the order of the Joint Registrar could be subjected to revision by the Registrar or the High Court under section 69 of the Act. So, an alternative remedy of revision was admittedly available to the petitioner. No doubt, existence of an alternative remedy cannot be an absolute bar to the exercise of extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution. In an appropriate case, this Court may interfere in spite of an alternative remedy being available to the petitioner. Every case has to be decided on its own facts and circumstances. Since in the present case, there was no inherent lack of jurisdiction with the Deputy Registrar or the Joint Registrar, who decided the case, it seems that it would have been better if the petitioner had approached the Registrar or the Government for reconsideration of the matter on original side before coming to this Court. Therefore, the writ petition merits dismissal on the ground that the petitioner did not pursue the alternative legal remedy available to him, which could be quite efficacious. Similar view was taken in *Watan Singh Giani* v. *State of Punjab etc.* (2).

(10) In fine, from whatever angle the case may be viewed, the petitioner can have no luck and the writ petition must fail. So, I dismiss it, but with no order as to costs.

B. S. G.

FULL BENCH

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

MAHANT LACHHMAN DASS,—*Appellant.*

versus.

SHIROMANI GURDWARA PARBANDHAK COMMITTEE. AMRITSAR,—*Respondent.*

F.A.O. 137 of 1972.

July 31, 1975.

Sikh Gurdwaras Act (*VIII of* 1925)—*Sections* 3, 5, 6, 7, 8, 12, 14, 25-*A*, 29 *and* 38—*Code of Civil Procedure* (*V of* 1908)—*Order* 9 *Rule*

(2) 1971 Cur. L.J. 486.

Mahant Lachhman Dass *v.* Shiromani Gurdwara Parbandhak Committee, Amritsar (B. S. Dhillon, J.)

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8 and Order 17, Rules 2 & 3—Provisions in the Code relating to dismissal of causes in default—Whether applicable to proceedings before Sikh Gurdwara Tribunal constituted under the Act—Section 38—Whether provides alternative remedy for all the proceedings initiated under Part I of the Act—Term "dispose of" in section 14 of the Act—Whether to be interpreted in the manner the term is used in Order 17 Rule 2 of the Code.

Held, that section 12(1) of Sikh Gurdwaras Act, 1925, provides for the constitution of a Sikh Gurdwara Tribunal for the purpose of deciding claims made in accordance with the provisions of Act. All petitions under sections 5, 7, 8 and 10 of the Act are claims made in accordance with the provisions of the Act, and therefore the Tribunal is constituted for deciding all such claims. No doubt subsection (11) of section 12 of the Act provides that the proceedings of the Tribunal shall so far as may be, and subject to the provisions of the Act, be conducted in accordance with the provisions of the Code of Civil Procedure, 1908, but these provisions have been made applicable only in so far as may be and subject to provisions of Act. Any provision in the Code, which tends to frustrate the mandatory provisions of the Act, cannot be made applicable as is clear from the very language of this section. The Tribunal is not bound to follow a procedure which ousts the jurisdiction of the Tribunal for deciding all the claims made in accordance with the provisions of the Act. If a petition under section 8 of the Act is dismissed for non-appearance, the jurisdiction of the Tribunal to adjudicate the question whether the institution in question is a Sikh Gurdwara or not and also regarding the claim made under section 10 of the Act about the property, is ousted. Section 75-A of the Act gives power to the Tribunal to pass a decree for the possession, if the Tribunal is satisfied that the claim relates to the right, title or interest in the immovable property, which has been held to be belonging to the Gurdwara or to the person in whose favour the declaration has been made. This provision was enacted to provide speedy machinery for implementing the orders of the Tribunal in a speedy and efficacious manner. A bare reading of the provisions of sub-sections (1) and (11) of section 22 and section 14 read with section 25-A of the Act, would make it clear that the Tribunal has been constituted to decide finally all claims made in accordance with the provisions of the Act in a speedy mnaner with a view to reduce the chance of protracted litigation. Disposal of all claims for or against the Gurdwaras with a view to reduce the chances of protracted litigation in a matter involving the religious sentiments of a large section of a sensitive people proud of their heritage will become redundant by the applicability of the procedure of dismissal in default under the Code. Hence the provisions of Order 9, Rule 8 and Order 17 Rules 2 & 3 of the Code in so far as these relate to dismissal of causes in default are not applicable to the proceedings before the Tribunal constituted under the Act.

Held, that the scope of proceedings under section 38 of the Act is not as wide as that of the proceedings before a Tribunal which get initiated in view of the provisions in Part I of the Act. A civil Court under the provisions of section 38 on a suit being instituted by two Sikhs can grant relief specified in section 92 of the Code of Civil Procedure, 1908, and may, on such suit having been decreed, make applicable the provisions of part III of the Act to such a Gurdwara. Such a Civil suit under that section cannot be instituted without the permission of the Deputy Commissioner whereas initiation of proceedings under sections 5, 6, 7, 8 and 10 of the Act are without any prior sanction of any authority. It is thus clear that claim regarding the properties made under section 5, claim of compensation made under section 6, claim made under section 8 for a declaration that a place asserted to be a Sikh Gurdwara, is not a Sikh Gurdwara and claim made under section 10 regarding the property, cannot be adjudicated under the provisions of section 38 of the Act. Hence the provision of section 38 does not provide an alternative remedy for all proceedings initiated under part I of the Act.

Held, that the term "dispose of" as used in section 14 of the Act is much wider in its import and includes the word decision. This term cannot be interpreted in the same manner as it has been used in Order 17 Rule 2 of the Code because in that case, the Tribunal under section 14 of the Act would not be entitled to decide the matters referred to it finally. The term as used in section 14 does not mean the disposal as postulated in Order 17 Rule 2. The term in the section can only be interpreted that the Tribunal will finally decide the matters referred to it under the Act.

Case referred by a Division Bench consisting of Hon'ble Mr. Justice P. C. Pandit and Hon'ble Mr. Justice Bhopinder Singh Dhillon, on May 31, 1973, *to a third Judge on account of difference of opinion on the question of law involved in the case. The Hon'ble the Chief Justice Mr. R. S. Narula, on August* 22, 1974, *further referred the case to a Full Bench for final decision. The Full Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, Hon'ble Mr. Justice P. C. Jain and Hon'ble Justice Bhopinder Singh Dhillon, finally decided the case on July* 31, 1975.

First appeal from the order of the Sikh Gurdwara Tribunal, *Punjab, Chandigarh, dated January* 6, 1972, *dismissing the petition with costs.*

T. S. Mangat, Advocate, *for the appellant.*

Narinder Singh, Advocate, *for the respondent.*

Mahant Lachhman Dass *v.* Shiromani Gurdwara Parbandhak Committee, Amritsar (B. S. Dhillon, J.)

JUDGMENT OF THE FULL BENCH

DHILLON J.—This First Appeal from Order was heard by a Division Bench consisting of P. C. Pandit J. (as he then was) and myself. On a difference of opinion between Pandit J. and myself, we directed that the case be placed before the Hon'ble Chief Justice for nominating a third Judge of this Court to hear and decide this appeal, *vide* our order dated May 31, 1973. This appeal was then listed before Hon'ble Chief Justice R. S. Narula on August 22, 1974. Shri Tehal Singh Mangat, the learned counsel for the appellant, contended before the Hon'ble Chief Justice that the provision in clause 26 of the Letters Patent for reference of points of difference between two Judges of a Division Bench to a third Judge is subject to any legislative provision to the contrary and in view of the mandatory provsions of section 34 of the Sikh Gurdwaras Act, 1925 (hereinafter called the Act), about the requirement of an appeal under that provision being heard by a Bench of not less than two Judges it would not be legal for a Single Judge to deal with any aspect of such an appeal at any stage. The second objection reagrding hearing and deciding the appeal by a third Judge was that there was no proper reference by the two Judges of the Division Bench in this case as the points on which the Judges are at variance have not been set out in their common order of reference. Thirdly, it was contended that one of the questions that may crop up in the appeal relates to the validity of the order under section 8 of the Act and the question of vires of section 8 of the Act is under consideration in Civil Appeal Nos. 354/1222/1261 of 1969 in the Supreme Court. Those appeals were directed against Full Bench judgment of this Court reported in *Mahant Lachhman Dass Chela Mahant Ishar Dass* v. *The State of Punjab and others* (1) upholding the vires of the Act. On these submissions having been made, the Hon'ble Chief Justice thought it proper that the appeal be set down for hearing before a Full Bench. It may be pointed out that the Supreme Court appeals referred to above have been dimissed and the decision is reported in *Dharam Dass etc.* v. *The State of Punjab and others* (2). Therefore, this appeal has now been listed for hearing before a Full Bench.

(2) After hearing the learned counsel for the parties, I am of the opinion that the view expressed by me in my earlier order is the

(1) I.L.R. 1968(2) Pb. & Haryana 499
(2) A.I.R. 1975 S.C. 1069.

correct view of the matter and the appeal is liable to be dismissed. My earlier order may be read as part and parcel of this judgment and as such it would not be necessary for me to repeat the facts of this case and so also the various provisions of the Act. I am firmly of the opinion that the provisions of Order 9, Rule 8 and Order 17, Rules 2 and 3 of the Code of Civil Procedure, insofar as those relate to dismissal of causes in default, are not applicable to the proceedings before the Sikh Gurdwaras Tribunal (hereinafter referred to as the Tribunal) and hence in this regard the Tribunal is entitled to formulate its own procedure for the disposal of the matters arising out of the Act and pending before the Tribunal. It is to be noticed that section 12(1) of the Act provides for the constitution of the Tribiunal for the purposes of deciding claims made in accordance with the provisions of the Act. It cannot be denied that all petitions under sections 5, 7, 8 and 10 of the Act are claims made in accordance with the provisions of the Act. Thus the Tribunal is constituted for deciding all the said claims. Sub-section (11) of section 12 of the Act provides that the proceedings of the Tribunal shall so far as may be and subject to the provisions of the Act, be conducted in accordance with the provisions of the Code of Civil Procedure, 1908. The provisions of the Code of Civil Procedure have been made applicable insofar as may be and subject ot the provisions of the Act. Any provision in the Code of Civil Procedure, which tends to frustrate the mandatory provisions of the Act, cannot be made applicable as is clear from the very language of this section. The contention that the Tribunal is bound to follow a procedure, which admittedly ousts the jurisdiction of the Tribunal for deciding the claims made in accordance with the provisions of the Act, is without merit. Furthermore, it is to be seen that under section 14 of the Act, the State Government is enjoined upon to forward to the Tribunal all the petitions received by it under the provisions of sections 5, 6, 8, 10 or 11 and the Tribunal is enjoined to dispose of such petitions by order in accordance with the provisions of the Act. It has been conceded before us by Shri T. S. Mangat, the learned counsel for the appellant, that in case his contention is accepted and if it is held that the provisions of Order 9, Rule 8 and Order 17, Rules 2 and 3 of the Code of Civil Procedure, are applicable, in that case, the Tribunal will have no jurisdiction to pronounce upon the claims made under section 7 of the Act and also consequently claims made under section 10 of the Act, when a petition under section 8 made by a hereditary office-holder is dismissed for non-appearance in accordance with the provisions of the Code of Civil Procedure. In other words, he concedes that if a

petition under section 8 is dismissed for non-appearance, the jurisdiction of the Tribunal to adjudicate the question whether the institution in question is a Sikh Gurdwara or not and also regarding the claim made under section 50 of the Act regarding the property, is ousted. Section 25-A of the Act gives power to the Tribunal to pass a decree for the possession, if the Tribunal is satisfied that the claim relates to the right, title or interest in the immovable property, which has been held to be belonging to the Gurdwara or to the person in whose favour the declaration has been made. This provision was enacted to provide speedy machinery for implementing the orders of the Tribunal in a speedy and efficacious manner. A bare reading of the provisions of sub-sections (1) and (11) of section 12, and section 14 read with section 25-A of the Act, would make it clear that the Tribunal has been constituted to decide finally all claims made in accordance with the provisions of the Act in a speedly manner with a view to reduce the chances of protracted litigation. This conclusion of mine finds support from the observations of their Lordships of the Supreme Court in *Dharam Dass's case* (*supra*). Their Lordships upheld the vires of sections 3(4), 7(5) and other provisions of the Act by that judgment, and after considering the provisions of the Act, the object for which the legislature enacted the Act, was summed up as follows:—

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

(3) To contend that the provisions of Part I of the Act, which were enacted by the Legislature for providing speedy disposal of all claims for or against the Gurdwaras with a view to reduce the chances of protracted litigation in a matter involving the religious sentiments of a large section of a sensitive people proud of their heritage, should be made redundant by the applicability of a procedure which procedure cannot be made applicable because of the provisions of sub-sections (1) and (11) of section 12, sections 14 and 25-A of the Act

itself, would be giving an interpretation against the very provisions of the Act which interpretation cannot be given.

(4) Reference may usefully be made to the Division Bench decision of this Court in *Messrs Wood Workers and Packing Case Works Moga* v. *The State of Punjab and others* (3). The question which fell for consideration in that case was whether the Appellate Authority under the Punjab General Sales Tax Act was entitled to dismiss the appeal in default. It was held that the Appellate Tribunal could not dismiss the appeal in default and was enjoined upon by law to decide the appeal on merits. The provisions of sub-section (6) of section 20 of the Punjab General Sales Tax Act, 1948 and Rule 59(2) came up for consideration in that case. The Division Bench interpreted the provisions of section 20(6) of the Act to be mandatory in terms and held that the appeal had to be decided on merits and the provisions of sub-rule (2) of Rule 59 of the Punjab General Sales Tax Rules, 1949, which provided for giving power to the Tribunal for dismissing the appeal in default, were held to be *ultra vires*.

(5) The contention of the learned counsel for the appellant that section 38 of the Act provides an alternative remedy for the proceedings which are shelved in case the petition made under section 8 of the Act is dismissed in default and in case provisions of Order 9, Rule 8 and Order 17, Rules 2 and 3 are held to be applicable and, therefore, the provisions of the Act are not frustrated, is completely without any merit. The scope of the proceedings under section 38 of the Act is not as wide as that of the proceedings before a Tribunal which get initiated in view of the provisions in Part I of the Act. The Tribunal has to decide claims made by any person regarding the property of the Scheduled Gurdwaras under section 5, claims of compensation by a hereditary office-holder under section 6, petitions claiming a particular institution as a Sikh Gurdwara under section 7, petitions to have it declared that a place asserted to be a Sikh Gurdwara is not a Sikh Gurdwara under section 8, petitions for claiming a property included in the list published under sub-section (3) of section 7 made under section 10 of the Act, claims for compensation by a hereditary office-holder of a Gurdwara notified under section 7 made under section 11 of the Act; whereas the scope of proceedings under section 38 is restricted one. A Civil Court under the provisions of section 38 on a suit being instituted by two Sikhs can grant relief specified in section 92 of the Code of Civil Procedure, 1908, and may, on such suit

(3) 1971 P.L.R. 125.

having been decreed, make applicable the provisions of part III of the Act to such a Gurdwara. Such a Civil suit under that section cannot be instituted without the permission of the Deputy Commissioner whereas initiation of proceedings under sections 5, 6, 7, 8 and 10 of the Act are without any prior sanction of any authority. It would thus be seen that claim regarding the properties made under section 5, claim of compensation made under section 6, claim made under section 8 for a declaration that a place asserted to be Sikh Gurdwara is not a Sikh Gurdwara and claim made under section 10 regarding the property, cannot be adjudicated under the provisions of section 38 of the Act. It is, therefore, idle to contend that the provisions of section 38 are alternative remedy for all the proceedings initiated under Part I of the Act, which stands shelved if it is held that the provisions of Order 9, Rule 8 and Order 17, Rules 2 and 3 of the Code of Civil Procedure are applicable.

(6) It would further be seen that the proceedings under section 38 of the Act can only be initiated after the expiry of one year from the commencement of the 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. Thus it is clear that during the period the proceedings in Part I of the Act are being initiated, recourse cannot be had to the proceedings under section 38. It appears that the provisions of section 38 were inserted by the Legislature with a view to cover the claim of such Gurdwara, which could not be included either in Schedule I or regarding which claims could not be made in time under section 7 of the Act. It cannot be held that the provisions of section 38 are of such a nature so as to say that the same provide an alternative remedy for the decision of the matters which the Tribunal is enjoined upon to make under the provisions of Part I of the Act.

(7) It has been next contended by the learned counsel that the language of section 14 of the Act does not postulate that the matters referred to the Tribunal under that section are to be finally decided. It is contended that the Legislature used the words "dispose of" in the said section which words cannot be interpreted that the Tribunal has to decide the claims finally. It is contended that if a petition under section 8 is dismissed in default, it may be considered to be disposed of and thus the provisions of section 14 will be complied with. A reference has been made to the provisions of Order 17, Rule

2 of the Code of Civil Procedure in this regard as the words "dispose of" have been used in that provision as well. This contention of the learned counsel is without any merit. The term "dispose of" is much wider term and would in its import include the word "decision" as well. The term "dispose of" used in section 14 cannot be interpreted in the manner as the said term has been used in Order 17, Rule 2 of the Code of Civil Procedure, because if that is done, in that case, the Tribunal under section 14 of the Act would not be entitled to decide the matters referred to it finally. It, therefore, cannot be held that the term "dispose of" used in section 14, would mean the disposal as postulated in Order 17, Rule 2. This term in this section can only be interpreted that the Tribunal will final decide the matters referred to it under the Act.

(8) The matter can be viewed from an other angle. It is only when a claim is made under section 7 of the Act that a counter-claim under section 8 of the Act is made. Therefore, an original claim petition for getting a particular institution to be declared a Sikh Gurdwara is filed under section 7 of the Act. Under section 8 of the Act, only a counter claim is made. To contend that by dismissing a counter-claim made under section 8 of the Act, the jurisdiction of the Tribunal will be ousted to consider the original claim made under section 7 of the Act, whether the institution in question is a Sikh Gurwara or not, will be again against the very spirit of the Act. Claim made under section 7 is to be decided by the Tribunal as the Tribunal is constituted under section 12(1) of the Act to decide a claim made in accordance with the provisions of the Act. Therefore, even though section 14 does not make mention of a claim under section 7, but the mandatory provisions of sub-section (1) of section 12 make it clear that the Tribunal is constituted to decide all claims made in accordance with the provisions of the Act. The above mentioned findings of mine are amply supported by the authorities of the Lahore High Court which hold the field for a number of years regarding which reference has already been made by me in my earlier order, which has been made part and parcel of this judgment. The said authorities being: *Guru Amarjit Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others* (4) and *Gurdit Singh and others* v. *Committee of Management Gurdwara Nawin Padshahi, Bichhuana, through S. Ajit Singh* (5). I have also placed reliance on the observations made in a decision

(4) A.I.R. 1936 Lahore 939.

(5) A.I.R 1940 Lahore 266.

of the Supreme Court in Kesar Singh v. *Balwant Singh and others* (6) wherein the extent and nature of jurisdiction vested in the Tribunal has been discussed. Viewed from any angle, the conclusion is irresistible that the provisions of Order 9, Rule 8 and Order 17, Rules 2 and 3 of the Code of Civil Procedure, relating to dismissal in default, cannot be made applicable to the proceedings before the Tribunal.

(9) As regards the merits of the appeal, it was contended by the learned counsel for the appellant that since there was no evidence on the record, therefore, the Tribunal could not decide the matter on merits. This contention is again devoid of merit. As I have come to the conclusion that the provisions of Order 9, Rule 8 and Order 17, Rules 2 and 3 of the Code of Civil Procedure, are not applicable, the Tribunal is duty bound to decide the case on merits on the existing material before it. It is well settled that a claimant coming to the Court for a particular declaration, has to prove that he is entitled to such a declaration and the onus of proof is always on the claimant. If a claimant fails to produce any evidence in support of his claim, his claim is bound to be dismissed on merits. The reliance is placed by the learned counsel for the appellant on a decision of the Supreme Court in *Board of High School and Intermediate Education, U.P. Allahabad and another* v. *Bagleshwar Prasad and another* (7). In fact the principle laid down by their Lordships of the Supreme Court in that case is that where a finding is recorded by an authority on there being no evidence on the record, the said finding is vitiated. That was a case where the order passed by an Enquiry Committee dealing with the case of unfair means was sought to be quashed on the ground that the finding of the Enquiry Committee was based on no evidence. It is quite clear that in the case of the allegations of unfair means, duty is cast on the authority to prove that a candidate is guilty of unfair means, and to produce evidence for such a finding being recorded and if such a finding is recorded without any evidence, the same is vitiated. In the present case, the appellant claimed to be a hereditary office-holder and filed his claim under section 8 of the Act. Following issue was framed on the pleadings of the parties:—

"Whether the petitioner is a hereditary office-holder? O.P.P."

(6) A.I.R. 1967 S.C. 487.
(7) A.I.R. 1966 S.C. 875.

Onus was on him to prove his claim and if inspite of a number of opportunities having been given to him, details of which have been given in my earlier order, to adduce evidence in support of his claim, he fails to do so, his claim is bound to be dismissed on merits. Therefore, this contention of the learned counsel for the appellant is also without any merit.

(10) For the reasons recorded above, this appeal fails and the same is hereby dismissed, but with no order to costs.

NARULA, C. J.—I agree.

JAIN, J.—I agree.

JUDGMENT DEEMED TO BE THE PART OF THE FULL BENCH JUDGMENT

DHILLON, J.—(11) I have had the privilege of perusing the judgment proposed to be delivered by my learned brother Pandit J., but I would, with great respect, differ from the conclusion arrived at by him.

(12) The facts giving rise to this appeal have already been mentioned in the judgment of my learned brother P. C. Pandit J., and, therefore, I need not repeat the same *in extenso*.

(13) No doubt the provisions of sub-section (11) of section 12 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the Act) provide that the proceedings of a Tribunal shall, so far as may be, and subject to the provisions of this Act, be conducted in accordance with the provisions of the Code of Civil Procedure, 1908, but the real question to be determined in the present case is as to whether there are provisions in the Act so as to exclude the application of the provisions of Order 9, Rule 8 and Order 17, Rules 2 and 3 of the Code of Civil Procedure. In order to examine this question, the scheme of the Act and the purpose for which the said Act has been passed, have to be kept in view. It would, therefore, be necessary to examine the necessary and relevant provisions of the Act which have to be kept in view in coming to the conclusion whether the Legislature in enacting this Act did intend that all petitions forwarded to the Sikh Gurdwaras Tribunal are to be fought to the conclusion and if that is so, to hold that Order 17, Rules 2 and 3 of the Code of Civil Procedure would apply to this case, would be allowing a person, making an objection petition

under the Act, who chooses to absent himself, to forestall and make redundant the various provisions of the Act by himself deciding not to appear or to prosecute the petition filed under section 5 or 8 or 10 of the Act. The various relevant provisions of the Act, which I shall be immediately mentioning, lead to an irresistible conclusion that while enacting the Act, the Legislature clearly intended that once the petition is forwarded to the Tribunal under the Act, it has to be proceeded to its finality and should culminate according to the provisions of the Act and it is not open to a petitioner under the Act to exercise his option to prosecute the same or not with a view to forestall the provisions of the Act being into operation and thereby making various provisions of the Act redundant.

(14) The preamble of the Act, which was enacted in the year 1925, provides that the said Act has been enacted for the better administration of certain Sikh Gurdwaras and for enquiring into the matter and settlement of the disputes connected therewith. It is thus obvious that this Act has been enacted for a special purpose and the purpose being for the better administration of the Sikh Gurdwaras and for giving finality to the enquiries into the matters and settlement of the disputes connnected with the Sikh Gurdwaras. Section 1 of the Act gives the short title, extent and commencement of the Act. Section 2 gives various definitions and in sub-section 4(vi), the hereditary office-holder has been defined to mean the holder of a hereditary office and the hereditary office has been defined in clause (iv) of this sub-section which means an office the succession to which, before the first day of January, 1920 or in the case of the extended territories, before the 1st day of November, 1956, as the case may be, devolved, according to hereditary right or by nomination by the office-holder for the time being. Under section 3 of the Act, any Sikh or any present office holder of a Gurdwara specified in schedule I of the Act may forward to the State Government through the appropriate Secretary within ninety days of the commencement of this Act, or, in the case of 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. He is also required to mention the name of the person in possession of any such right, title or interest and the names of the persons who

are actually or constructively in possession of such right, title or interest in the property. Sub-section (2) of the said section deals with the declaration of Scheduled Gurdwara and publication of list forwarded under sub-section (1) in a consolidated form and any person interested in the property, rights and title mentioned in the consolidated list under sub-section (2) of section 3 of the Act may file petition under section 5 of the Act claiming the property, right or title or interest included in the consoliadted list as published under sub-section (2) of this section.

(15) Under section 6 of the Act, a hereditary office-holder of a notified Sikh Gurdwara can make a claim for compensation. Then comes section 7 which deals with the question of non-scheduled Gurdwaras. Under sub-section (1) of this section, a provision has been made that 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, 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 within the time specified, a petition praying to have the Gurdwara declared to be a Sikh Gurdwara. We are not concerned with the proviso to sub-section (1) of this section. Then comes sub-section (2) of this section, which provides that 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,tehsil 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 etc. etc. Sub-section (3) of this section provides that on receiving a petition duly signed and forwarded under the provisions of sub-section (1) the Government is enjoined upon to publish the petition along with the accompanying list by notification as prescribed under this section and shall also give such other notice thereof as may be prescribed. Under sub-section (4), the State Government is enjoined upon to 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.

(16) Then comes section 8, the crucial section under which the appellant filed the petition in the present case. This section provides that on the publication of a notification under 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 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 within the prescribed period, a petition signed and verified by the petitioner, as the case may be, claiming that the Gurdwara is not a Sikh Gurdwara. Thus it would be appropriately noticed here that a petition under section 8 can only be filed by two categories of persons, namely, hereditary office-holder or any 20 or more worshippers of the Gurdwara, who fulfil the qualifications mentioned in this section. According to the provisions of section 9, if no petition has been presented in accordance with the provisions of section 8 in respect of a Gurdwara to which a notification published under the provisions of sub-section (3) of section 7 relates, the State Government shall, after the expiration of ninety days from the date of such notification, publish a notification declaring the Gurdwara to be a Sikh Gurdwara. Then comes section 10 which provides that any person may forward to the State Government, within the period specified in this section, a petition claiming a right, title or interest in any property included in the list so published under section 7(3) of the Act. Sub-section (2) of this section provides the procedure of signing and verification of the said petitions; whereas sub-section (3) of this section provides that the State Government shall, as soon as may be, after the expiry of the period for making 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 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. Section 11 provides for the claim of compensation by a hereditary office-holder of a Gurdwara ntoified under section 7 or his presumptive successor. Sections 3 to 11 are in Chapter II, gist of which have been reproduced above.

(17) Then starts Chapter III. Sub-section (1) of section 12 provides that for the purpose of deciding claims made in accordance with the provisions of this Act the State Government may from time to time by notification direct the constitution of a Tribunal or more

Tribunals than one and may in like manner direct the dissolution of such tribunal or tribunals. Sub-sections (2), (3), (4), (6), (7) and (8) of this section make provisions regarding the constitution of the Tribunal. Sub-section (9) of this section vests the Tribunal, for the purpose of deciding any matter that it is empowered to decide under the provisions of this Act, to have the same powers as are vested in a Court by the Code of Civil Procedure, 1908 and vests the Tribunal with the jurisdiction unlimited as regards value throughout Punjab. Sub-section (10) of this section provides the mode of execution of the decrees and orders. Sub-section (1) provides that the proceedings of a Tribunal shall so far as may be, and subject to the provisions of this Act, be conducted in accordance with the provisions of the Code of Civil Procedure, 1908. Sub-section (12) of this section provides the procedure for the working of the Tribunals. Then comes section 13 which deals with the procedure on difference of opinion. Section 14 deals with the disposal of petitions by the Tribunal. Sub-section (1) of this section is in the following terms:—

> "14(1). The State Government shall forward to a Tribunal all petitions received by it under the provisions of sections 5, 6, 8, 10 or 11 and the tribunal shall dispose of such petitions by order in accordance with the provisions of this Act."

(18) Section 15 of the Act empowers the Tribunal to join parties in the disposal of the disputes under the Act and also allow any person desirous to be made a party in the proceeding, to join the proceedings. Section 16 provides that 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). Sub-section (2) of this section provides as to in what circumstances an institution can be declared as a Sikh Gurdwara and enjoins upon the tribunal to decide, if the ingredients mentioned in sub-section (2) of this section are satisfied, that such an institution should be declared as a Sikh Gurdwara, and record an order accordingly. Under section 17 of the Act it is provided that 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 the said finding having become final, 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.

(19) The next important section which has to be kept in mind is section 25-A of the Act, which provides that when it has been decided under the provisions of this Act that a right, title or interest in immovable property belongs to a Notified Sikh Gurdwara, or any person, the Committee of the Gurdwara concerned or the person in whose favour a declaration has been made, may, within the period specified, institute a suit before a Tribunal claiming to be awarded possession of the right, title or interest in the immovable property in question as against the parties to the previous petition and the Tribunal shall, if satisfied that the claim relates to the right, title or interest in the immovable property which has been held to belong to the Gurdwara, or to the person in whose favour the declaration has been made, pass a decree for possession accordingly.

(20) The next important section is section 29 of the Act which is reproduced below:—

> "29. Notwithstanding anything contained in any other law or enactment for the time being in force no suit shall be instituted and no Court shall entertain or continue any suit or proceedings in so far as such suit or proceeding involves—
>
> (1) any claim to, or prayer for the restoration of any person to an office in a Notified Sikh Gurdwara or any prayer for the restoration or establishment of any system of management of a Notified Sikh Gurdwara other than a system of management established under the provisions of Part III;
>
> (2) any claim to, or prayer for the restoration of any person to an office in or any prayer for the restoration or establishment of any system of management of, any Gurdwara in respect of which a notification has been published in accordance with the provisions of sub-section (3) of section 7 unless and until it has been decided under the provision of section 16 that such Gurdwara should not be declared to be a Sikh Gurdwara."

(21) Sections 36 and 37 are the next sections which oust the jurisdiction of the Civil Courts in connection with the matters dealt with under this Act.

(22) Chapter IV deals with the application of provisions of Part III to Gurdwara found to be Sikh Gurdwaras by Courts other than a Tribunal under the provisions of the Act and Chapter V deals with the provisions regarding the control of Sikh Gurdwaras. The remaining provisions of the Act are not necessarily to be kept in view for the purposes of deciding the point involved in this case, therefore, they need not be mentioned.

(23) As I look at the matter, the first question to be determined is as to what is the nature and jurisdiction of the Sikh Gurdwaras Tribunal qua the claims made under sections 3, 5, 6, 7, 8, 10 or 11 of the Act. Sub-section (1) of section 14 which has been reproduced above, provides that the State Government shall forward to a Tribunal all petitions received by it under the provisions of sections 5, 6, 8, 10 or 11 and the Tribunal shall dispose of such petitions by order in accordance with the provisions of this Act. The point under consideration is whether such petitions are to be disposed of by the Tribunal to his final conclusion or the Tribunal can have recourse to the provisions of the Code of Civil Procedure so as to dismiss a petition filed under sections 5, 8 or 10 in default if the petitioner chooses not to appear or prosecute the same. In other words, the question is that when a petition under sections 5, 8 or 10 of the Act is made, is the jurisdiction of the Tribunal confined to the examination and decision of such petition or is the Tribunal bound and has got jurisdiction to decide as to whether a Gurdwara in question in connection with which the petition under section 8 has been made, is a Sikh Gurdwara or not or whether the property in connection with which a petition under section 5 or 10 is made, is the property of the Sikh Gurdwara or not, because if the jurisdiction of the Tribunal is only confined to the disposal of the petition filed under sections 5, 8 or 10 of the Act and the other matters regarding the declaration of the Gurdwara to be a Sikh Gurdwara or the property to be that of the Sikh Gurdwara, cannot be gone into by the Tribunal, then some plausible argument may be made that the Legislature did not intend the Tribunal to decide all the disputes regarding the Gurdwara in its finality. It would be seen that under the provisions of section 7 when the application is made by any fifty or more Sikh worshippers of a Gurdwara, the claim can be made regarding two matters, firstly that the Gurdwara in question

is a Sikh Gurdwara, and secondly, that the property, right and title mentioned in the claim belongs to the said Sikh Gurdwara. As regards the first question, whether the Gurdwara claimed to be a Sikh Gurdwara, is a Sikh Gurdwara or not, the hereditary office-holder or any twenty or more worshippers of the Gurdwara are entitled to challenge the grant of this declaration under section 8; whereas the challenge to the property claimed to be belonging to the Sikh Gurdwara is made under section 10. In a given case, the decision whether a particular institution is a Sikh Gurdwara as claimed under section 7 or not, or is a Dera as claimed under section 8, may be directly linked with the disposal of the petition under section 10. For instance, where a claim is made under section 8 in respect of the notification published under the provisions of sub-section (3) of section 7 in respect of any institution and it is further claimed that the property, which is alleged to be belonging to the Gurdwara is the property of a Dera, which is claimed to be a Dera in a petition under section 8, in that case, if the claim under section 8 cannot be disposed of to its finality on merits, as is contended by the learned counsel for the appellant, the petition under section 10 cannot also be effectively dealt with and disposed of. If in the revenue record a particular property is mentioned to be attached to a particular institution, which institution, according to the claim under section 7, is a Sikh Gurdwara; whereas according to the claim under section 8, it is a Dera, till this matter is decided as to whether the institution in question is a Sikh Gurdwara as claimed under section 7 or a Dera as claimed by the claimants under section 8, the nature and ownership of the property attached with such an institution under section 10 cannot be effectively and conclusively adjudicated upon by the Tribunal as the property is mentioned to be attached with the institution itself. Therefore, it is to be seen that in some cases the disposal of the petition under section 8 on merits to its finality may be necessary for disposing of a petition under section 10. If this cannot be done, in that case, the provisions of section 25-A of the Act, which vest the Tribunal with the power to pass decrees for possession in favour of the Committee of the Gurdwaras or in favour of any other person who has been declared entitled to the said property will become redundant, because in that case the Tribunal can only pass a decree for possession when it has been decided under the provisions of this Act that a right, title or interests in the immovable property belongs to a notified Sikh Gurdwara or to any other person and that right, title or interest being not

capable of finally adjudicated upon by the Tribunal to its conclusion the Tribunal will have no jurisdiction to proceed to give the relief of possession under section 25-A in these cases.

(24) Thus as I have already pointed out that the nature and jurisdiction of the Tribunal has to be determined in order to examine the question involved in the case. I may now examine as to what is the jurisdiction of the Tribunal envisaged by the Act under the provisions of section 14(1) and also under section 25-A of the Act. In a case reported in *The Shiromani Gurdwara Parbandhak Committee, Amritsar* v. *Jagat Ram and others* (8), a Division Bench of the Lahore High Court took the view that while examining a petition under section 10 of the Sikh Gurdwaras Act, the Tribunal can only either decree the claim in whole or in part or dismiss it, but the Tribunal has no jurisdiction to go into the question as to whether the said property belongs to the Gurdwara and thus while deciding a petition under section 10, the Tribunal cannot declare the property to be belonging to the Sikh Gurdwara. This view was dissented from by another Division Bench of the same High Court in *Guru Amarjit Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others* (4) (supra) wherein it was held as follows:—

> "The purpose of the Sikh Gurdwaras Act was to settle not only pending disputes but all likely disputes in future and to have it determined whether the Gurdwara concerned or some possible claimant was owner of the right claimed on behalf of the Gurdwara. The intention of the Act was that the tribunal should decide whether the Gurdwara did or did not own property claimed in a petition presented under section 10".

It was further held that—

> "The tribunal disposing of a petition under section 10 is empowered to decide by its order not only the petitioner's claim but also the claim made on behalf of the Gurdwara and to make a declaration to that effect, when the right of the Gurdwara has been positively established by evidence."

(8) A.I.R. 1935 Lahore 279.

(25) Similar view was taken by another Division Bench of the Lahore High Court in *Gurdit Singh and others* v. *Committee of Management Gurdwara Nawin Padshahi, Bichhuana, through S. Ajit Singh* (5) (supra), wherein it was held as follows:—

> "The Sikh Gurdwaras Tribunal set up by section 12 has authority to decide a petition under section 7 when a counter-petition under section 8 or section 10 has been filed and forwarded to the tribunal. Under section 12 the tribunal is expressly constituted for the purpose of deciding claims made in accordance with the provisions of the Act. It is not constituted merely to decide matters arising in petitions received by it from the Provincial Government under sections 5, 6, 8, 10 or 11, in accordance with section 14(1). These latter petitions are received by the Government and forwarded by them for decision, but the petition under section 7 is a claim and is also before the tribunal, when under section 10(1) a counter petition is forwarded to it for disposal, because under section 10(1) the petition forwarded under this latter section is based upon a right, title or interest in any property included in the list attaced to the petition forwarded to Government under section 7. The tribunal is set up for the purpose of deciding all claims made and a claim under section 7 in connection with the property said to belong to the Gurdwara is a claim in accordance with the provisions of the Sikh Gurdwaras Act."

(26) Both the Division Benches of the Lahore High Court referred to above dissented from the view taken in *Jagat Ram's case* (supra) and held that the Tribunal has the jurisdiction to go into the complete matter regarding the claim under section 7, that the institution in question is a Gurdwara and also regarding its property and also the counter-claims made under section 10 of the Act so as to give finality to the proceedings. This view has now been finally established by the Supreme Court and this matter is no more in controversy in view of the authoritative pronouncement of their Lordships of the Supreme Court in *Kesar Singh* v. *Balwant Singh and others* (6) (supra). Their Lordships of the Supreme Court, while interpreting the provisions of the Sikh Gurdwaras Act, held as follows:—

> "It is clear, therefore, from the scheme of the Act that it gives jurisdiction to the Tribunal to decide all claims to

properties which are claimed to be the properties of a Sikh Gurdwara mentioned in schedule I to the Act. It is true that where a property is notified in the list under section 3 each person who has a claim to that property has to make a separate claim on his own behalf which is forwarded to the tribunal for decision. It is clear, however, from the provisions of section 15 that where a tribunal is dealing with a property which is claimed to belong to a Sikh Gurdwara and in respect of which counter claims have been made by other persons, it has jurisdiction to decide to *whom that property belongs, whether to the Sikh Gurdwara or to any other person claiming it and for that purpose it can consolidate the proceedings resulting from different claims to the same property so that all disputes with regard to that property can be decided in one consolidated proceeding.* Further it has the power under section 15 to inquire by public advertisement or otherwise if any person desires to be made a party to any proceeding and may join in any proceeding any person, who, it considers, ought to be made a party thereto. Where, therefore, a number of claims have been made under section 5 to the same property which is claimed under section 3 to belong to a Sikh Gurdwara the tribunal can consolidate all such claims under section 15 and treat all the claims as one proceeding. Where, therefore, the tribunal consolidates the claims in one proceeding each claimant even though he had made a claim for himself as against the Sikh Gurdwara would be entitled under section 15 to contest the claim not only of the Sikh Gurdwara but of any other person who is making a rival claim to the property as against the Sikh Gurdwara. It is also clear from section 25-A that in deciding the claims made under section 5 it is open to the tribunal not only to decide whether the property to which claims have been made belongs to the Gurdwara but also to decide whether it belongs to any of the claimants. *It seems, therefore, that the Act has given full power to the tribunal to decide between the rival claims of the Sikh Gurdwara and other claimants under section 5 and empowers it not only to give a decision as to the rights of the Sikh Gurdwara but also of other claimants.* Further there is provision in section 34 of the Act for appeal to the High Court by any party aggrieved by a final order passed by a tribunal in matters

decided by it under the provisions of the Act. The words in section 34(1) are very wide and where claims are consolidated in one proceeding under section 15 and the claim of the Gurdwara and the rival claims of various claimants under section 5 with respect to one property are decided in a consolidated proceeding, it is clear that any party who was party to the consolidated proceeding would be entitled to appeal against the order of the tribunal if it went against it and was in favour of the Sikh Gurdwara or of any other claimant in the consolidated proceeding. Section 36 thereafter bars a suit in any Court to question any decision of a tribunal in exercise of any powers vested in it by or under the Act. Section 37 bars any Court from passing any order or granting any decree or executing wholly or partly any order or decree, if the effect of such order, or decree or execution would be inconsistent with any decision of a tribunal or any order passed on appeal therefrom under the provisions of the Act."

(27) From what has been stated above, it is clear that the Tribunal has not only the jurisdiction to try and dispose of the petitions under sections 5, 8 or 10, but while such petitions are being examined, the Tribunal has to decide about the counter claims because of which the petitions under sections 5, 8 or 10 were filed and the counter claims having been mentioned in sections 3 and 7 of the Act, wherein the property is claimed to be the property belonging to the scheduled Sikh Gurdwara under section 3 and where the institution in question is claimed to be a Sikh Gurdwara and the property attached to it is to be the property belonging to the Sikh Gurdwara under section 7 of the Act. As I have already said, the purpose for enacting a special enactment as stated in the preamble is for enquiring into the matters and settlement of the disputes connected with the Sikh Gurdwaras and the disputes of all kinds. If the argument is accepted, that the petitioner who has filed a petition under sections 5, 8 or 10 of the Act, by absenting himself, can oust the jurisdiction of the Tribunal in deciding the counter claims made under sections 3 and 7 of the Act wherein the institution and the property in question is being claimed to be the Sikh Gurdwara and to be belonging to the Sikh Gurdwara respectively, in that case, the very purpose of this Act will be frustrated. It would be seen that if no petition is made under section 8, a notification

under section 9 has to be made declaring the institution to be a Sikh Gurdwara, but if such a petition is made under section 8, till the said petition is disposed of by the Tribunal, no finality can be attached to the notification issued under section 7 of the Act. If the plea is taken before the Tribunal that the petition filed under section 8 is not filed by a person competent to file the same, and the Tribunal comes to this conclusion, it will be deemed in law that no petition under section 8 was filed as the petition so filed was incompetent in view of the provisions of section 8 itself and in that case, notification under section 9 will issue and if the petition under section 8 has been filed by the person competent to file the same, that is, the hereditary office-holder or any twenty or more worshippers of the Gurdwara, in that case, till the Tribunal decides the question in accordance with the provisions of section 16, the finality to the notification issued under section 7 of the Act, cannot be given. It is only after the decision of the Tribunal, whether the institution in question is a Sikh Gurdwara or not, and also regarding the property regarding which counter claims are being made that the proceedings which are initiated by the provisions under sections 5, 7, 8 and 10 of the Act come to culmination and get the stand decided finally. If it is be held that the Tribunal has no jurisdiction to finally decide the status of the institution and the property regarding which claims and counter-claims are being made and is bound to proceed under Order 9, rule 8 or Order 17, Rules 2 and 3 of the Code of Civil Procedure if the objector chooses to absent himself or fails to prosecute his petition, that will be negativing the provisions of the Act, because the moment petitions are filed under sections 5, 8 or 10 and the petitioners decide to get the same dismissed in default, even though the claims made in the petitions may be baseless, the Tribunal's jurisdiction in deciding all the matters connected with the claim of its being a Sikh Gurdwara or the status of the property attached to it, will be ousted. Thus it would lie in the hands of the objector, if he happens to be a frivolous objector, to forestall the working of the Act and make all the provisions of the Act non-existent. The provisions of sub-section (2) of section 29 are also a pointer towards the fact that qua a notification issued under section 7(3) of the Act the finality must be given by the Tribunal by finally deciding whether the institution in dispute is a Sikh Gurdwara or not. It has been specifically provided under this sub-section that the jurisdiction of the Civil Court will be barred qua all matters regarding which notification under section 7(3) of the Act has been issued and the matter has not finally been adjudicated upon by the Tribunal. From all this discussion made

above, I am clear in my mind that the various provisions of the Act referred to above, make the trial of the claims and counter-claims before the Tribunal so integrated that one party by deciding to absent itself at any stage of the proceedings, cannot disentitle the Tribunal of its jurisdiction to decide the claims and counter-claims on merits so as to give finality to such claims. Therefore, my conclusion is that the provisions of the Act, clearly postulate the trial of all the proceedings made triable before the Tribunal to their finality and to that extent the provisions of the Code of Civil Procedure, that is, Order 9 and Rule 8 and Order 17 Rules 2 and 3, cannot be held to be applicable to the proceedings before the Tribunal.

(28) The contention of the learned counsel for the appellant, that in such cases where the claims of the objectors under section 8 or 10 are not decided by the Tribunal on merits and the petitions are dismissed in default, the matter can be got decided from the Civil Court is without any merit. Reference in this connection has been made to the provisions of section 38 of the Act. Before interpreting the provisions of section 38, which proivsions have been reproduced by my learned brother P. C. Pandit, J. in his judgment, I may specifically point out to the provisions of sub-section (2) of section 29, which have been reproduced in the earlier part of my judgment. These provisions specifically exclude the jurisdiction of the Civil Courts on any claim or prayer for the restoration of any person to an office in or any prayer for the restoration or establishment of any system of management of, any Gurdwara in respect of which a notification has been published in accordance with the provisions of sub-section (3) of section 7 unless and until it has been decided under the provision of section 16 that such Gurdwara should not be declared to be a Sikh Gurdwara. Thus concerning the matters regarding which a notification has been issued in sub-section (3) of section 7, the Civil Court's jurisdiction is clearly barred without that matter being finally disposed of under section 16. This provision also leads to the conclusion that the Legislature while enacting the Sikh Gurdwaras Act, clearly intended that the moment a notification under sub-section (3) of section 7 is issued, the proceedings must lead to its finality and a decision under section 16 must be finally made and till this is done and it is declared that the institution mentioned in the notification issued under sub-section (3) of section 7, is or is not a Sikh Gurdwara, the Civil Court will have absolutely no jurisdiction to go into the matter. The bare reading of the provisions of section 38 would show that the provisions of this

section cannot be made applicable to a case where a notification has been issued under sub-section (3) of section 7 of the Act and which matter has not been finally adjudicated upon by the Tribunal which Tribunal alone has the jurisdiction to decide that matter finally.

(29) The contention that if a petition under section 8 is dismissed, the Tribunal thereby does not make a decision regarding the right, title or interest in the immovable property, which is alleged to be belonging to the said Gurdwara, therefore, the provisions of section 25-A will not become redundant, is without any merit. As I have already pointed out, keeping in view the scheme of the various provisions of the Act, and as has been authoritatively pronounced upon by their Lordships of the Supreme Court in *Kesar Singh's case* (supra), the Tribunal is vested with the power to decide the claims and counter-claims regarding the institution and also the property's right, title or interest. I have also pointed out that in a given case, the decision whether a particular institution is a Sikh Gurdwara or not, may finally affect the decision regarding the property's claim or counter-claim, which property is attached to the said institution and in that case the decision to be made regarding the claim and the counter-claim of the institution may have repercussions on the decision of the right, title and interest of the property in dispute. Therefore, the claim, that a particular institution is a Sikh Gurdwara or the claim that the property attached to the scheduled Gurdwara or a non-scheduled Gurdwara is the property of a Sikh Gurdwara and the counter claim that the institution is not a Sikh Gurdwara and the property in question did not belong to the Sikh Gurdwara or it, belongs to the objector, are in a way all connected matters and the same cannot be separated while considering this aspect of the case. Therefore, my conclusion is that if the contention of the appellant is accepted, then it will be in the hands of the objector to forestall the machinery which is envisaged under the provisions of the Act by filing a frivolous petition and by absenting himself so that the matters in dispute regarding the institution and the property connected with it, are not finally adjudicated upon, which was never the intention of the Legislature. That will be completely repealing the Act itself which interpretation cannot be given. Therefore, my conclusion is that the provisions of the Code of Civil Procedure in this regard are not applicable and, as such, I am in respectful agreement, with the observations made by a Division Bench of the Lahore High Court in *Sunder Singh and others* v. *Mahant Narain Dass and others* (9), wherein it was held that where a petition is dismissed

(9) A.I.R 1934 Lahore 920:

by reason of its being incompetent it must be taken not to have been presented in accordance with the provisions of section 8 and that the Local Government could notify the institution. No doubt, the learned Judges of the Lahore High Court observed in that case that where a petition under section 8 is withdrawn or not prosecuted, there is some room for difference of opinion and hey also suggested some amendments to be made in the Sikh Gurdwaras Act, but the fact remains that the learned Judges were of the candid opinion that the various provisions of the Act lead to the conclusion that the proceedings under the Act should lead to finality. These observations of the learned Judges have been reproduced in *extenso* in the judgment of the Tribunal. In my view, the Tribunal was right in coming to the conclusion that the appellant clearly adopted dilatory tactics in prosecuting the petition filed by him before the Tribunal, as would be apparent from the history of the case given in the judgment of the Tribunal, that the first date for producing evidence of the appelalnt was 17th November, 1964. On that day, the counsel for the appellant asked for an adjournment to make up his mind as to whether he should prosecute the petition under section 8 or press his claim only under section 10. The case was adjourned to 28th December, 1964 on the undertaking that the appellant will bring his own witnesses on the next date of hearing. On that date the case was adjourned to 16th February, 1965 and on 16th February, 1965 another adjournment was taken for 30th March, 1965 on which date the counsel for the appellant stated that he may be given another adjournment for examining some judgment delivered by the High Court about the validity of the notification under section 7 and the case was adjourned to 18th May, 1965 on the payment of Rs. 32 as costs. On the adjourned date, an application under Order 6, Rule 17 of the Code of Civil Procedure was filed for amendment of the petition. The case stood adjourned to various dates and the application was ultimately rejected on 23rd July, 1965 and the case was adjourned for the evidence of the appellant to 24th August, 1965 on which date the appellant did not bring any evidence and the case was again adjourned to 23rd September, 1965, on payment of Rs. 25 as costs, for appellants evidence. On 23rd September, 1965, a stay order was issued by this which remained stayed till 11th August, 1971, when an order of the High Court dated 4th August, 1971, vacating the stay order was received. On 12th August, 1971, the counsel for the parties were present in Court and the counsel for the appellant wanted an adjournment for getting instructions from his client and the case was accordingly adjourned to 24th

August, 1971. On the adjourned date, the appellant was present in person along with his counsel, but the case was adjourned to 8th September, 1971 on which date the appellant was again present with his counsel and the Tribunal passed an order on that date that issue No. 1 should be treated as a preliminary issue and would be decided first and the case was adjourned to 4th November, 1971, for the evidence of the appellant on issue No. 1. The appellant was given a period of one week for summoning his witnesses but no witnesses were summoned by the appellant through Court and this fact was known to the counsel for the appellant, who was present on the date of scrutiny also. No evidence of the appellant was present on 4th November, 1971 and his counsel again prayed for another adjournment for producing evidence which was strongly opposed by the counsel for the respondent committee, but in the interest of justice, last opportunity was given to the appellant to produce his evidence on payment of Rs. 25 as costs and the case was adjourned to 23rd December, 1971, again allowing the appellant a period of one week for summoning the witnesses through Court. On 23rd December, 1971, neither the appellant nor his counsel turned up nor any witness was present and it was in these cricumstances that the Tribunal decided to proceed with the disposal of the case. It would be seen that the appellant in this case has already filed a petition under section 10 of the Act and as I have already said, the disposal of the question whether the institution in question is a Sikh Gurdwara or not, is necessarily to have bearing on the question of the property attached to the Gurdwara for which a separate claim has been lodged by the claimant under section 10. If the claim whether the institution in question is a Sikh Gurdwara or not, is not adjudicated upon, possibly the rights of the parties to the property in question, in which one claim has been made by the issuance of the notification under section 7 of the Act and the other claim under section 10, may become difficult to be decided finally. In my opinion, the conduct of the appellant throughout has been to forestall the proceedings before the Tribunal, therefore, the matter has to be finally adjudicated and if it be held that the Tribunal had no jurisdiction to decide the matter finally, that will be repealing the Sikh Gurdwaras Act completely and allowing a frivolous petitioner to oust the jurisdiction of the Tribunal to decide the matter finally which is not the intention of the Legislature. Therefore, in this regard, I am not inclined to agree with my learned brother Pandit, J. when he comes to the conclusion that the Tribunal has no jurisdiction to decide the matter finally. In my opinion, the authority in *Sunder Singh's case* (supra) clearly takes the view

which I am taking and so far as the interpretation of the provisions of the Act are concerned, the difference of the facts of that case and the present case, would not make any difference.

(30) Even if for argument's sake it be presumed that the provisions of the Code of Civil Procedure apply, even then, in my opinion, there is no reason to interfere with the order of the Tribunal, which has been rightly passed under the provisions of Order 17, Rule 3 of the Code of Civil Procedure. I agree with my learned brother Pandit, J. that the provisions of Order 9, Rule 8 of the Code of Civil Procedure, would not apply to the present case as it was not the first date of hearing. The only question is whether the order passed by the Tribunal under Order 17, Rule 3 of the Code of Civil Procedure, is justified or not. From the various authorities of the Lahore High Court, some of which have already been referred to in the judgment of my learned brother Pandit, J., it is apparent that in a given case, wherein the provisions of Order 17, Rule 3 of the Code of Civil Procedure are otherwise satisfied, but in case where the defaulting party absents himself, the Tribunal is not debarred from passing the order under Order 17, Rule 3 of the Code of Civil Procedure. It is the consistent view of the Lahore High Court, that in case where the judgment can be pronounced on the material on the record, the recourse to the provisions of Order 17, Rule 3 of the Code of Civil Procedure, can be had in spite of the fact that the defaulting party absents itself, but none of the authorities of the Lahore High Court, relied upon by the learned counsel for the appellant, clarifies as to what should be the quantum of the material on record for the pronouncement of the judgment. In my opinion, this would depend on the facts and circumstances of each case. It is not possible to make an attempt to decide the exact kind or quantum of the material which is the requisite material for the operation of Order 17, Rule 3 of the Code of Civil Procedure. All the authorities have used the word 'material'. The question is, can the absence of evidence altogether exclude the applicabality of Order 17, Rule 3 of the Code of Civil Procedure or whether the pleadings of the parties are not material, which can be taken into consideration for passing the final judgment? In my opinion, it would depend upon the facts and circumstances of each case. In a given case the pleadings of the parties and the issues arising therefrom may enable the Court to decide a suit forthwith if the other ingredients of Order 17, Rule 3 of the Code of Civil Procedure are present. I am fortified in this view by a Full Bench

decision of the Rajasthan High Court in *Gopi Kishan* v. *Ramu and another* (10). When the facts of the present case are kept in view, it is difficult for me to come to the conclusion that the Tribunal has gone wrong in deciding issue No. 1 under order 17, Rule 3 of the Code of Civil Procedure. As has already been pointed out, a petition under section 8 of the Act is only competent by a hereditary office-holder or any twenty or more worshippers of the Gurdwara. The appellant claims himself to be the hereditary office-holder and he has claimed to be so in the petition, but without giving the pedigree table or Gur Parnali of his own, along with the petition to support his assertion. His pleadings themselves are contradictory as in the petition itself he has mentioned that he was appointed as Mohtimim by the order of the Maharaja Adhiraj Mohinder Bahadur of Patiala,—*vide* his order dated 19.3.1998 BK. and the appellant is in possession and management and control of the Dera since the death of his Guru Mahant Moti Ram. I have also reproduced the definition of hereditary office-holder given in the Act and according to the definition, the office must devolve to the incumbent according to the hereditary right or by nomination of the office-holder for the time being. A person who is appointed by the Maharaja Adhiraj Mohinder Bahadur of Patiala, and who claims himself to be in possession on account of his appointment as Mohtimim by the Maharaja, cannot be considered to have succeeded or devolved according to the hereditary right or by nomination of the office-holder as Mahant and in no case can be termed to be the office-holder of the said institution. The averments in the pleadings themselves are self-speaking and no amount of evidence could have taken advantage of from this situation which clearly, according to his own pleadings, indicate that he is not a hereditary office-holder. In my opinion, the material on the record was sufficient for the Tribunal to have come to this conclusion and the Tribunal rightly came to this conclusion and the petition filed by the appellant being incompetent as it does not qualify the ingredients of section 8 has been rightly dismissed by the Tribunal. I am not inclined to agree with the learned counsel for the appellant that even if it be held that the Tribunal had the jurisdiction to decide the case under Order 17, Rule 3 of the Code of Civil Procedure it has gone wrong in exercising its discretion to decide the same under these provisions and ought to have proceeded under the provisions of Order 17, Rule 2 of the Code of Civil Procedure. I have also enumerated the facts of the present case which would show that the appellant tried to

(10) A.I.R. 1964 Rajasthan 147.

prolong the proceedings by one way or the other for a number of years and was granted sufficient latitude by the Tribunal in prosecuting his petition but in fact he never wanted to prosecute his petition as would be apparent from his conduct. Keeping in view all the facts and circumstances, which I have elaborately explained in the earlier part of my judgment, it cannot be said that the Tribunal has gone wrong in exercising its discretion for passing an order under Order 17, Rule 3 of the Code of Civil Procedure, even if for argument's sake it be held that the said provision of the Code of Civil Procedure is applicable to the proceedings pending before the Tribunal.

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

JUDGMENT

Judgment containing facts of the case.

PANDIT, J.—(32) The dispute in this appeal relates to an institution, situate in village Landa, District Patiala. About 58 Sikhs, claiming themselves to be the worshippers of this institution, which they called as Gurdwara Sahib Guru Granth Sahib, made a petition under section 7(1) of the Sikh Gurdwara Act, 1925, hereinafter called the Act, and prayed that the said institution be declared a Sikh Gurdwara. Under section 7 (3), the Punjab Government, on 5th July, 1963, published this petition, along with a consolidated list of all rights, titles and interests in the properties, which were claimed to belong to the said Gurdwara. In response to this notification, Lachhman Dass, who alleged himself to be a hereditary office-holder of this institution, made a petition under section 8 of the Act saying that the alleged Gurdwara was not a Sikh Gurdwara, but it was a *Dera* of Udasi Sadhus. He also said that he was appointed a *Mohatmim* of this *Dera* by the Maharaj Adhiraj Mohinder Bahadur of Patiala by means of his order dated 19.3.1998 B.K. According to him, he was in possession and managing the institution since the death of his Guru Mahant Moti Ram.

(33) The State Government forwarded the petition of Lachhman Dass to the Sikh Gurdwara Tribunal, hereinafter referred to as the Tribunal, for trial under section 14(1) of the Act. Thereupon, the Tribunal issued a notice to Lachhman Dass to appear and prosecute

his petition. He, accordingly, appeared and also engaged a counsel. There was no respondent mentioned in the petition under section 8, with the result that the Tribunal issued notice to the persons, who had made the petition under section 7 (1) of the Act.

(34) It appears that those persons did not come in response to the notice and, consequently, the Shiromani Gurdwara Parbandhak Committee, Amritsar, hereinafter called the Committee, made a prayer to the Tribunal that it should be impleaded as a respondent to the petition under section 8. This prayer was granted and the Committee was impleaded as a party under section 15 of the Act. Thereafter, the Committee filed a written statement, in which it denied all the allegations made by Mahant Lachhman Dass and also raised a preliminary objection that the said Mahant was not a hereditary office-holder and, therefore, he could not file a petition under section 8 of the Act and the same merited dismissal on that ground alone.

(35) The Tribunal, on 29th September, 1964, framed two issues—(i) whether the petitioner is a hereditary office holder; and (ii) whether the institution in dispute is a Sikh Gurdwara. The case was then fixed for 17th November, 1964, for the evidence of the petitioner. On that date, the petitioner's counsel prayed for an adjournment on the ground that he wanted to make up his mind as to whether the petitioner should prosecute his petition under section 8 or press his claim only to property under section 10 of the Act. The case was adjourned for the petitioner's evidence. Thereafter, a number of adjournments were taken by the petitioner for producing his evidence. The last opportunity was given to him in this behalf on payment of costs. On the adjourned date, i.e. 23rd December, 1971, the petitioner neither paid the costs nor appeared in person or through counsel and no witness was also present on his behalf. The counsel for the Committee then submitted that the petition under section 8 could not be dismissed in default, but had to be disposed of in accordance with the provisions of the Act. The Tribunal then adjourned the case to 30th December, 1971, and on that date, arguments of the counsel for the Committee were heard. It was strenuously urged by the learned counsel for the Committee that in view of the default in appearance on the part of the petitioner, the case could not be dismissed in default and the Tribunal was bound to proceed with the trial and decision of the issues involved in spite of the default. On 6th January, 1972, the Tribunal announced its decision holding that the burden of

proving issue No. 1 lay heavily on the petitioner, but he failed to discharge the onus notwithstanding the fact that he was afforded a large number of opportunities for doing so. All that he had averred in para No. 3 of his petition was that he was a hereditary office holder and that the succession of the office had always been from *Guru* to *Chela*. He had not given any pedigree-table or *Gurparnali* of his own to support that assertion. On the other hand, he himself had belied his claim by stating in para No. 4 of the petition that he was appointed as the *Mohatmim* by the order of the Maharaja Adhiraj Mohinder Bahadur of Patiala and was in possession, management and control of the said *Dera* since the death of his Guru. That allegation in the petition itself was sufficient to dislodge his claim that he was a hereditary office holder. It was, accordingly, held by the Tribunal that the petitioner was not a hereditary office holder of the institution in question and as such he had no *locus standi* to present the petition under section 8 of the Act. After giving that finding, the Tribunal went on to observe :—

> "There being no competent petition before this Tribunal presented in accordance with the provisions of section 8 of the Act, the State Government will now be free to notify the institution in question under section 9 as the Sikh Gurdwara. In view of our finding on issue No. 1, we do not wish to proceed any further in the matter at this stage so far as the consideration of issue No. 2 is concerned. Issue No. 1 having been found against the petitioner, his petition under section 8 must fail. We, arcordingly, dismiss the same with costs."

Against this decision, the present appeal has been filed by Mahant Lachhman Dass.

(36) The main point that has been canvassed before us is as to what should happen when the petitioner under section 8 of the Act does not prosecute his petition and is absent on the date of hearing fixed in the case. Should the petition be dismissed in default or is the Tribunal bound to decide it in view of the provisions of the Act ? According to the learned counsel for the petitioner, in a situation of this kind, the petition has to be dismissed in default in view of the provisions of order 9, rule 8, Code of Civil Procedure. The stand taken by

the counsel for the Committee, on the other hand, is that the Tribunal cannot take recourse to Order 9, rule 8, but it has to dispose of the petition one way or the other under the provisions of the Act. In the circumstances of this particular case, an additional argument was also used by the Tribunal and it was observed that Order 9, rule 8, would not apply to the facts of the instant case, but the same had to be disposed of under Order 17, rule 3, Code of Civil Procedure, and the decision had to be on the merits. In the words of the Tribunal—"It is well settled that Order 9 C.P.C. does not apply to a case, where the plaintiff or the defendant has already appeared, but fails to appear at an adjourned hearing of the suit. In such a case, the procedure, which applies, is laid down in Order 17 rule 3 C.P.C., which deals with adjournments...A decision under this rule should nevertheless be a decision on the merits i.e. on a consideration of such material as may be necessary and available and does not mean a summary decision. If in the case of the plaintiff, such material failed to substantiate the claim, the suit will be dismissed on that ground and not for the default committed by him".

(37) Section 12 (11) of the Act says :

> "The proceedings of a tribunal shall so far as may be, and subject to the provisions of this Act, be conducted in accordance which the provisions of the Code of Civil Procedure, 1908."

(38) According to this sub-section, the Tribunal will conduct its proceedings in accordance with the provisions of the Code of Civil Procedure, but this would be subject to the provisions of the Act. In other words, if, on a particular matter, there are specific provisions in the Act, they will take precedence over the provisions of the Code of Civil Procedure. Now the question is that if a person files a petition under section 8 and does not pursue the same and absents himself without leading any evidence in support thereof, what is the Tribunal supposed to do in a case of this kind ? As I have said, that if there are specific provisions given in the Act for dealing with such a situation, then the Tribunal is bound to follow them. If, on the other hand, nothing is mentioned in the Act about the procedure to be adopted in such a case, then, according to section 12(11), the Tribunal has to take recourse to the provisions of the Code of Civil Procedure. According to the Code, the petition will be dismissed in default under Order 9, rule 8 or Order 17, rule 2 or if the alternative argument of the counsel for the respondent is to prevail, then the

petition would be disposed of under the provisions of Order 17, rule 3. But before we examine as to whether Order 9, rule 8 Order 17, rule 2 will govern such a situation or the petition has to be decided in accordance with Order 17, rule 3, it is necessary to examine the main contention of the learned counsel for the respondent, namely, that the petition cannot be dismissed in default, but the dispute raised by the petitioner has to be finally settled by the Tribunal. That, as I have already said, will first depend upon as to whether there are provisions in the Act, which govern such a contingency.

(39) Learned counsel for the respondent submits that the dispute raised by the petitioner is not like the one, which one comes across in civil suits. Here the nature of the institution and the rights of the worshippers of the Gurdwara have to be settled once for all and according to the counsel, the judgment that will be pronounced by the Tribunal will be one *in rem*. Counsel argued that if the petition was merely to be dismissed in default, it would encourage cantankerous persons to file frivolous petitions and not pursue them, with the result that the State Government would not be able to issue a notification under section 9 to the effect that the institution was a Sikh Gurdwara and that being so, the Gurdwara would be debarred from taking possession of the property attached to it under the provisions of section 25-A or section 28 of the Act. By adopting this method, the Committee of the Gurdwara would be made powerless to manage the property of the said institution after taking possession thereof. Attention was invited to the preamble of the Act, where it was stated that the Statute had been enacted for enquiries into matters and *settlement of disputes* connected with the better administration of certain Sikh Gurdwaras. It was also submitted that the scheme of the Act was such that the petition had to be decided on merits and not dismissed in default. It was not only that the rights of the petitioner had to be determined, but it had also to be found whether the institution was Sikh Gurdwara or not and on that decision also depended the right, title and interest in the properties belonging to the Gurdwara, inclusive of the Gurdwara itself.

(40) As already mentioned above, a petition under section 7 of the Act was made in this case by more than 50 worshippers of this institution. The same was published under section 7(3) along with the list of the properties claimed to belong to the said institution. If no petition under section 8 had been made by the petitioner, who

claimed himself to be a hereditary office holder of that institution, then it is common ground that the Government would have issued a notification under section 9(1) to the effect that the institution was a Sikh Gurdwara. After a petition is published under section 7(3) along with the list of the properties, two types of petitions can be made one under section 8 and the other under section 10. The former petition has to be filed either by a hereditary office holder or 20 or more worshippers of the institution and the prayer therein is that the place asserted to be a Sikh Gurdwara is not such a Gurdwara. The other petition under section 10 can be filed by any person, who is claiming a right, title or interest in any property included in the list published under section 7(3). According to section 14, the Government is to forward all the petitions received by it under sections 5, 6, 8, 10 or 11 to the Tribunal for disposal in accordance with the provisions of the Act. Section 15 authorises the Tribunal to implead any person as a party and permit the same to put in its written statement to the claim made by the opposite party in the petition. The petitions are then tried by the Tribunal in accordance with the provisions of the Code of Civil Procedure, subject, of course, to the provisions of the Act. Section 25-A deals with the power of the Tribunal to pass decrees for possession of the properties in favour of the Committees of Gurdwaras. Section 28 is concerned with suits for possession of property on behalf of notified Sikh Gurdwaras. Section 36 says that no suit shall lie in any Court to question anything purporting to be done by the State Government, or by a Tribunal, in exercise of powers vested in it by or under the Act. Section 37 lays down that no Court shall except as provided in the Act, pass any order or grant any decree or execute wholly or partly, any order or decree, if the effect of such order, decree or execution, would be inconsistent with any decision of a Tribunal, or any order passed on appeal therefrom, under the provisions of the Act.

(41) The argument raised by the learned counsel for the respondent, as I have already said, was that by filing a petition under section 8 and not pursuing it, the petitioner would prevent the State Government from issuing a notification under section 9 that the institution was a Sikh Gurdwara, because the same could be issued only if no petition under section 8 was made after a petition under section 7 was published under sub-section 3 thereof. If no notification was issued under section 9, so argued the counsel, then the Managing Committee of the Gurdwara could not get possession of the property

of the said Gurdwara under the provisions of section 25-A of the Act. The main emphasis of the learned counsel was on the provisions of section 25-A, which are as under :—

> "When it has been decided under the provisions of this Act that a right, title or interest in immovable property belongs to a Notified Sikh Gurdwara, or any person, the Committee of the Gurdwara concerned or the person in whose favour a declaration has been made may, within a period of one year from the date of the decision or the date of the constitution of the Committee, whichever is later, institute a suit before a tribunal claiming to be awarded possession of the right, title or interest in the immovable property in question as against the parties to the previous petition and the tribunal shall, if satisfied that the claim relates to the right, title or interest in the immovable property which has been held to belong to the Gurdwara, or to the person in whose favour the declaration has been made, pass a decree for possession accordingly."

(42) A perusal of this section will show that it will come into operation only when the Tribunal makes a decision regarding the right, title or interest in the immovable property and holds that the said property belongs to a notified Sikh Gurdwara. It is only after that, that the Committee of the Gurdwara or the person in whose favour a declaratoin has been made, could, within a period of one year from the date of the decision, institute a suit before a Tribunal claiming possession of the said property as against the persnos, who were in possession thereof and claiming the said property as their own. Now the question is that if a petition under section 8 is dismissed, does the Tribunal thereby make a decision regarding the right, title or interest in the immovable property, which is alleged to belong to the said Gurdwara ?

(43) The petitioner under section 8 only wants a declaration that the institution, which is claimed to be a Sikh Gurdwara, is not such a Gurdwara. That is all and no decision is required regarding the right, title or interest in the property of the Gurdwara. When a notification is issued under section 9, all that it declares is that the institution is a Sikh Gurdwara and by virtue of sub-section (2) of that section, the publication of a notification under the provisions

of sub-section (1) will be conclusive proof of the fact that the Gurdwara is Sikh Gurdwara and the provisions of Part III of the Act shall then apply to it with effect from the date of the publication of the notification. Part III, it may be mentioned, only deals with the management and the control of the Sikh Gurdwaras. If a similar notification, like the one under section 9, is issued after contest, it will be under the provisions of section 17. So the notification of this kind is either issued under section 9 or 17. The right, title or interest in the properties of the institution is dealt with in sections 5 and 10 and it is only after the trial of the petitions under those two sections, that a finding regarding the ownership of the properties is given. When the Tribunal holds that either the Gurdwara or some other person is the owner of those properties, it is then that the Managing Committee of the Gurdwara or the person in whose favour the declaration is given, can file a suit before the Tribunal for possession of the said properties under the provisions of section 25-A. A petition under section 8, as already mentioned, has nothing to do with the right, title or interest in the properties of the institution. If a person, after filing a petition under section 8, does not pursue the same and gets it dismissed in default, it is not as if the other party is left without any remedy. It can take recourse to the provisions of section 38 of the Act. Sub-section (1) of that section says :

> "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."

According to this section, two or more persons, having an interest in any Gurdwara, in respect of which no notification declaring it to be a Sikh Gurdwara has been published under the provisions of the Act, can, after the expiry of one year from the commencement of the Act, after obtaining the consent of the Deputy Commissioner of the district, in which the Gurdwara is situate, institute a suit in the principal Court of original jurisdiction, praying for any of the reliefs, which are mentioned in section 92 of the Code and if they succeed, part III of the Act will be applicable to such Gurdwaras as well. So, this is the entire machinery that has been provided by the Act for the various contingencies. The fact, however, remains that the Act does not prescribe the method by which a petition under section 8, which is not pursued by the petitioner, has to be disposed of. That being the position, by virtue of section 12(11), such a petition has to be decided in accordance with the provisions of the Code of Civil Procedure.

(44) It may be mentioned that while dealing with the above point, the Tribunal made a refernece to a Bench decision of the Lahore High Court in *Sundar Singh and others* v. *Mahant Narain Dass and others* (9) (supra) where it was held:

"The question is what should be done when petitions under section 8 are withdrawn or not prosecuted or when it is held that the petition is not competent. Should such a petition merely be dismissed, leaving the Local Government to notify the institution under section 9 as a Sikh Gurdwara, on the ground that no petition had been presented in accordance with the provisions of section 8 of the Act; or should the Tribunal proceed to hear ex-parte evidence on behalf of the objectors without allowing the petitioner or petitioners to intervene so as to be able to give a declaration that the Gurdwara is a Sikh Gurdwara, and thus enable the Local Government to issue a notification under section 17, or should the Tribunal automatically grant such a declaration without taking evidence on the merits, on the ground that the dismissal of the petition as incompetent or for want of prosecution or by

reason of its withdrawal must entail such a consequence? It would appear that, where a petition is dismissed by reason of its being incompetent, it must be taken not to have been presented in accordance with the provisions of section 8 and that the Local Government could notify the institution under section 9. But where it is withdrawn or not prosecuted, there is room for some difference of opinion. I understand that petitions are now being withdrawn or not prosecuted in the hope that the intention of the Act may be defeated: that is, the notification under section 9 does not issue because the petition is presented, and it is thought that a notification under section 9 or section 17 will not issue.

If the petition is merely dismissed and no declaration is given that the Gurdwara is a Sikh Gurdwara, as under section 17 it is a condition precedent for the publication of a notification that such a declaration be given. In fact, the Act seems to contemplate that all petitions will be fought to a conclusion and by far the best course would be to amend either section 9 or section 17 so as to make it clear that, when a petition is withdrawn or not prosecuted or when it is held that the petitioner has no *locus standi*, then, either the Local Government must publish a notification declaring the Gurdwara to be a Sikh Gurdwara or the Tribunal should be directed to enquire into this matter ex-parte in the absence of the petitioner and give a declaration one way or the other. If it is not amended, the question will have to be decided one day whether the Tribunal would not be justified in giving automatically in the above circumstances a declaration that the institution is a Sikh Gurdwara, or whether it should hear exparte evidence on behalf of the objectors in the absence of the petitioner and give on such evidence whatever declaration it finds to be established. If neither of these courses is adopted and the Local Government does not see its way to issue a notification under section 9, the whole object of the Act can be defeated by putting in an incompetent petition or withdrawing a competent petition. It was said that, in the beginning, the Tribunal

used to hear evidence *ex parte* on behalf of the objectors in such circumstances and either grant or not grant the declaration, but latterly that it has been dismissing the petitions or allowing them to be withdrawn without giving any declaration. Until the question comes directly before the Court, it is impossible for me to decide it finally."

(45) In the above-mentioned authority, before making the aforesaid observations, the learned Judge, who prepared the judgment, had said: "Before doing so, I desire to notice certain matters, which were mentioned before us, but which do not directly arise in this appeal". Later on, also he observed: "Until the question comes directly before the Court, it is impossible for me to decide it finally."

(46) It will, therefore, be seen that the observations referred to by the Tribunal were only *obiter dicta,* because this point was not involved in that case and besides no final decision regarding it was given by the learned Judges. Moreover, neither the remedy suggested by them has been resorted to by the legislature up till today and nor did the Tribunal direct the respondent to produce *ex parte* evidence in the absence of the petitioner on the basis of which some declaration could be given by it as referred to in the above ruling. This apart that authority is distinguishable on facts also. There, the objectors, whose case was before the Tribunal, were worshippers and Shiromani Gurdwara Parbandhak Committee was not a party. In the case in hand, the Shiromani Gurdwara Parbandhak Committee was not the objector and it is a party to the proceedings.

(47) Now, the question arises, should such a petition be disposed of in accordance with the provisions of Order 9, rule 8 or Order 17, rule 2 or Order 17, rule 3, Code of Civil Procedure, as contended by the learned counsel for the respondent. The said provisions read as under:—

"*Order* 9, *rule* 8.

Procedure where defendant only appears.—Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing the Court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof in which case the Court

shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder."

"*Order* 17, *rule* 2.

Procedure if parties fail to appear on day fixed.—Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit."

"*Order* 17, *rule* 3.

Court may proceed notwithstanding either party fails to produce evidence etc.—Where any party to a suit whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith."

(48) Order 9, rule 8 deals with a situation when the plaintiff does not appear and the defendant alone appears. In those circumstances, the suit is dismissed, unless, of course, the defendant admits the claim or part thereof. Failure of the plaintiff to appear under this provision seems to be at the first hearing of the suit. A dismissal of a suit at an adjourned hearing on account of the default of the plaintiff's appearance will, however, be under Order 17, rule 2 read with Order 9, rule 8, Code of Civil Procedure. Order 17, rule 3 comes into play when a party to a suit, to whom time has been granted *at his own instance* either to produce his evidence or cause the attendance of his witnesses or perform any other act necessary for the further progress of the suit, fails to do so. In such a situation, the Court may, in spite of this default, prcoeed to decide the suit forthwith. This rule, unlike rule 2, seems, to apply, where the party is present, but has committed the default mentioned above.

(49) Keeping the above provisions in view, let us see which rule will apply to the facts of the instant case. As already mentioned above, a number of adjournments had been taken by the petitioner for producing his evidence. The last opportunity in this connection

was given to him on payment of costs; and on the adjourned date, viz., 23rd December, 1971, the petitioner neither paid the costs nor appeared in person or through counsel. Besides, no witness of his was also present on that date. The counsel for the Committee, however, was present and he submitted that the petition under section 8 could not be dismissed in default, but had to be disposed of in accordance with the provisions of the Act. The case was then adjourned to 30th December, 1971, by the Tribunal, on which date arguments of the counsel for the Committee were heard on this point. I have already held above that the Act does not prescribe the method by which a petition under section 8 has to be decided, if the same is not pursued by the petitioner. That being so, under section 12(11) of the Act, such a petition has to be disposed of in accordance with the provisions of the Code of Civil Procedure. Now, the question is whether the petition in the present case should have been dismissed in default either under Order 9, rule 8/Order 17, rule 2, or the Tribunal should have decided it on merits under the provisions of Order 17, rule 3, Code of Civil Procedure. According to the counsel for the petitioner, the petition could not in law have been disposed of on merits under Order 17, rule 3, which provision, according to him, did not apply to the instant case, but the same should have been dismissed in default under Order 9, rule 8, or Order 17, rule 2, Code of Civil Procedure. On the other hand, the counsel for the respondent submitted that Order 17, rule 3, was applicable to the present case and action could have been legally taken thereunder.

(50) Order 9, rule 8, will not apply, because the petitioner's failure to appear was not on the first hearing of the case. The petition could have been rightly dismissed in default under the provisions of Order 17, rule 2, because the petitioner failed to appear at an adjourned hearing of the case. The question is whether the Tribunal could dispose of this petition under Order 17, rule 3.

(51) It is true that the case had been adjourned a number of times at the instance of the petitioner, who wanted to produce his evidence. On one such date, neither he nor his counsel was present, and nor did any of his witnesses attend the Court. It will, thus, be noticed that on the adjourned date, the petitioner, who had committed the default, was also not present either personally or through the counsel. We are, therefore, dealing with a situation, where a party had *at his instance* been given time for producing evidence. He had not only failed to do so, but had also not appeared either in

person or through a counsel. In such a situation, what is to be done by the Court? On this point, there is divergence of judicial opinion and the same has been noticed in Chitaley's Code of Civil Procedure, Volume II, 8th Edition, page 1233, where it is stated:

> "On this question, the authorities are not uniform. The High Courts of Madras (11) *Prativadi Bhayan Karam Pichamma* vs. *Kami Setti Sreeramulu and others*, Andhra Pradesh (12) *M. Agaiah* vs. *Mohmd. Abdul Karim*, Kerala (13) *P. Govinda Menon and another* vs. *Visalakshi Amma and others*, and Orissa (14) *Parikshit Sai and another* vs. *Indra Bhai and others*, have held that in such cases, the Court should proceed only under rule 2. The Rangoon High Court (15) *Maffla Nyun* vs. *Ma Aye Myint and others* (D.B.) has also taken a similar view. The Judicial Commissioner's Court at Bhopal (16) *Hashmat Rai* vs. *Lal Chand and another* also seems to be of the same opinion. On the other hand, the Bombay (17) *Basalingappa irappa Shivangappa and another* vs. *Shidramappa Shivangappa and another*, Calcutta (18) *Mariannissa* vs *Ram Kalpa Gorain*, Gujarat (19) *Ismail Suleman Bhayat* vs. *State of Gujrat, Delhi* (20) *Dyal Chand* vs. *Sham Mohan* Lahore (21) *Jhanda Singh and others* vs. *Sadiq Mohm. and others* and Patna (22) (*A.I.R.* 1967 *Patna* 366) High Courts take the view that the Court can proceed under this Rule, if there are materials on record to enable the Court to come to a decision on the merits and that otherwise the Court should proceed under rule 2."

(52) It may be mentioned that in the present case after the framing of the issues, none of the parties produced any evidence and

(11) A.I.R. (1918) Mad. 143 (F.B.).
(12) (A.I.R. 1961 A.P. 201 F.B.).
(13) A.I.R. 1964 Kerala 99.
(14) A.I.R. 1967 Orissa 14.
(15) A.I.R. 1937 Rangoon 437 D.B.
(16) A.I.R. 1952 Bhopal 43.
(17) A.I.R. 1943 Bombay 321 F.B.
(18) I.L.R. 34 Calcutta 235 D.B.
(19) A.I.R. 1971 Gujrat 42.
(20) A.I.R. 1971 Delhi 183.
(21) A.I.R. 1924 Lahore 545 D.B.
(22) A.I.R. 1967 Patna 366.

the petition had been disposed of by the Tribunal merely on the pleadings of the parties and on a consideration of the burden of proof.

(53) As the various High Courts are not taking a consistent stand on this point, let us first examine the decisions of the Lahore High Court, by which we are bound, unless, of course, we disagree with that view and refer the point to a larger bench, and see what they have to say regarding this matter. In *Ramrattan* v. *Hyat Muhamed and others* (23), a Division Bench of the Punjab Chief Court held:

> "Where time is allowed to a plaintiff to produce his witnesses and he fails to do so and is himself absent on the day fixed for the hearing, held that the Court may proceed under section 157 (present Order 17, rule 2) of the Code and dismiss the suit for default under section 102 (present Order 9, rule 8). It is not incumbent on the Court, nor would it usually be the correct procedure to proceed under section 158 (present Order 17, rule 3), though the party absent may have also made default of the kind referred to in that section."

(54) This decision was followed by another Bench decision of the Punjab Chief Court, consisting of Shadi Lal and Wilberforce JJ. in *Hargopal* v. *Harish Chander and another* (24) where it was held:

> "That where the Court directed the plaintiff whose witnesses could not be served owing to incorrect addresses, to give correct addresses within 3 days and they were not furnished, as ordered and the Court then granted an adjournment to a certain date on which date neither the plaintiff nor his pleader appeared and there was no sufficient material on the record to enable the Court to proceed to judgment the Court should proceed under Order 17, rule 2, and not rule 3 of the Code of Civil Procedure."

While giving this decision, the learned Judges observed:

> "It is clear to us that a default took place within the meaning of both rule 2 and rule 3 of order XVII; and the only question for decision is under which rule the suit should have been dismissed. Although there is a conflict of authority among the High Courts whether rule 2, or rule 3, should be applied where there is material on the record

(23) 41 P.R. 1880.
(24) 48 P.R. 1919.

to enable the Court to pronounce judgment, there is no such conflict where such material does not exist, as was the case in the present suit. The Calcutta High Court judgments published in (25) (*Mariannissa* v. *Ramkalpa Gorain*) (26), (*Kader Khan* v. *Juggeswar Prasad Singh*) (26), and (*Enatulla Basunia* v. *Jiban Mohan Roy*) (27) are sufficient authorities that, where there is no sufficient material on the record to enable the Court to proceed to judgment, rule 2 should be applied. The same appears to be the view of the only published authority of this Court (*Ramrattan* v. *Hyat Muhammad*) (23) (supra). We hold, therefore, that the suit should have been dismissed under rule 2 of Order XVII."

(55) Then we have the Bench decision of the Lahore High Court in *Jhanda Singh and others* v. *Sadiq Mohamad and others* (21) (supra). In that authority, the entire evidence in the case had been recorded and parties had closed their respective cases. A date for arguments had been fixed and the time had been extended at the instance of one of the parties. In those circumstances, it was held that on the failure of that party to put an appearance the Court was perfectly justified in proceeding to dispose of the case on the merits under Order 17, rule 3 and it was not bound to act under Rule 2 of the same order.

(56) A learned Single Judge of the Lahore High Court in *Madan Gopal* v. *Budhu* (28), held:

"Where a party has taken time to produce evidence and on the date fixed for hearing of that evidence he is absent the proper course to follow is to pass an *ex parte* decree and not an order under Order 17, rule 3. The words "make such order as it thinks fit" in Order 17, rule 2, do not include an order under rule 3 .....".

(57) From a reading of the above decisions, it would be seen that according to Lahore High Court, if there was material on the record to enable the Court to pronounce judgment or in other words the evidence in the case had been recorded and time had been granted at the instance of one of the parties, then on the failure

(25) I.L.R. XXXIV Calcutta 235.
(26) XXXV Calcutta 1023.
(27) XLI Calcutta 956.
(28) A.I.R. 1932 Lahore 477.

of that party to put in appearance, the Court could dispose of the case on the merits under Order 17, rule 3, but if there was no sufficient material on the record to enable the Court to proceed to judgment, then in that case the Court should act under rule 2 of order 17.

(58) Following the rule of law laid down by these authorities, in the case in hand, where none of the parties had produced any evidence after the framing of the issues, the Tribunal should not have decided the petition on merits under Order 17, rule 3, but disposed it of in accordance with the provisions of Order 17, rule 2, Code of Civil Procedure.

(59) It may be stated that the learned counsel for the respondent relied on a Full Bench decision of the Rajasthan High Court in *Gopi Kisan* v. *Ramu and another* (10) (supra) which had held that Order 17, rule 3, would be applicable even if there was no material on the record, if the suit could be decided against the defaulting party on a consideration of the burden of proof.

(60) This view runs counter to the one adopted by the other High Courts in India, as referred to above. As at present advised, after hearing the counsel for the parties, I am not persuaded to take a different view from the one adopted by the Lahore High Court and refer the case to a larger Bench on this point, especially when according to the Rajasthan High Court itself, the application of Order 17, rule 3, restricted the future remedies of a defaulting party and it was a stringent provision, which should be applied with circumspect caution and judicial restraint.

(61) It may be mentioned that the learned counsel for the petitioner referred to a decision of Narula J. in *Smt. Dakhri and others* v. *Munshi and others* (29), where it was held that the provisions of Order 17, rule 3, were penal in character and unless the Court concerned decided to follow the same in an appropriate case, it could not adopt a via media. If the Court in pursuance of the said rule dismissed the suit, no fault could be found with the order, but, if the Court did not proceed to decide the case *forthwith* and adjourned it, it should allow another opportunity to the plaintiff to lead his evidence on the date of adjourned hearing. This ruling was quoted by the learned counsel presumably to show that the Tribunal while disposing of the petition under section 8, had not complied

(29) (1967) P.L.R. 149.

even with the provisions of Order 17, rule 3, because it did not decide the case forthwith on 23rd December, 1971, but adjourned the hearing to 30th December, 1971 (*not at the request of the petitioner*), on which date arguments were addressed by the counsel for the respondent in the absence of the petitioner or his counsel, when no information regarding that date had been given to the petitioner, and the judgment was then pronounced on 6th January, 1972.

(62) Another matter, which is noteworthy, is that the provisions of rule 3 of Order 17 are not mandatory and a discretion is with the Court whether or not to proceed under this rule and decide the suit forthwith. As pointed out by Chitaley in his Code of Civil Procedure, Volume II, at page 1230, 8th Edition, rule 3 of Order 17 is permissive and not mandatory as is shown by the words "the Court may" proceed to decide the suit forthwith. The stringent provisions thereof should not be applied, unless the facts did not admit of the application of any other provision of the Code, where for instance, there was no sufficient material on record to give a proper decision, the Court should grant a further adjournment of the case. Similarly, if the facts of the case made the provisions of rule 2 applicable, the Court should act under that rule, even though such facts came within the operation of rule 3 as well. At any rate, the circumstances in the instant case did not, in my opinion, justify the discretion being exercised by the Tribunal in taking recourse to the provisions of Order 17, rule 3, Code of Civil Procedure in deciding the petition under section 8.

(63) In view of the foregoing, I would hold that this petition could not be disposed of in accordance with the provisions of Order 17, rule 3 as contended by the learned counsel for the respondent.

(64) In view of what I have said above, this appeal is accepted, the order of the Tribunal set aside and the case remanded to it for decision in accordance with law. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

K. S. K.

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