1) out of the categories enumerated in paragraph 12 in the judgment of S. R. Das, C. J., in *Shri Ram Krishan Dalmia* v. *Shri Justice S. R. Tendolkar* (45), inasmuch as Schedule I indicates the institutions to which its provisions are intended to apply and the basis of classification of such institutions is easily gatherable from the surrounding circumstances brought to the notice of the Court. I am further of the opinion that the intelligible differentia on which the classification of Gurdwaras in Schedule I was based, has clear nexus with the objects of the 1925 Act and the objects of the two Amending Act, viz., (i) better administration of certain Sikh Gurdwaras, (ii) to bring some Gurdwaras in the erstwhile PEPSU area under the same management and subject to the same laws as similar Gurdwaras in the pre-1956 Punjab, and (iii)

(43) A.I.R. 1962 S.C. 171.
(44) A.I.R. 1963 S.C. 853.
(45) A.I.R. 1958 S.C. 538.

(regarding Act 10 of 1959) to make minor corrections in the description of certain Gurdwaras included in Schedule I as amended by Act 1 of 1959.

This takes me to the third point urged by Mr. Gupta, i.e., about the alleged discrimination in favour of an hereditary office-holder of a particular Gurdwara as against a non-hereditary office-holder of the same Gurdwara effected by section 8 of the Act. This question does not appear to arise on the facts of any of the cases before us, and it is, therefore, unnecessary to deal with it in any detail. Mahant Lachhman Dass petitioner in Civil Writ 1935 of 1962, does not claim to be an office-holder of the institution named in item 249 of the first Schedule, i.e., of "Gurdwara Sahib Panjaur Padshahi Pahaili." He claims to be a duly constituted Mahant of "Gurdwara Sahib Pinjore" which is a different institution than the one described in item 249. In fact he could not possibly have claimed to be an office-holder of "Gurdwara Sahib Pinjore, Padshahi Pahaili". "Padshahi Pahail" refers to Guru Nanak and Udasis are not Sikhs of Guru Nanak or any of the ten Gurus, and have in fact been held to be not Sikhs at all. In any event, Mahant Lachhman Dass claimed to be an hereditary office-holder (Guru to Chela) of the institution which he claimed and not to be a non-hereditary office-holder. The alleged discrimination, even if present, cannot possibly hit him and he has no cause of complaint in that behalf.

Pritpal Singh petitioner in Civil Writ 1198 is not an office-holder of any Gurdwara at all, but claims the property in dispute as his personal residential house and agricultural land. Mahant Gurmukh Singh petitioner in Civil Writ 1925 of 1964 also claims as Chela of Aggar Singh. In none of the three writ petitions referred to above has any complaint been made, of the alleged discrimination. In fact no such complaint could possibly be made as section 8 is not applicable to any of the three cases as they all relate to Schedule I Gurdwaras to which section 8 does not apply. The only case to which section 8 could apply is Civil Writ 514 of 1966—*Mahant Dharam Dass* v. *State of Punjab*. Though Mahant Dharam Dass describes himself as Chela of Karan Parkash and claims to be an Udasi Sadh, he has stated in paragraphs 7 and 10 of his petition that he forwarded an application under section 8 of the Act to the Government and admits that his said claim is *sub judice* before the Tribunal. He claims to be an hereditary office-holder, the Tribunal has not held to the contrary, and no complaint of his having been discriminated against by

section 8 of the Act has been made by him. "Hereditary-office" has been defined in section 2(4) (iv) of the Act to mean an 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), the succession to which before the first day of November, 1956 (in case of PEPSU Gurdwaras) devolved according to hereditary right or by nomination by the office-holder for the time being. "Hereditary office-holder" has been defined to mean the holder of an hereditary office. Even otherwise I would hold that there is no objectionable discrimination in this respect in section 8 of the Act as the two classes of persons, viz., (i) hereditary office-holders on the one hand, and (ii) non-hereditary office-holders on the other, form two distinct classes amongst whom intelligible difference is apparent on the face of the thing and there is nothing wrong in the Act conferring a right to question the nature of an institution on an hereditary office-holder alone and not conferring it individually on a person who happens to be the office-holder at a particular time though he has no hereditary right in the sense in which the word is defined in the Act. Even nominated and co-opted members of a Committee managing a Gurdwara have been held by a Division Bench of the Lahore High Court in *Guru Nanak Sat Sang Sabha and another* v. *Thakar Das Sanhi and others* (46), to be hereditary office-holders. Neither the petitioners have laid any foundation for raising the third point, nor is there any force therein.

The fourth contention of Mr. Gupta relates to the grievance of the petitioners against the conclusive presumption raised by section 3(4) about the Gurdwara notified under section 3(2) being a Sikh Gurdwara. The complaint is against the effect of the abovesaid provision to bar an enquiry into the nature of the institution, i.e., whether it is a Sikh institution or a non-Sikh one. Following are the preconditions for the raising of such a presumption:—

(i) the institution must be one named in the first Schedule to the Act; and

(ii) a notification under sub-section (2) of section 3 must have been issued in regard to it.

This particular presumption does not affect the rights of anyone more than the bar created by sub-section (1) of section 5 against the claim

(46) A.I.R. 1935 Lah. 277.

to such an institution does. It has already been held above that the classification of such Gurdwaras in Schedule I is based on reasonable differentia having rational relation to the objects of the Act. That being so, and no new argument other [than those referred to below in connection with the other conclusive presumptions under section 3(4) and those under section 7(5)] having been addressed in this behalf, the provision in section 3(4) of the Act about the notification under section 3(2) being conclusive proof of the notified Gurdwara being a Sikh Gurdwara, does not in my opinion, subject any of the petitioners before us to an unequal treatment as compared with any other person similarly situated and does not infringe the guarantee of equal protection of laws. 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.

This takes me to the fifth contention pressed before us; and this one on behalf of all the four petitioners. The complaint in the three cases of Schedule I Gurdwaras was that the mere publication of a declaration and of the consolidated list under section 3(2) is given by section 3(4), the status of "conclusive proof" of the fact that the application made under sub-section (1) of section 3 was in fact made by a Sikh or any present office-holder of the Gurdwara in question (specified in Schedule I), of the fact that the notification and the consolidation list had been published in the prescribed manner at the headquarters of the district, headquarters of the tahsil and in the revenue estate in question, and of the fact that the State Government sent by registered post a notice of the claim, etc., to each of the persons named in the list as being in possession of any such right, etc., i.e., of the requisites of sub-sections (1), (2) and (3) of section 3. Similarly the complaint of Dharam Dass petitioner regarding sub-section (5) of section 7 is that it bars an enquiry into the fact whether the persons who made the application under sub-section (1) of section 7 were in fact 50 or more or not, whether such persons were in fact Sikh worshippers of the Gurdwara or not, and whether each one of them was more than twenty-one years old or not at the relevant time, and also conclusive proof of the publication of the notification and the list in the district, tahsil and revenue estate, and the sending of the notice of the claim to the person interested by registered post, i.e., conclusive proof of fulfilment of the requirements of

sub-sections (1) to (4) of section 7. A three-pronged attack was made by Mr. Gupta against these statutory conclusive presumptions. It was argued by him that these provisions violate Article 14 because—

(i) the impugned presumptions have the effect of taking away from the petitioners certain rights which are available to contesting parties in a suit under section 38, thus driving a wedge of invidious discrimination between cases tried under Part I of the Act on the one hand and those tried under Part II of the Act (section 38) on the other;

(ii) the said presumptions are pieces of substantive law and not merely rules of evidence; and

(iii) the presumptions in question have the effect of taking away certain defences which are normally open to a litigant in an ordinary legal proceeding, i.e., the plea to question the *locus standi* of a claimant under section 3(1), and of claimants under section 7(1) by pleading and proving that such claimants did not possess the requisite qualifications entitling them to make the claim in dispute.

Relying on the pronouncement of the Supreme Court in *Izhar Ahmad Khan and others* v. *Union of India and others* (47); and in *The Municipal Board, Hapur* v. *Raghuvendra Kripal and others* (48); counsel argued that these two provisions, viz., section 3(4) and section 7(5), are liable to be struck down as they are equivalent to an *ex parte* judgment on the relevant point having been given by the Legislature against the petitioners. The provision of law which was upheld by the Supreme Court in *Izhar Ahmad Khan's case* (*supra*) was rule 3 of Schedule III of the Citizenship Rules, 1956 framed under sub-section (2) of section 9 of the Citizenship Act, 1955. This rule provided that "the fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his having voluntarily acquired the citizenship of the country before that date" Sub-section (2) of section 9

(47) A.I.R. 1962 S.C. 1052.
(48) A.I.R. 1966 S.C. 693.

of the Citizenship Act under which the rule in question had been framed was in the following terms:—

> "If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf."

Any rule framed under sub-section (2) of section 9 of the Citizenship Act which could not be classed as a "rule of evidence" would, therefore, have been outside the scope of the rule-making authority conferred on the Central Government by section 9(2) of the Citizenship Act. The vires of rule 3 were impugned, *inter alia*, on the above said ground. It was in this context that the Supreme Court was called upon to decide as to when it could be said that a statutory conclusive presumption fell within the ambit of "rules of evidence" and when it could not be so said. After referring to the genesis of the law of evidence and the functions which its enactment is intended to discharge, and referring to the fact that the law of evidence is a part of the law of procedure, P. B. Gajendragadkar, J., (as he then was) observed that a rule prescribing a rebuttable presumption is a rule of evidence and proceeded to hold as follows:—

> "It seems rather difficult to accept the theory that whereas a rebuttable presumption is within the domain of the law of evidence, irrebuttable presumption is outside the domain of that law and forms part of the substantive law.
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> In deciding the question as to whether a rule about irrebuttable presumption is a rule of evidence or not, it seems to us that the proper approach to adopt would be to consider whether fact A from the proof of which a presumption is required to be drawn about the existence of fact B, is inherently relevant in the matter of proving fact B and has inherently any probative or persuasive value in that behalf or not. If fact A is inherently relevant in proving the existence of fact B and to any rational mind it would bear a probative or persuasive value in the matter of

proving the existence of fact B, then a rule prescribing either a rebuttable presumption or an irrebuttable presumption in that behalf would be a rule of evidence. On the other hand, if fact A is inherently not relevant in proving the existence of fact B or has no probative value in that behalf and yet a rule is made prescribing for a rebuttable or an irrebuttable presumption in that connection, that rule would be a rule of substantive law and not a rule of evidence. Therefore, in dealing with the question as to whether a given rule prescribing a conclusive presumption is a rule of evidence or not, we cannot adopt the view that all rules prescribing irrebuttable presumptions are rules of substantive law. We can answer the question only after examining the rule and its impact on the proof of facts A and B. If this is the proper test, it would become necessary to enquire whether obtaining a passport from a foreign Government is or is not inherently relevant in proving the voluntary acquisition of the citizenship of that foreign State."

By the majority judgment, rule 3 in question was held to be a rule of evidence after applying the above quoted tests, though the rule provided for a conclusive presumption. The ratio of the judgment of the Supreme Court in *Izhar Ahmad Khan's case* (supra) is not directly relevant for our purposes as the impugned provisions [section 3(4) and section 7(5)] were enacted by a competent Legislature itself and were not subject to any controlling provision like sub-secion (2) of section 9 of the Citizenship Act. The Legislature is competent to provide for irrebuttable and conclusive presumptions not only as mere rules of evidence but even as substantive pieces of law so long as the relevant provision is within the legislative competence of the Legislature concerned and is not otherwise unconstitutional. But even if the tests laid down by the Supreme Court (per Gajendragadhkar, J.), in *Izhar Ahmed Khan's case* are applied to the presumption impugned before us, it would be clear that the issue of a notification under section 3(2) or section 7(2), as the case may be, is inherently relevant in the matter of proving that the Government must have satisfied itself about all steps preliminary to the issue of such a notification having been fulfilled. Even in the absence of the impugned provisions, it would not have been illegal for a Tribunal to presume the existence of the preliminary facts though it would no doubt, in such a situation, allow the presumption to be rebutted by proper evidence. The issue

of a notification would to any rational mind bear a probative or persuasive value in the matter of proving the existence of the preliminaries after which alone the statute provides for the issue of the notification. From this point of view it would appear that the impugned provisions did not contain anything more than mere rules of evidence according to the tests laid down by the Supreme Court in *Izhar Ahmad Khan's case*. I would further hold that even if it were not so and the presumption in question could be held to be a piece of substantive law, it would by itself make no difference to the constitutionality of the impugned provisions.

The case of *Hapur Municipality* (supra) dealt with the validity of sub-section (3) of section 135 of the U. P. Municipalities Act (2 of 1916) (hereinafter referred to as the U.P. Act). Section 128 of the U.P. Act authorises municipalities within that State to levy any of the taxes enumerated in that section. Sections 131 to 135 lay down the procedure for the imposition of those taxes. Section 131 requires the framnig of a proposal by a special resolution specifying the tax, the person or class of persons to be made liable therefor, and the description of the property or other taxable things or circumstances in respect of which they are to be made liable, etc. The municipality is required by the same section to prepare a draft of the rules which are sought to be made by the State Government for the imposition, levy and recovery of the tax in question, and to publish the proposal and the draft rules with a notice in the prescribed form in the prescribed manner. Section 132 enables any resident of the municipal area in question to submit written objections to the municipality for the publication of such notices against any or all of the proposals. The municipality is then required to consider and decide the objections by a special resolution. If the municipality decides to modify its proposals or any of them, the modified proposals and the revised draft rules, if any, have again to be published for objections with a fresh notice. After final settlement of the proposals, the municipality has to submit the same along with the objections, if any, and the orders made thereon to the prescribed authority appointed by the State Government. The prescribed authority is empowered by section 133 to reject, sanction or modify any proposal. In case of modification, they have to be referred back to the municipality for further consideration. Section 134 requires that when the proposals are sanctioned by the prescribed authority or the State Government, the Government has to proceed to make relevant rules under section 296 of the U. P. Act.

A copy of such rules and the order of the sanction are then sent to the municipality, who by special resolution directs the imposition of the tax with effect from a date which it specifies in the resolution. This as well as the impugned provision are contained in section 135 of the U.P. Act in the following terms:—

"Imposition of tax,—

(1) A copy of the resolution passed under section 134 shall be submitted to the State Government, if the tax has been sanctioned by the State Government, and to the Prescribed Authority, in any other case.

(2) Upon receipt of the copy of the resolution the State Government, or Prescribed Authority, as the case may be, shall notify in the official Gazette, the imposition of the tax from the appointed date, and the imposition of a tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

In the case before the Supreme Court, the special resolution under section 131(1) had been passed, but the same was not published in a local Hindi paper in the prescribed manner. The imposition of the tax was impugned before the Allahabad High Court. The only objection relevant for our purposes against the tax was that the rules which ought to have accompanied the relevant resolution under section 131 had not been exhibited. The Hapur Municipality claimed that the Court was precluded by sub-section (3) of section 135 from making an inquiry into that matter as the notification had been made by the Legislature, conclusive evidence about the tax having been imposed in accordance with the provisions of the U.P. Act. The taxpayer combated this stand by challenging the constitutionality of sub-section (3) of section 135 on the ground that it discriminated against him inasmuch as it did not allow litigants desirous of questioning the imposition of the tax to prove their allegations as against the general body of litigants in other cases where such defences were open. The *vires* of section 135(3) were also challenged on the ground

that the said provision conferred judicial functions on the Legislature which was contrary to the separation of powers under the Constitution. Hidayatullah, J., who wrote the judgment of the majority (Wanchoo J., dissenting) first dealt with the question whether the rule of conclusive evidence contained in section 135(3) was such as to shut out all enquiries by Courts and held that enquiry into the question whether the tax was one included in the list of permitted taxation in section 128 of the U.P Act, and into the factum of passing of the last special resolution required under sectoin 134 of that Act was not barred. That matter depended on consideration of the relevant provisions of the U.P. Act, and does not concern us. I have referred to this aspect of the judgment of the Supreme Court because Mr. Dalip Chand Gupta sought to equate the last special resolution under section 134 of the U.P. Act to the sending of a valid application under section 7(1) of the 1925 Act by competent applicants. The Supreme Court held (per majority) that what section 135(3) of the U.P. Act does is "to put beyond question the procedure by which the tax is imposed, that is to say, the various steps taken to impose it." Reference was then made to the functions of the State Government about satisfying itself regarding the said preliminary steps in the following passage:—

> "As observed already some of the provisions controlling the imposition of a tax must be fully complied with because they are vital and, therefore, mandatory, and the others may be complied with substantially but not literally, because they are directory. In either case the agency for seeing to this compliance is the State Government. It is hardly to be expected that the State Government would not do its duty or that it would allow breaches of the provision to go unrectified. One can hardly imagine that an omission to comply with the fundamental provisions would ever be condoned. The law reports show that even before the addition of the provision making the notification conclusive evidence of the proper imposition of the tax, complaints brought before the Courts concerned provisions dealing with publicity or requiring ministerial fulfilment. Even in the two earlier cases which reached this Court and also the present case, the complaint is of a breach of one of the provisions which can only be regarded as directory. In cases of minor departures from the letter of the law especially in matters not fundamental, it is for the Government to see whether

there has been substantial or reasonable compliance. Once Government condones the departure, the decision of Government is rightly made final by making the notification conclusive evidence of the compliance with the requirements of the Act. It is not necessary to investigate whether a complete lack of observance of the provisions would be afforded the same protection. It is most unlikely that this would ever happen and before we pronounce our opinion we should like to see such a case."

After holding that the finality given by the voice of the Legislautre to the relevant notification does not amount to excessive delegation or a conferral of legislative functions on the municipality or on the State Government, Hidayatullah, J., proceeded to hold as below:—

"It remains to consider two other arguments in the case. The first is the question of discrimination which is said to arise from the proviso which makes the notification conclusive in respect of the procedure by which the tax is imposed. There are numerous statutes, including the Evidence Act, in which a fact is taken to be conclusively proved from the existence of some other fact. The law is fully of fictions and irrebuttable presumptions which also involve proof of facts. It has never been suggested before that when the Legislature says that enquiry into the truth or otherwise of a fact shall stop at a given stage and the fact taken to be conclusively proved, that a question of discrimination arises. The tax-payers in the Municipality are allowed under the Municipalities Act to object to the proposal for the tax and the rules and to have their objections considered. They cannot, of course, be allowed to keep on agitating and a stage must come when it may be said that the provisions of the Act have been duly observed. That stage is reached after Government has scrutinized the proposal, the rules, the objections and the orders and has approved of the proposal, a special resolution is passed by the Municipal Board and a notification is issued. It cannot be said that sub-section (3) of section 135 which leads to the conclusion that the imposition of the tax is according to the Municipalities Act discriminatory because it only concludes objections against the procedure followed in the imposition of the tax.

> The next object that the impugned sub-section involves the exercise of judicial functions not open to the Legislature, is wholly erroneous. The sub-section only shuts out further enquiry and makes the notification final. There is no exercise of a judicial function. In our country there is no rigid separation of powers and the legislature often frames a rule such as is incorporated in the third sub-section of section 135. The Evidence Act is full of such provisions. In the United States of America where the separation of powers is extremely rigid in some of the constitutions of the States it may be open to objection that the Legislature in shutting out enquiry into the truth of a fact encroaches upon the judicial power of the State. Such disability has never been found to exist in our country although legislation of this type is only too frequent. The objection is, therefore, without substance."

From a careful reading of the above quoted passage in the majority judgment of the Supreme Court in the *case of Hapur Municipality*, it appears to me that the ratio of that judgment is not only of no assistance to the petitioners, but in fact helps the case set out by the respondents in this behalf. It has been held by the majority in *Hapur Board* case that when the Legislature says that an enquiry into the truth or otherwise of a fact shall stop at a given stage and the fact is taken to be conclusively proved, no question of discrimination arises. The observations of the Supreme Court to the effect that it cannot be said that section 135(3) of the U.P. Act, which leads to the conclusion that the imposition of the tax according to the U.P. Act is discriminatory, because it excludes objections against the procedure followed in the imposition of the tax, apply with full force to the conclusive presumptions impugned before us. It has been specifically held in the case of *Hapur Municipality* that a provision of law which shuts out further enquiry and makes a notification in respect of certain preliminary steps conclusive, does not involve the exercise of any judicial function, and that the Evidence Act is full of such fictions. Moreover, it appears from the opening words of sub-section (2) of section 3 that it is only on the receipt of a list "duly forwarded under the provisions of sub-section (1)" that the State Government is expected to publish a notification, the publication of which is made the conclusive proof of certain facts by sub-section (4) of section 3. The use of the expression "duly forwarded" in relation to an application under sub-section (1) of section 3 shows that the

State Government is expected to satisfy itself before the issue of a notification under sub-section (2) of section 3, that the application in question is a proper application under sub-section (1), and has been duly forwarded. This implies that the State Government is expected to see that the application has been made by any Sikh or any present office-holder of a Gurdwara specified in Schedule 1, and otherwise fulfils the requiremnts of sub-section (1) of section 3. The conclusiveness of the presumption relating to proper publication of the application and the list when it is proved that a notification about the same has been published in the official Gazette is nothing extraordinary, as such a presumption is consistent with the legal fiction of imputing knowledge to all concerned on the issue of a notification by publication in the official Gazette. In *Emperor v. Rayangouda Lingangouda Patil* (49), it was held in connection with rule 119 of the Defence of India Rules, 1939, that if notice by publication in the official Gazette was not deemed to be a sufficient notice, the result would be that the prosecution would lose a simple method of establishing beyond controversy that the person affected had received notice or the order affecting him, and that the person affected would find it easier to establish the fact that he had not received notice assuming that in any particular case, the burden of proof were upon him to prove affirmatively that he had not received notice. In the absence of a statutory provision like the one contained in sub-section (5) of section 7, it is no doubt difficult to hold that mere publication in the official Gazette is sufficient notice to the individual of an order passed against him. But in case of the provisions impugned before us, the conclusive presumption is only in regard to the preliminaries which do not amount to the passing of an order against an objector, and as already explained, do not at all affect any of his rights or claims to any property. In *Sobhraj Odharmal and others* v. *The State of Rajasthan and others* (50), it was argued that an opportunity to be afforded to the objector under section 68-D (1) of the Motor Vehicles Act would be reasonable opportunity only if the objector has advance notice of the date, time and place of the meeting, and that the authority hearing the objections must, therefore, give notice to the objector to appear before him and to substantiate his objections. It was argued that the notice sent by registered post which was not served because it was never tendered to the addressees, followed

(49) A.I.R. 1944 Bom. 259
(50) A.I.R. 1963 S.C. 640.

by publication of the notice in the Government Gazette did not amount to affording reasonable opportunity to the objectors to substantiate their objections to the scheme. It was contended that clause (4) of rule 7 of the rules framed under the Motor Vehicles Act which raises a presumption of service on publication of a notice in the Government Gazette was invalid, because the State Government was not entitled to deprive the objectors of a reasonable opportunity of being heard by prescribing a presumption of service of notice of hearing merely from publication of the notice in the Government Gazette. The Supreme Court repelled the contentions of the objectors. In *State of Maharashtra* v. *Mayer Hans George* (51), it was held that even on the narrowest view of the law, the notification of the Reserve Bank must be deemed to have been published in the sense of having been brought to the notice of the relevant public, and hence the plea by the respondent that he was ignorant of law could not afford him any defence in his prosecution. Prosecution is a much more serious matter as compared with the right to file objections to a certain claim which right is not finally taken away even if the objections are not filed under section 5 within time, if one can show and prove in a subsequent suit under section 30(ii) that he had in fact no notice of the claim. Same applied to a notification under sub-section (3) of section 7 as such a notification has to issue only "on receiving a petition duly signed and forwarded under the provisions of sub-section (1)" of that section. There is no reason to believe that the State Government would not do its duty properly or would collude with the applicants under section 3(1) or 7(1), to deliberately disregard the requirements of sub-sections (1), (2) and (3), of section 3, or sub-sections (1) to (4) of section 7. The observations of the Supreme Court in this connection in the case of *Hapur Municipality* (48), have already been quoted above.

Mr. Gupta is in error in equating the municipal resolution under section 134 of the U.P. Act to the sending of a valid application under section 3(1) or 7(1) of the Sikh Gurdwaras Act. Schedule I of the Act can be equated to section 128 of the U.P. Act in the sense that no application under section 3(1) would be entertainable in respect of a Gurdwara not named in Schedule I in the same manner as imposition of no tax which is not covered by section 128 of the U.P. Act would be upheld. The requirements of sections 131 to 134 of the

(51) A.I.R. 1965 S.C. 722.

U. P. Act prior to the passing of the last special resolution by the municipality can be equated to the requirements of sub-sections (2) and (3) of section 3, and sub-sections (2) to (4) of section 7 of the Act. It is, therefore, clear that though the conclusive presumptions raised by the impugned provisions do appear to me to be mere rules of evidence, it would make no difference to their constitutionality even if they are treated as pieces of substantive law. Article 14 prohibits invidious discrimination as much in matters of substantive law as in procedural law. The Legislature is competent to make a law raising conclusive presumption regarding certain steps preliminary to an adjudication by a judicial or a quasi-judicial Tribunal. In my opinion, a competent Legislature can always say that such and such an irregularity may be condoned. The Legislature could have said that the State Government may *suo motu* issue a notification under section 3(2) or section 7(3) on coming to know from any source that a particular institution is a Sikh Gurdwara. If the Legislature has laid down certain qualifications of the persons who can make such an application, there is nothing to stop the same Legislature from barring by the same statute an enquiry into the existence or non-existence of those qualifications. Legislature can always make laws providing as well as taking away safeguards or defences.

The comparison of the said impugned provisions with the proceedings under section 38 of the Act is wholly misconceived. Section 38 proceedings are not parellel to proceedings under section 3 or 7. No question of such defences being available under section 38 can arise as law does not require a suit under that section being instituted either by a Sikh or an hereditary office-holder or by fifty Sikhs or persons of any particular age or residents of any particular place. Section 38 is more or less analogous to section 92 of the Code of Civil Procedure. An action under that provision can be brought by any two or more persons having interest in any Gurdwara in respect of which no declaration of its being a Sikh Gurdwara has been published under Part I of the Act. Jurisdiction to invoke section 92 of the Code in respect of a Sikh Gurdwara is not barred by section 29 of the Act. There are two material differences in proceedings under section 92 of the Code of Civil Procedure on the one hand and those under section 38 of the Sikh Gurdwaras Act on the other. Whereas section 92 of the Code can be invoked only in a case of breach of trust or in a case where direction of the Court is thought to be necessary, no such condition need be fulfilled in invoking section 38 of the Act. Secondly it is open to a Court under section 92 of the Code to frame any scheme

of management or to pass other orders envisaged by that provision. No such discretion is vested in the Court in case of proceedings under section 38 in which proceedings on a declaration being made that the institution in question is a Sikh Gurdwara, the scheme of management given in Part III of the Act is made applicable to the property of that institution by section 41 of the Act. Proceedings regarding properties of every Gurdwara in respect of which the Tribunal can adjudicate can be initiated either under section 3(1) or section 7(1). In respect of both sets of cases identical presumptions are raised by section 3(4) on the one hand and section 7(5) on the other. Between the two classes of Gurdwaras (Schedule I Gurdwaras and other Sikh Gurdwaras), there is, therefore, no discrimination invidious or otherwise in this respect. In *Berar Swadeshi Vanaspathi and others* v. *Municipal Committee, Shegaon and another* (52), J. L. Kapur, J.; who delivered the judgment of the Court, held that a notification imposing an octroi having been issued in the official Gazette under sub-section (7) of section 67 of the C. P., and Berar Municipalities Act (2 of 1922), was conclusive evidence of the tax having been imposed in accordance with the provisions of the Berar Municipalities Act, and it could not be challenged on the ground that all the necessary steps preliminary to the imposition of the octroi had not been taken. In *Smt. Somawanti and others* v. *The State of Punjab and others* (53), it was held that since evidence means and includes all statements which the Court permits or requires to be made, when the law says that a particular kind of evidence would be conclusive as to the existence of a particular fact, it implies that that fact can be proved either by that evidence or by some other evidence which the Court permits or requires to be advanced, and that if evidence which is made conclusive is adduced, the Court has no option but to hold that the fact exists. Their Lordships further held that statutes may use the expression "conclusive proof" where the object is to make a fact non-justiciable, but the Legislature may use some other expression such as "conclusive evidence" for achieving the same result. On that basis it was decided that there is no difference between the effect of the expression "conclusive evidence" from that of "conclusive proof", the aim of both being to give finality to the establishment of the existence of a fact from the proof of another. The majority of the Court held in *Somawanti's case* (53) (supra) that the contention that

(52) A.I.R. 1962 S.C. 420.
(53) A.I.R. 1963 S.C. 151.

the bar created by section 6(3) of the Land Acquisition Act (1 of 1894), would not stand in the way of the Supreme Court while dealing with a petition under Article 32, and that, therefore, it is open to it to ascertain whether an acquisition is for a public purpose or not could not be accepted. Section 6(3) of the Land Acquisition Act raising a conclusive presumpption about the existence of a public purpose on a declaration to that effect having made in a notification issued under that provision, was held to be valid law.

The other aspect of the argument of the petitioners in this respect, i.e., about certain defences being taken away is equally devoid of force. In *Vanguard Fire and General Insurance Co.; Ltd.* v. *Sarla Devi and others* (54); it was held that section 96 of the Motor Vehicles Act (4 of 1939) which took away certain defences against a running down action by a third party did not violate Article 14 of the Constitution. The interpretation placed by a Division Bench of the Punjab High Court on section 96 of the Motor Vehicles Act in the case of *Vanguard Fire and General Insurance Co., Ltd.*, (54), (Supra) was approved by their Lordships of the Supreme Court in *British India General Insurance Co., Ltd.*, v. *Captain Itbar Singh and others* (55). The hollowness of this argument of the petitioners is demonstrated by reference to the authoritative pronouncement of the Supreme Court *in Joseph Kuruvilla Vellukunnel* v. *Reserve Bank of India and others* (56), Section 38(1) (b) of the Banking Companies Act, 1949, provides that notwithstanding anything contained in the relevant provisions of the Companies Act, 1956, the High Court shall order the winding-up of a Banking Company "if an application for its winding-up has been made by the Reserve Bank under section 37 or section 38(1) (b) of the Act." The Reserve Bank of India made an application in the High Court of Kerala under section 38 for the winding-up of the Pilai Central Bank Limited and for the appointment of the Official Liquidator of the High Court as the Liquidator of the Bank. Against the judgment of the High Court allowing the application of the Reserve Bank, an appeal by special leave was preferred to the Supreme Court, and the constitutionality of section 38(1) (b) of the Banking Companies Act was challenged on the ground that it was a discriminatory provision which had made the Reserve Bank the sole Judge to decide whether the affairs of a banking company were being

(54) A.I.R 1959 Punj. 297.
(55) A.I.R. 1959 S.C. 1331.
(56) A.I.R. 1962 S.C. 1371.

conducted prejudicially to the interest of depositors by making it mandatory for the High Court to order winding-up when such an application was made by the Reserve Bank. After referring to their own judgment in *Virendra* v. *The State of Punjab and another* (57), where it had been pointed out that in judging the reasonableness of any particular law, the surrounding circumstances in which the impugned law came to be enacted, the underlying purpose of the enactment and the extent and urgency of the evil sought to be remedied must be considered, their Lordships of the Supreme Court held in the *Pilai Central Bank case* as below :—

> "These observations lay down clearly that there may be occasions and situations in which the Legislature may, with reason, think that the determination of an issue may be left to an expert executive like the Reserve Bank rather than to Courts without incurring the penalty of having the law declared void. The law thus made is justified on the ground of expediency arising from the respective opportunities for action. Of course, the exclusion of Courts is not lightly to be inferred nor lightly to be conceded. The reasonableness of such a law in the total circumstances will, if challenged, have to be made out to the ultimate satisfaction of this Court and it is only when this Court considers that it is reasonable in the individual circumstance that the law will be upheld."

The impugned provision was upheld by the Supreme Court. The defences available to a Bank Company in an ordinary action for winding-up under the Companies Act relate to much more vital matters than the kind of things in respect of which conclusive presumptions have been raised in the impugned provisions before us. After all there could have been no charm in a person being permitted to question that an applicant under section 3(1) or section 7(1) is not a Sikh as all that section 2(9) of the Act requires for a person to be a Sikh is to state that he professes the Sikh religion. The statutory definition further provides that if any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or he refuses to make in the prescribed manner a declaration to the effect that he solemnly affirms

(57) A.I.R. 1957 S.C. 896.

that he is a Sikh, that he believes in Guru Granth Sahib, that he believes in the Ten Gurus, and that he has no other religion. It would be a vain formality to allow a defence of an applicant not being a Sikh being raised merely in order to obtain a formal declaration in the prescribed form which would put the controversy finally at rest. After all the object of the relevant impugned provision was to assist in the devising of an easy and quick remedy, to undo the evil of Sikh shrines being polluted or misused by usurpers and to take them back from them for the benefit of the community to which they belonged. The said object is brought out by the historical background already referred to from the book by Professor Ruchi Ram Sahni and is also apparent from the following passage from pages 111 to 113 of Prof. Teja Singh's "The Gurdwara Reform Movement and the Sikh Awakening" (published in 1922):—

> "After the terrible year of 1919, when the whole of India went through an unprecedented crisis, the agitation about reform assumed a new shape. The Sikhs could not remain content any longer with the piecemeal reform of their temples. They had tried the Courts for a sufficiently long time, and except in a few minor cases, had found them quite unavailing.
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> The process of law was dilatory and the expenses almost prohibitive. The Court fee of Rs. 10 on the plaint was only a small fraction of the enormous expenses that the reformers going to Court had to incur. Even this fee became too much for the poor enthusiasts, when the Courts insisted that it should be levied on the full value of a property attached. The plaint of Sialkot Sikhs in the case of Babe-di-Ber was rejected on the ground that the plaintiffs had failed to pay the Court-fee on Rs. 50,000. The Sikhs had to depend on public subscriptions, while the Mahants had at their disposal the vast revenues of the Gurdwaras. The few successes of the Sikhs rather worsened the situation. The Mahants were put on their guard, and they found out the weakness of the law and the strength of their own position.
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> They began openly to defy the Panth by selling the property of the Gurdwaras and recklessly wasting the money on wine and mistresses. One of them was carrying on his love affairs with his own aunt. His love letters in which

he admits his wine drinking are filed in the Court. Another Mahant, whose love letters have also been captured and whose photo drawn with a loose woman is on the Court file, boasted in another Court that he had got more than 300 Gurdwaras under him. The existing law had proved a veritable boon to him. He said in the Court that he was the Shri Mahant or the acknowledged head of all the Sikh temples in Northern India; and the sign of his Shri Mahantship, he said, was that he received from Government two boat-loads of Bhang, which he supplied to all the Gurdwaras under him. Another Mahant, that of Nankana Sahib, who had taken the vow of celibacy, was openly living with a low class Mohammendan woman and had children by her, whom he was providing with property worth lakhs out of Gurdwara funds. What could the Sikhs do to reform them?

They had tried the experiment of litigation in many cases, but after some time they began to despair. They could not free the temple of Sialkot from an apostate, who openly flouted Sikh religion. What was this law that allowed a man, even whose company was forbidden to Sikhs, to give the rule in their temple. In the past they had resorted to law in the hope that the Government would realise their position and help them. But the Government failed to realise their position."

Elimination of unimportant steps in the trial of a case was held to be not abhorrent to Article 14 in *Attar Singh and others* v. *The State of U.P.* (58), while dealing with sections 14 to 17 read with section 49 of the U.P. Consolidation of Holdings Act (5 of 1954).

Shutting out further enquiry about the fulfilment of the requirements of sub-sections (1) to (4) on satisfaction about the issue of notification under sub-section (3) and making the said notification final and conclusive is not a judicial function. In other words the only effect of section 7(5) is that enquiry into requirements of sub-sections (1) to (4) of that section stops at the stage of proof of publication of the application and the list in the official gazette. It appears

(58) A.I.R. 1959 S.C. 564.

to me that except for the requirement of publication of the application, etc., in the official gazette, the other provisions of sub-sections (1) to (4) of section 7 are merely directory. The authority for seeing to the compliance with those directory requirements is the State Government. The obvious effect of section 7(5) is that the Legislature has left no doubt about non-compliance with the directory provisions having no possible effect on the validity or entertainability of any claim made under section 7(1) as soon as it is shown that publication in the official gazette has been done. This is not the first time when possible minor departures from the letter of the law with regard to inconsequential and non-fundamental matters has been condoned by the Legislature itself; and only substantial and not literal compliance with the same has been insisted upon. I do not, therefore, find any force in any of the three arguments pressed by Mr. Gupta, in relation to his fifth contention. From whatever angle the matter is looked at, the impugned conclusive presumptions do not appear to infringe Article 14 or any other fundamental right of the petitioners.

Moreover, no such plea has been taken in any of the writ petitions except of Dharam Dass. In the other three cases it has not even been stated that any of the petitioners wanted to question any of the facts which are held to be conclusively proved by sub-section (4) of section 3 of the Act. In *Dharam Dass's case* such a request was made before the Tribunal, but was turned down on account of the impugned conclusive presumption raised by sub-section (5) of section 7. It has become necessary to deal with this point only because it directly arises in Dharam Dass's petition, in which case in fact no other point has been argued. I have not been able to find any fault with the finality given by the Legislature in section 7(5) of the Act about the conclusive proof of certain preliminaries. It is also noteworthy that the preliminary points on which Dharam Dass wanted the Tribunal to adjudicate, i.e., whether the application under section 7(1) was made by fifty Sikhs or not; and things of that kind did not at all affect the merits of the claim of Dharam Dass or of any other person who may be placed in that situation. The matters covered by the impugned presumptions appear to me to be immaterial and inconsequential, inasmuch as they do not affect the right, title and interest of the claimant in any property (or even in the institution itself under section 8) which have to be adjudicated upon by the Tribunal. The Legislature has entrusted the adjudication of only certain matters to the Tribunal and the disputed question of the application having been

made by the requisite number of persons having the specific qualifications has been raised above the level of controversy. There is no doubt that if the requisite qualifications had been laid down in section 7(1) but the conclusive presumption had not been raised in section 7(5), it might have been open to a claimant to question the competency of the petition on one of those grounds before the Tribunal.

Mr. Gupta relied on the unreported judgment of a Division Bench of this Court (S. B. Capoor and Dua, JJ.), dated March 10, 1966, in Civil Writ 767 of 1963 *Bihara Singh* v. *State of Punjab and others* (59). By that judgment a bunch of writ petitions was disposed of by the Bench. The main case was of Bihara Singh. He had claimed that he was the Mahant of an institution known as "Smadh Baba Darbara Singh" in village Tibba, tehsil and district Kapurthala; and had been enjoying the usufruct of the entire property of that institution for his personal benefit. On the extension of the 1925 Act to PEPSU (including the erstwhile State of Kapurthala) certain persons forwarded an application under section 7(1), on the receipt of which the Punjab Government issued notification, dated December 23, 1960, under section 7(3). The application and the list were proclaimed in the locality and individual notices under section 7(4) were issued to Bihara Singh in January, 1961. Bihara Singh's petition against the claim under section 7(1) was forwarded for adjudication under section 14 of the Act to the Tribunal. By notification, dated July 31, 1962, the Punjab Government then declared the abovesaid institution as a Sikh Gurdwara. The arguments advanced on behalf of Bihara Singh at the hearing of his writ petition were two-fold, viz. (i) that the claim under section 7(1) was barred on the principles of *res judicata* as the Adalat-i-Khas constituted under sections 26 and 27 of the Sikh Gurdwarahai Riyasat Kapurthala of Yakam Har, Sambat 1986, corresponding to 1929 A.D., which was the law in force in the erstwhile State of Kapurthala before the merger of that State with Patiala, had held that the land attached to the institution was not of the Sikh Gurdwara, and that the institution itself was also not a Sikh Gurdwara, and had finally decided the matter which could not be reopened under the 1925 Act extended to Kapurthala in 1959; and (ii) that the conclusive presumption raised under section 7(5) of the Act was invalid and was in any case proved to be unworkable, in his case. The arguments advanced on behalf of Bihara Singh at the hearing of his writ petition

(59) C. W. 767 of 1963 decided on 10th March, 1950.

regarding the sencod point mentioned above were summarised by the Division Bench in the following words :—

> "With regard to the provisions of section 7, the detailed objections are as follows. No indication is given that any authority is to check whether the petitioners, who had presented a petition under sub-section (1) are actually existing or not or whether they are qualified by reason of age and residence to present the petition. On the other hand, under sub-section (3) on receiving a petition along with the list the State Government is required, as soon as may be, to publish these by notification and there is no indication that at any stage or before any authority, the persons, who may be affected by the notification, have the right to challenge the *locus standi* of the alleged petitioners. No doubt, under sub-section (4) the State Government is required to send by registered post a notice of the claim to any right, title or interest included in the list of the persons shown in the list as being in possession of any such right, title or interest, but it is not further provided that the State Government is to satisfy itself that the service is actually effected on these persons within a reasonable time so as to enable them to put forward their own claims. On the other hand sub-section (5) makes the publication of the notification conclusive proof that the provisions of sub-sections (1), (2), (3) and (4) have been duly complied with, and there is nothing to prevent the State Government from issuing such a notification even before it has sent the notice to the individual claimants under sub-section (4) or made the publication of the petition and the list in the district and tahsil headquarters and in the revenue estate in which the Gurdwara and its properties are situated. It is also argued that as section 4 comes after sub-section (3), and it may be assumed that the notice by registered post to the intended claimant is to be issued after notification under sub-section (3)."

Though section 7(5), of the Act was not struck down by the Court; it appears that full effect to the conclusive presumption under that provision was not given by the Bench on the ground that what was proved to be wrong could not be presumed to be correct. It was held as a matter of interpretation of sub-section (3) to (5) of section 7 that

in order to make the raising of a presumption about the gazette notification under section 7(3) being conclusive proof of publication of the petition, and about the service of personal notice under section 7(4), the latter must logically precede the former, as it would be impossible to presume from the publication of notification, dated December 23, 1960, that personal service of notice under section 7(4) would be effected in January, 1961. Having so interpreted the relevant provisions, the learned Judges proceeded to quash the impugned notifications, dated December 23, 1960, and July 31, 1962, as publication of the petition under section 7(1) in the revenue estate, etc., under section 7(3) and service of personal notices required by section 7(4) had admittedly been effected in *Bihara Singh's case* (59) after the notification under section 7(3). The passage in which the reasoning of the Bench in this respect is contained is set out below:—

> "So far as the criticism that there is nothing in section 7 to prevent the State Government from sending the notice of the claim under sub-section (4) even after the issue of the notification under sub-section (3) of section 7 is concerned, I am of the view that it is unjustified. It is a cardinal principle of interpretation that if there are two apparently inconsistent interpretations of certain statutory provisions the Courts will construe ambiguous expression in such manner as to maintain the validity of the statute if the language will reasonably bear such interpretation,—vide *Durga Parshad* v. *Custodian of Evacuee property Block, New Delhi, and others* (60). The words "as soon as may be" occur not only in sub-section (3) but also in sub-section (4) and since the publication of the notification in the Gazette under sub-section (3) is made,—*vide* sub-section (5) a conclusive proof of that fact that notice of the claim made in the petition under sub-section (1) has been duly issued to the person concerned and the publication of the petition and the list also made at the headquarters of the district and of the tahsil and in the revenue estate where the institution as well as the properties are situated, the clear intention of the Legislature is that it is only after

(60) I.L.R. (1960) 2 Punj. 159. (F.B.)=A.I.R. 1960 Pnj. 341 at page 344 (F.B.).

these steps have been taken that the notification under sub-section (3) is to be published in the Gazette. The suggestion on behalf of the petitioners that these provisions permitted the State Government to make the notification conclusive proof of something which had not yet occurred would be imputing to the Legislature an absurdity which should not readily be ascribed nor should be assumed that the officials of the State Government would act so as to defeat the intention of the Legislature which can be so clearly inferred from the impugned provisions. On the other hand the fact that the issuing of the notification under sub-section (3) of section 7 is made the starting point of a limitation not only under sub-section (1) of section 9, but also under sub-section (1) of section 10, would indicate that on any reasonable view the public notices as well as notice to the individuals concerned must issue before the publication of the notification under sub-section (3) of section 7 so as to give sufficient time to the persons, who may claim any right, title or interest in the properties mentioned in the list accompanying the petition under sub-section (2) of section 7, to lodge their claims before the appropriate Secretary to Government. These were the reasons advanced by Mr. H. S. Wasu, learned counsel for Shromani Gurdwara Parbandhak Committee in civil writ No.1858 of 1962, and we are entirely satisfied as to their correctness.

It would then logically seem to follow that if the Gazette notification under sub-section (3) of section 7 is issued before the publication of the petition and the accompanying list in the district and tahsil headquarters and the revenue estate in which the institutions or the properties pertaining to it are situated, or before the issue of the notice under sub-section (4) to the persons shown and in the list as being in possession of any right, title or interest to the properties, the notification will be liable to be quashed."

We are not concerned with the other ground (relating to the principles of *res judicata*) on which also the impugned notifications were quashed by the Bench in ***Bihara Singh's case*** **(supra)** (59) Counsel for Dharam Dass petitioner was no doubt right in submitting that if the law laid down in Bihara Singh's case is correct, the

notification in his case (Civil Writ 514 of 1966) must also be quashed as the publication of the application in the locality and the service of personal notice on the petitioner was in this case also long after the issue of gazette notification under section 7(3).

Reliance has on the other hand been placed on behalf of the respondents on a later Division Bench judgment of this Court (Falshaw, C. J. and D. K. Mahajan, J.) in L.P.A. 338 of 1965 ***Mahant Man Dass*** v. ***The State of Punjab and others*** (61). Jindra Lal, J. had in his judgment, dated September 10, 1965, in Civil Writ 621 of 1965, repelled the arguments advanced on behalf of Mahant Man Dass against his having been deprived from going behind the conclusive presumption raised under section 7(5) in the following words ;—

> "Admittedly there is no provision in the statute for holding an inquiry whether or not the signatures on an application under section 7(1) of the Act have been obtained by duress, pressure or fraud. But it is contended that the purpose for publication of a notification under section 7(3) is merely meant for the use and information of the State Government with the intention of setting in motion the machinery of the law for holding an inquiry into the nature of the institution and regarding its property. In this context it is urged that the publication of the notification under section 7(3) confers no right on anybody nor does it deprive anybody of his rights.
>
> It is not denied that the original application was in fact signed by more than 50 persons. Clearly, therefore, when the application came into the hands of the Government there was no patent defect in it. It is only Harnek Singh, who appears to have written to the State Government that his signature was taken by fraud. It is claimed on behalf of the respondents that the application was only on behalf of Harnek Singh although there is some suggestion in paragraph 5 of the petition that the application in fact contained 17 signatories, which fact has not been specifically denied by the respondents.

(61) L.P.A. 338 of 1965 decided on 24th Feb., 1966.

In any case it is obvious that no right of the petitioner has in any case been violated. All that he has to do, as he claims to have already done, is to make a claim before the Tribunal appointed under the Act that the Dera Baba Khandesri and the property attached to it is not a Sikh Gurdwara and if he succeeds then it is conceded, he will be entitled to costs.

On behalf of the State Government it is contended by the learned Senior Deputy Advocate-General that the act of publication of the impugned notification is purely an administrative act which is not amenable to the jurisdiction of this Court under Article 226 of the Constitution. This, however, does not appear to be a sound argument and it has been brought to my notice that a Division Bench of this Court has in Civil Writ No. 767 of 1963, *Bihara Singh* v. *State of Punjab and others*, (59) quashed a notification made under section 7(3) of the Act. The facts of that case were of course very different because in that case a notification under section 7(3) was published in 1960, but was not served on all the persons interested. Publication locally was not done till the 7th April, 1963, by which time the right to make a claim under section 8 of the Act had become time-barred and it was, therefore, claimed that the rights of the petitioners in that petition in fact had been violated because due to non-publication of the notification in accordance with law, the petitioners had lost their valuable land and property.

It has also been urged that if, as is contended by the respondent, the Act contains no provision for an inquiry whether the application before the Government is in accordance with the provisions of the Act or not, then section 7(5) is unconstitutional.

It is not necessary to decide this matter in the present petition because in my view no right either statutory or fundamental of the petitioner has in any way been violated."

While dismissing Letters Patent Appeal 338 of 1965, filed by Mahant Man Dass (61) against the judgment of Jindra Lal, J., it was observed by Mahajan, J. (with whom Falshaw, C. J. concurred) as under :—

"It is not disputed that a petition under section 7(1) of the Act was forwarded to Government signed by over 60 persons

who had appended their signatures to it. It is, however, maintained that 17 signatories are reported to have stated in the affidavits that the institution in question was not a Sikh Gurdwara and that in spite of this, the Government proceeded to publish the notification on the 17th April, 1964, without holding any inquiry whether the Dera in dispute was really a Sikh Gurdwara within the meaning of the definition, as given in the Act. The principal contention raised before the learned Single Judge was that it was incumbent on the Government to hold an inquiry whether the petition was, in fact, signed by the persons purporting to sign it; whether that petition was voluntarily signed; and whether the institution was or was not a Sikh Gurdwara. The learned Single Judge repelled this contention on the short ground that there is no provision in the Act for such an inquiry nor does it or the rules provide any machinery for holding such an inquiry. An application by 50 or more worshippers of a Gurdwara is only necessary to set the provisions of section 7 in motion. As a matter of fact, the proviso makes this fact clear. According to the operative part of section 7, 50 or more Sikh worshippers are required to be residents of police-station area in which the Gurdwara is situated, whereas according to the proviso, the Government has the power to declare by notification that a petition has been duly forwarded whether the petitioners were or were not on the commencement of the Act residents of the police-station area in which the Gurdwara is situated.

We are, therefore, in respectful agreement with the view taken by the learned Single Judge on this matter. Moreover, section 7 does not violate any right of the petitioner-appellant. An elaborate inquiry, as to whether an institution is or is not a Sikh Gurdwara, has to be held by the Tribunal, and the petitioner has already made a claim to the Tribunal to the effect that the institution in question is not a Sikh Gurdwara. Moreover, sub-section (5) of section 7 of the Sikh Gurdwaras Act, 1925, clearly states that—

'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.'

In view of this provision, it is difficult to hold that any inquiry with regard to matters enumerated in sub-sections (1) to (4) is contemplated".

The conflict of opinion between the two Division Benches was noticed by Falshaw, C.J. and Mahajan, J. at the time of motion hearing of Civil Writ 514 of 1966, and that is why the said petition (*Mahant Dharam Dass* v. *The State of Punjab, etc.*) was admitted to a Full Bench.

Though the word "also" used in section 7(4) in connection with service of personal notice, and the sequence in which sub-sections (3) and (4) have been placed by the legislature in section 7, do indicate that compliance with section 7(4) was probably expected to be made only after the publication of the Gazette notification under section 7(3), it appears to be unnecessary to enter into this controversy in view of my finding to the effect that the provision for conclusive presumption under section 7(5) is valid and constitutional. There is no meaning in calling the said presumption as conclusive if in any circumstances it is allowed to be rebutted. Whereas Mr. Dalip Chand Gupta submitted that the Division Bench judgment in the *case of Mahant Man Dass* (61) needs reconsideration, it was vehemently argued by the Advocate-General and by Mr. Garg, counsel for the respondents, that the *case of Bihara Singh and others* (59) had been wrongly decided. With the greatest respect to the learned Judges who decided the latter set of cases *Bihara Singh and others* (59), I am inclined to hold that the view expressed by Falshaw, C. J. and Mahajan, J. in Division Bench is the correct view, and that in the face of the statutory conclusive presumption under sub-section (5) of section 7, it is not open to the Court to hold in any circumstances that though a notification under section 7(3) has been published, the provision of any of the preceding sub-sections of section 7 had not been duly complied with. The Court will refuse to hear an argument in that behalf howsoever clear, patent and tempting may be the facts on which such a contention is sought to be founded. If this were not so, the presumption would be only rebuttable and not conclusive. A presumption can be said to be conclusive only when every possible inquiry into the fact said to be conclusively proved is completely shut out. The expression is used in the sense in which it is defined in section 4 of the Evidence Act, i.e., when one fact is; declared by the relevant statute to be conclusive proof of another, the Court must on proof of the one fact regard the other as proved and

shall not allow evidence to be given for the purpose of disproving it. The Division Bench in the *case of Bihara Singh and others* (59) could not, therefore, allow evidence to be given or to be considered for the purpose of disproving the conclusive presumption under section 7(5) of the Act. To that extent it must be held with all the esteem in which I hold the learned Judges who decided those cases, that the course adopted for quashing the notifications on the ground of non-compliance with section 7(3) and section 7(4) of the Act was contrary to sub-section (5) of section 7. The fifth contention of Mr. Gupta, therefore, fails.

This brings me to the sixth main argument of Mr. Gupta, i.e. the alleged infringement of Article 19(1)(f) of the Constitution. As already observed counsel for the petitioners candidly stated that if they fail on the alleged violation of the guarantee of equal protection of the laws, they cannot maintain the charge under Article 19 of the Constitution. Even otherwise, it is clear that no tangible property of any of the petitioners has been put in jeopardy by any provision of the Act. Machinery has been provided in Part I of the Act for adjudication of all claims of all concerned to every little bit of tangible property sought to be managed according to the provisions of the Act. As pointed out in an earlier part of this judgment, trial by the Sikh Gurdwaras Tribunal as compared to one by ordinary civil Courts in the country, is admittedly more beneficial to the litigants.

Mr. Gupta submitted that the basis of Article 19(1)(f), i.e. deprivation of property; does not only apply to tangible property, but even to an office. Counsel relied in this connection on the observations of the Supreme Court in the *Commissioner, Hindu Religious Endowments, Madras;* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (62); wherein it was held that in the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other, and that the word "property" as used in Article 19(1)(f) of the Constitution, should be given a liberal and wide connotation and so interpreted, should be extended to those

(62) A.I.R. 1954 S.C. 282.

well-recognised types of interest which have the insignia or characteristics of proprietary right. The ratio of that judgment of the Supreme Court has, in my opinion, no application to the cases before us. No office-holder of any non-Sikh institution is sought to be deprived of his office by any provision of this Act. Office-holders of Sikh institutions who could possibly be dispossessed of their offices were Mahants. In case of such office-holders, the property and the office remain separate and are not blended together as in the Supreme Court case. Mahants of Sikh Gurdwaras have been held to be mere custodians and managers in *Ram Parshad and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar and others* (63), Moreover, provision is made in section 6 (in case of Schedule I Gurdwaras) and in section 11 (in respect of other Gurdwaras) for payment of compensation to any hereditary office-holder of a Gurdwara notified to be a Sikh Gurdwara or to his presumptive successor, etc., who may be sought to be deprived of his office on the vesting of the management of the Sikh Gurdwara in question in the S.G.P.C. The Act provides for full adjudication by the Tribunal, and as already indicated, provides various safeguards even after the declaration by the Tribunal and adjudication by the High Court that no one dispossessed of any property without having been provided with an adequate opportunity of being heard. The Act does not, therefore, place any unreasonable restriction on the fundamental right of the petitioners to acquire, hold or dispose of property. It is, therefore, impossible to hold that Article 19(1)(f) of the Constitution has in any manner been infringed by any provision in Part I of the Act.

Regarding the last contention advanced on behalf of the petitioners, i.e. the alleged infringment of Article 26 of the Constitution, it was half-heartedly argued by Mr. Gupta that the Act provides for machinery for taking away non-Sikh institutions, or their property from the persons in their possession and to hand them over to the Sikhs. It appears to me that no argument under Article 26 can arise in these cases as there is no claim in any of these petitions on behalf of a denomination or even on behalf of any section thereof. Assuming, however, for the sake of argument that Lachhman Dass petitioner has come to this Court on behalf of Udasi Bhekh, it is significant to note that the Act does not even purport to deal with or

(63) A.I.R. 1931 Lahore 161.

touch any non-Sikh institution or its property. It is not disputed and indeed it has been so held repeatedly that Udasis are not Sikhs though even Udasis do not conform to any single type. In the case of *Durgah Committee, Ajmer and another* v. *Syed Hussain Ali and others* (64), it was held (paragraph 37 of A.I.R. report) that Article 26(c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. If the right to administer properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it, Article 26 cannot be successfully invoked. The Udasis neither had nor have claimed to have ever had any right to possess. or manage Sikh Gurdwaras. They can be effected only if they want to resist handing over a Sikh Gurdwara or its property. They have admittedly no such right. Ariicle 26 has, therefore, no application to these cases.

It was then contended that if the Tribunal or the High Court wrongly holds that an Udasi institution is a Sikh institution, the Act will indirectly hit the Udasis. The argument is devoid of any merit. If someone is affected by a wrong judgment of a competent Court, he cannot complain of infringement of any fundamental right. The impugned provisions in the Act do not, therefore, infringe the freedom of any religious denomination or any section thereof to manage its religious affairs, or to establish or maintain institutions; or to own and acquire movable and immovable property, or to administer such property in acrordance with law.

No other point was argued before us in these cases. In view of the above discussion it is held that :—

(1) Gift or dedication of property can normally be made only in favour of a living or juristic person or in favour of an institution or corporation irrespective of whether such institution or corporation is a juristic person or not, but never in favour of another corporal or tangible property unless such physical property is itself impressed with a juristic personality;

(64) A.I.R. 1961 S.C. 1402.

(2) The word "Gurdwara" used in (i) the opening lines of section 3(1), (ii) in section 5(1), (iii) in the heading of the fifth column of the first Schedule to the Sikh Gurdwaras Act, 1925; and (iv) in some other provisions indicated in this judgment, has reference to the "institution" comprising the "purpose" or "ideal" which owns all the property of the Gurdwara and not in the mundane sense implying the mass of earth, and the brick and mortar thereon, which is the physical place of worship in which Guru Granth Sahib may be installed;

(3) In order to repel an attack under Article 13 of the Constitution against any statutory provisions, the Court is entitled to obtain relevant guidance (i) from preamble of the Act, (ii) from the surrounding circumstances which necessitated the legislation, (iii) from the well-known facts of which Court might either take judicial notice, or of which it is appraised by evidence in the form of affidavit or other wise, (iv) from the legislative proceedings relating to the discussion of the Bill which was ultimately passed in the form of the statute in question for the proper understanding of the circumstances under which the Act was passed, and the reasons which necessitated it, (v) from the statement of objects and reasons for the enactment of the statute for ascertaining the conditions prevailing at the time of the impugned classification, (vi) from the history which lies behind the enactment, (vii) from the prior state of the law and the evil sought to be eradicated, (viii) from the process by which the law was evolved, and (ix) from such other material which may be reasonably deemed by the Court to be admissible for the purpose of testing the validity of the impugned statutory provisions;

(4) There is no discrimination between Gurdwaras which are likely to become the subject-matter of litigation under section 38 of the Act on the one hand and those which are likely to be dealt with under Part I of the Act on the other as the two sets of provisions do not cover the same field and are not parallel. Section 38 can be invoked only in respect of the Gurdwaras in respect of which no declaration of being Sikh Gurdwara has been made under Part I, and only after the expiry of the period of one year during the course of which Part I proceedings can be initiated;

(5) Classification of Gurdwaras enumerated in Schedule I on the one hand and Gurdwaras to be dealt with under sections 7 to 14 of the Act on the other is based on intelligible differentia having clear nexus with the objects of the Sikh Gurdwaras Act, and does not, therefore, suffer from constitutional inhibition of Article 14;

(6) Section 8 of the Act is not *ultra vires* Article 14 of the Constitution;

(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) Except for the requirement of publication of the application and the list filed under section 7(1) in the official gazette, the other provisions of sub-sections (1) to (4) of section 7 of the Act are merely directory. The effect of the operation of sub-section (5) of section 7 is that the Legislature has raised the question of compliance with the said directory provisions beyond the ambit of controversy and has barred the entertainability of any objeciton in that regard on proof of publication of the requisite notification in the official gazette. Shutting out of such enquiry about the fulfilment of certain preliminary, inconsequential and non-fundamental requirements not affecting the merits of the claims of an objector does not infringe Article 14 of the Constitution. Sub-section (5) of section 7 of the Act is, therefore, *intra vires* and not unconstitutional;

(9) For the reasons given in connection with sub-section (5) of section 7, the conclusive presumption raised under subsection (4) of section 3 regarding compliance with the requirements of sub-section (1) to sub-section (3) of section 3, is also valid and constitutional, and does not violate Article 14 of the Constitution;

(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 ;

(11) Section 3 to 7 of the Act do not infringe Article 26 of the Constitution, and are; therefore; perfectly valid and *intra vires* the Constitution ;

(12) No complaint about infringement of fundamental rights can be made on the ground that the statute provides for adjudication by a Tribunal, the wrong decision of which may affect the property rights of the claimant; and

(13) A statute is presumed to be valid and constitutional, and the burden of proving that it is not so lies on the person who makes an allegation to that effect. The Court will always lean towards the constitutionality of a legislative enactment. A writ petitioner must place before the Court the entire material on the basis of which he claims the provision of an enactment in question to be violative of Article 14 and cannot ask for any provision being struck down on assumed facts which are neither alleged nor proved.

I do not think it to be inappropriate to place on record the fact that Mr. Dalip Chand Gupta, Advocate for the petitioners, the learned Advocate-General for the State of Punjab, and Mr. R. K. Garg, Advocate for the S.G.P.C. argued these cases in a very fair and able manner with the requisite clarity.

Reverting to the facts of the individual cases before us, Civil Writ 514 of 1966 *Mahant Dharam Dass* v. *State of Punjab, etc.;* must be dismissed as the only ground pressed before us in that case about the alleged non-compliance with the provisions of sections 7(3) and 7(4) is not available to the petitioner in view of the statutory bar raised by the conclusive presumption of such steps having been taken by section 7(5) of the Act.

In Civil Writ 1935 of 1962 *Mahant Lachman Dass* v. *The State of Punjab, etc.;* two solitary arguments advanced by Mr. M. R. Mahajan; the learned counsel for the petitioner, were; (i) that the Tribunal's

order, dated September 27, 1962, refusing to allow an amendment of his petition under section 5 of the Act under Order 6 Rule 17 of the Code, to be able to plead that in case it is found that he is not the owner of the property in dispute, he is entitled to remain in possession of the same as a Mahant or as a Manager of the shrine in question, was a wrong order; and (ii) that the Legislature should not have included item 249 in Schedule I, but should have included the same in Schedule II, and even if it wanted to include the same in Schedule I, the legislature should have given notice of the same to the petitioner before so doing. In so far as the Tribunal by its impugned order, dated September 27, 1962, did not allow an additional plea to be raised about the institution defined in item 249 of the first Schedule being a non-Sikh institution, no error of law can be found in that order as an inquiry into such a matter has already been held by me to be barred by the conclusive presumption raised under section 3(4) of the Act. If there is some other error in the order of the Tribunal peculiar to the facts of the case, its rectification can be sought in an appeal under section 34 against the final order of the Tribunal, and that is not a matter which can be dealt with in a petition under Article 226. The plea about the alleged unconstitutionality of the Sikh Gurdwara Act which was sought to be raised before the Tribunal has already been repelled and no more survives. In view of the detailed discussion of the subject under Article 14 of the Constitution, there is no force whatsoever in the bald assertion made by Mr. Mahajan that item 249 should not have been included in Schedule I without notice to the petitioner. No law provides notice being issued by the Legislature to persons who might possibly be affected by the piece of legislation sought to be enacted. The petitioner has not claimed himself to be the owner of the institution defined and described in item 249 of the first Schedule, and has, therefore, no *locus standi* to claim that the said institution should have been included in Schedule II. The institution in which he claims to have interest — "Gurdwara Sahib Pinjore" has not been listed in Schedule I. Item 249 in the first Schedule relates to an institution of "Padshahi Pahaili", and the petitioner admits that he has nothing to do with institutions of Padshahi Pahaili. There is, therefore, nn force in any of the arguments advanced on behalf of the petitioner in this case, and Civil Writ 1935 of 1962 also, therefore, merits dismissal.

Pritpal Singh's case (Civil Writ 1198 of 1964) is simple. The attacks on the constitutionality of the relevant provisions of the Act

have already been repelled. The grievance of the petitioner that sub-section (1) of section 5 debarred the petitioner from claiming any right, title or interest in the building of the Gurdwara which he claims to be his private property, is misconceived, and it has already been held that the petitioner can, if so advised, claim according to law every inch of the land and building covered by the notification under section 3(2) irrespective of whether the Gurdwara itself is housed in that part of the property or not. In the suit filed by the S.G.P.C. under section 28 of the Act for possession of the property in question, the petitioner has already claimed that the property in dispute is really his residential house exclusively owned by the petitioner, and that it is not a Sikh Gurdwara. His claim on merits will naturally be adjudicated upon by the Court in accordance with law. No ground has been made out for quashing the notification under sections 3(2) and 5(3). No other relief has been claimed in this writ petition, which has to be dismissed.

The claim of Mahant Gurmukh Singh is confined to the property known as Bunga Dhamtanian near Railway Station, Patiala. He does not claim any interest in the institution known as "Gurdwara Padshahi Naumi, Dhamtan, tahsil Narwana, district Sangrur." Though he cannot question the legality of the amendment made in the relevant entry by section 7 of Act 10 of 1959, relating to the Gurdwara in question, he can claim every bit of the physical or tangible property, movable or immovable of the Bunga in question, and section 5(1) does not bar any such claim. The objection of the S.G.P.C. raised before the Tribunal to the effect that the Tribunal has no jurisdiction to decide whether the institution named in the first Schedule is or is not a Sikh Gurdwara, is well-founded, and has been correctly upheld by the Tribunal. Subject to this, the claim of the petitioner under section 5 of the Act relating to the property of the Bunga will certainly be tried and disposed of by the Tribunal on merits in accordance with law. No relief can be granted to the petitioner by this Court in these proceedings. Civil Writ 1925 of 1964 must also, therefore, meet the same fate.

For the foregoing reasons, all the four writ petitions fail and are accordingly dismissed with costs.

Mehar Singh, C. J.—I agree.

PANDIT J.—The only point urged by the learned counsel for the petitioners in these four writ petitions was that the various provisions of the Sikh Gurdwaras Act, 1925, were unconstitutional, being violative of the fundamental rights guaranteed under Articles 14, 19 and 26 of the Constitution. It was frankly conceded by the learned counsel that if their attack on the basis of the violation of the provisions of Article 14 failed, they would not have much to say regarding the charge on the strength of Articles 19 and 26. A preliminary objection had been raised by the respondents that this Court could not examine the question of unconstitutionality of the Act on the score of Article 14 in the absence of specific allegations supported by the requisite material in that behalf. It had not been alleged by the petitioners that there were persons who were similarly circumstanced like the petitioners and the petitioners had been discriminated against.

There is force in this preliminary objection. It is undisputed that the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. (*See* in this connection the Supreme Court decision in *Charanjit Lal Chowdhry* v. *The Union of India and others* (15). A petitioner has to place before the Court the material on the strength of which he alleges that the provisions of a particular Act are *ultra vires* Article 14. It was held by the Supreme Court in *V. S. Rice and Oil Mills and others* v. *State of Andhra Pradesh*, etc. (16).

> "This Court has repeatedly pointed out that when a citizen wants to challenge the validity of any statute on the ground that it contravenes Article 14, specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned statute is based on discrimination and that such discrimination is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute. Judged from that point of view, there is absolutely no material on the record of any of the appeals forming the present group on which a plea under Article 14 can even be raised. Therefore, we do not think it is necessary to pursue this point any further."

Similarly, in a latter decision in *Cochin Devaswom Board, Trichur* v. *Vamana Setti and another* (17) the Supreme Court also observed:—

> "A person relying upon the plea of unlawful discrimination which infringes a guarantee of equality before the law or equal protection of the laws must set out with sufficient particulars his plea showing that between the persons similarly circumstanced, discrimination has been made which is founded on no intelligible differentia. If the claimant for relief establishes similarity between persons who are subjected to a differential treatment it may lie upon the State to establish that the differentiation is based on a rational object sought to be achieved by the Legislature."

In the present case, even after the State had filed its return that the allegations of the petitioners regarding the unconstitutionality of the Act were vague and indefinite, the petitioners did not file any replication giving the details of the persons who were similarly placed and who were subjected to a differential treatment. In one of the writ petitions, even Article 14 had not been mentioned throughout the petition. In the other petitions, no allegation had been made that there was any particular person who was similarly situated as the petitioners and he had been placed in a more advantageous position by the provisions of the Act.

I have gone through the judgment prepared by my learned brother; Narula, J. and I agret with him that the preliminary objection taken by the respondents was well-founded. I am, however, of the opinion that in this state of the pleadings, it is unnecessary to examine the constitutionality of the provisions of the Act and I would, therefore, not like to express any opinion regarding that matter.

With these observations, I would agree with order proposed by Narula, J. that these writ petitions should be dismissed. But in view of the facts that the preliminary objection was raised by the respondents at a very late stage and the points regarding the merits were highly debatable ones, I am of the view that this is a case in which the parties should bear their own costs.

R. N. M.

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