very low and thus deprive the workers of the provident fund to which they are entitled for working additional hours within the statutory hours."

But, as in the present case, it is nobody's case that the management has fixed the lesser number of working hours by way of a device to deprive the workers of the provident fund, or that the wages fixed for the normal working hours were not adequate or reasonable, so no help could be sought from the said observations of the Supreme Court for taking a view that the allowance paid to workers for additional hours was not 'other similar allowance' of the nature of 'overtime allowance'. I, therefore, fully endorse the view expressed by Tewatia, J. with the result that these petitions are allowed and the impugned order, Annexure P-1, quashed. In the circumstances of the case, the parties are left to bear their own costs.

R.N.R.

Before K. S. Tiwana and M. M. Punchhi, JJ.

SOM DASS and others,—*Appellants.*

versus

THE SHIROMANI GURDWARA PRABANDHAK COMMITTEE, AMRITSAR,—*Respondent.*

F.A.O. No. 449 of 1978

December 16, 1986

Sikh Gurdwaras Act (XXIV of 1925)—Sections 4, 8, 10 and 16(2)(iii)—Guru Granth Sahib worshipped publically in a Sikh Gurdwara—Whether a juristic person—Whether capable of holding property.

Held (per majority D. S. Tewatia and M. M. Punchhi, JJ. K. S. Tiwana, J. contra) that the juristic person is a fiction of law. The affairs of a juristic person are managed by a living person and therefore, law always envisages the existence of a manager of the juristic person. Hindu Law envisages a Shebait to be the Manager of the idol. The judicial precedents, therefore, came to recognise idol as the jursitic person and not the temple as the Hindu law did not envisage a manager of a temple. Sikh Gurdwara which is treated as a juristic person on the analogy of a Math is envisaged, under the Sikh Gurdwaras Act to be managed by a Managing Committee. There is no provision in Sikh Gurdwaras Act envisaging a

Manager of the affairs of the Guru Granth Sahib installed therein. The property in law can be dedicated to an object if in law or custom a Manager is envisaged for managing the affairs of such object otherwise property dedicated to any managerless object or institution would be *res-nullius*. So, the condition precedent for treating an institution or an object to be a juristic person is the existence of a manager of its affairs in law or custom. Where the law as it exists does not envisage a manager of an institution or object, then such an institution or object cannot be treated as a juristic person. Guru Granth Sahib, to which law does not ordain any manager, cannot be considered to be a juristic person. Additionally Guru Granth Sahib cannot be considered to be a juristic person for the very same reason on account of which a temple cannot be considered to be a juristic person. Hence it has to be held that the Guru Granth Sahib is not a juristic person and, therefore, not capable of holding property.

(Paras 23, 24 and 26).

Held (K. S. Tiwana, J., minority view) that Guru Granth Sahib is a juristic person. It can hold property, sue and be sued. However, the Guru Granth Sahib in every form is not a juristic person. If it is lying in the press or at a book shop or is worshipped in a private house, where public does not have an access, then it may not have that personality of a juristic person. It is simply a Guru Granth Sahib in those circumstances but when it is publically worshipped in a Gurdwara, which cannot appropriately acquire its name unless Guru Granth Sahib is worshipped there and as owner of that building and property, if at all attached to/gifted in its name, that the Guru Granth Sahib acquires the position of a juristic person. However, Gurdwara as a structure of brick and mortar is not a juristic person. It is only when Guru Granth Sahib is worshipped there. It is actually the presence of Guru Granth Sahib, which gives the building name of a Gurdwara. Even in common parlance a Gurdwara is meant by that place where the Guru is presiding. In some cases, these Gurdwaras and Guru Granth Sahib become synonymous in their capacity to hold the property. Even if the properties are owned separately in the name of the Gurdwara and the Guru Granth Sahib, then they have to be dealt separately and cannot be mixed or inter-mingled. It is the choice of the donor to choose the endowment in favour of either of these two. The holding of property by them separately may not pose any practical difficulty as their status or capacity, one does not work to the exclusion of the other.

(Paras 20 and 27).

Case referred to a larger Bench by the Division Bench consisting of Hon'ble Mr. Justice K. S. Tiwana and Hon'ble Mr. Justice

Som Dass and others *v.* The Shiromani Gurdwara Prabandhak Committee, Amritsar (K. S. Tiwana, J.)

M. M. Punchhi on April 1, 1983 *as an important question of law was involved in the case but difference of opinion arose between the learned Judges. The Full Bench consisting of Hon'ble the Acting Chief Justice Mr. Prem Chand Jain, Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice S. P. Goyal,—vide order, dated 27th August,* 1984 *opined that the case should be heard by a third Judge and thus the Hon'ble Mr. Justice D. S. Tewatia,—vide his order, dated April* 19, 1985 *gave his opinion on the question involved and directed the office to place the case before Division Bench for finally disposing of the appeal on merits by Hon'ble Mr. Justice K. S. Tiwana and Hon'ble Mr. Justice M. M. Punchhi. Hon'ble Mr. Justice K. S. Tiwana,—vide his order, dated 5th August,* 1986, *affirmed his views taken in his earlier judgement in this case dated April* 1, 1983 *and Hon'ble Mr. Justice M. M. Punchhi, finally disposed of the case,—vide his judgment, dated 16th December,* 1986.

First Appeal from the order of the Sikh Gurdwaras Tribunal, Punjab, Chandigarh, dated 4th September, 1978, *dismissing the petition with costs and declaring that the institution in dispute, namely, Gurdwara Sahib Dharamsala Guru Granth Sahib situated in the revenue estate of Bilaspur, tehsil Sirhind, district Patiala is the owner of the property in dispute consisting of Gurdwara building, the plan of which is given in the notification No.* 1702-G.P., *dated the 14th September,* 1962 *at page* 2523 *and the agricultural land measuring* 115 *Bighas-*12 *Biswas the details of which are given in the copy of Jamabandi for the year* 1955-56 *A.D., attached to the above said notification at page* 2429 *and is comprised of Khasra No.* 456 *min,*453, 457, 451, 644 *and* 452 *bearing Khewat No.* 276, *Khataunis Nos.* 524 *to* 527.

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

Gurbachan Singh, Advocate, Narinder Singh, Advocate, *for the Respondent.*

JUDGMENT

K. S. Tiwana, J.—

On approach, under section 7(1) of the Sikh Gurdwaras Act, 1925 (hereinafter referred as the Act), by 56 persons of villages Bilaspur, Ghodani, Dhamot, Lapran and Buani, the worshippers of the Gurdwara in question situated in the area of village Bilaspur, District Patiala, the Government published notification No. 1702-G.P. dated 14th of September, 1962, in the Punjab Government Gazette

dated 14th of September, 1962, under section 7(3) of the Act, containing the description and boundaries of the Gurdwara building and the particulars of the land attached thereto. Som Dass, son of Bhagat Ram, Sant Ram, son of Narain Dass and Anant Ram, son of Sham Dass, residents of Village Bilaspur presented a composite petition under sections 8 and 10 of the Act to the Government. They stated that the Gurdwara is not a Sikh Gurdwara but is a Dera Udasian owned and managed by them. There is nothing in it to show that it was a Sikh Gurdwara. It was a Dharamshala where the Sadhus come and take shelter. Samadhis of the founder of the Dera and his successors were situated in the Dera. It is not a historical place nor is it connected with any of the Sikh Gurus or martyrs nor was it managed by any person appointed by the Sikh community. It was under the ownership and management of the petitioners jointly with Bachan Dass, Niranjan Dass, sons of Bhagat Ram, Pritam Dass, Nikka Dass, sons of Narain Dass, Hari Dass, Ishar Dass, Darshan Dass and Amar Dass, sons of Sham Dass since the time of their fore-fathers. The petitioners and the other persons mentioned therein were the hereditary office-holders of the Dera in succession in accordance with their ancestral shares. The property and land attached to the Dharamshala was admitted to be in their possession. It was alleged that the notification was wrongly published and the institution was not a Sikh Gurdwara. They held the office in succession according to the hereditary rights long before the first day of November, 1956. The prayer of the petitioners in the petition is :—

> "Hence it is prayed that this petition under section 8 of the Sikh Gurdwaras Act, 1925 as amended by Act No. 1 of 1959 be accepted and it may be declared that Dharamshala Guru Granth Sahib situated in village Bilaspur, Tehsil Sirhind, District Patiala is not a Sikh Gurdwara but an institution of Udasi Sadhus owned and managed by the petitioners and other aforesaid members of their families in ancestral shares."

2. The petition was forwarded by the Punjab Government to the Sikh Gurdwara Tribunal (hereinafter referred as the Tribunal) appointed under the Act for disposal. On a notice by the Tribunal, the Shiromani Gurdwara Parbandhak Committee (hereinafter referred as the S.G.P.C.) contested the petition. It was claimed that the institution was a Sikh Gurdwara having been established by the Sikhs for worship, wherein Guru Granth Sahib is the only

object of worship and the sole owner of the Gurdwara property. It was denied that the institution was a Udasi Dera or the petitioners were its owners, managers or hereditary office-holders. The succession was denied from Guru to Chela. A preliminary objection was raised that the petitioners were not hereditary office-holders of the institution and had no *locus-standi* to file any such objection.

3. The petition was first tried under section 8 of the Act on the preliminary point as to whether the petitioners were the hereditary office-holders of the institution in dispute. After recording the evidence of the parties and hearing them the Tribunal found against the petitioners on the preliminary issue. The petitioners filed F.A.O. No. 40 of 1965 — *Som Dass and others* vs. *The Shiromani Gurdwara Parbandhak Committee,* in this Court, which was dismissed on 24th of March, 1976.

4. In the written statement submitted by the S.G.P.C., regarding the portion of the petition pertaining to the claim of the petitioners under section 10 of the Act, it was stated that the property, namely, the land and the building are the properties of Gurdwara Sahib Dharamshala Guru Granth Sahib at Bilaspur. The petitioners along with their family members have all along been the managers of the Gurdwara and the land owned by it. It was further stated that no personal right had been claimed by the petitioners in this land.

5. In the replication it was reiterated that the building and the property does not belong to the Gurdwara, but the petitioners and other persons are the owners of the land and Samadhs of their ancestors as had been claimed by them.

6. The petition under section 10 was tried on the following issues :—

(1) What right, title or interest have the petitioners in the property in dispute ?

(2) What right, title or interest has the notified Sikh Gurdwara in the property in dispute ?

7. The petitioners produced Bagga Singh P.W. 1, Mihan Singh P.W. 2, residents of village Bilaspur, and Bakhtawar Singh

P.W. 3, resident of village Gidri, besides Ram Dass, one of the petitioners, in support of their case. All of them stated that the petitioners are Udasi Sadhus and the land is in their possession. The building, the description of which was given by the petitioners' witnesses, tallied with the description of the building published in the Government Gazette referred to in the earlier paragraphs, is in possession of Sant Ram, one of the petitioners, and is being used as a residential house. According to the petitioners' witnesses Guru Granth Sahib is not worshipped in that building. There are two Gurdwaras in the village. There are also two Dharamshalas in the village, which are used for the stay of marriage parties on the occasion of marriages. Ram Dass petitioner appearing as P.W. 4 denied if the institution was a Udasi Dera or was managed jointly by the petitioners and others. Besides this oral evidence, copies of the revenue record and mutations Exhibits P. 1 to P. 13 were tendered in support of their case.

8. The S.G.P.C. examined Tarlok Singh, R.W. 1 and Inder Singh R.W. 2, residents of village Bilaspur, who deposed that in the building in question Guru Granth Sahib was worshipped. The land attached to the Gurdwara was in possession of the petitioners and others and the income was spent on the Gurdwara. The petitioners celebrated the Gurpurabs. Copies of the revenue records, some of which are common with the copies produced by the petitioners, a copy of the notification published in the Government Gazette on 27th of April, under section 9 of the Act, Exhibits R.I. to R. 11 were tendered.

Bhagat Singh, Puran Singh and Malkiat Singh PWs were examined in rebuttal by the petitioners.

9. The Tribunal decided issue No. 1 against the petitioners and issue No. 2 in favour of the respondent holding that the building in question was a Sikh Gurdwara and the agricultural land belonged to the Sikh Gurdwara. The petitioners have filed F.A.O. No. 449 of 1978 against this order of the Tribunal.

10. During the pendency of this F.A.O. No. 449 of 1976 in this Court, the S.G.P.C., on the basis of the order of the Tribunal affirmed in appeal in F.A.O. 40/1965 filed Suit No. 94 of 1979 — *S.G.P.C.* vs. *Som Dass and others,* under section 25-A of the Act for the possession of the building and the land. The petitioners, who were the respondents, in that suit, raised an objection about the mis-description of the property and that the income of the Gurdwara was more

than Rs. 3,000 per annum and the Committee had to be constituted before the suit could be filed and for that reason the S.G.P.C. was not competent to file that suit.

11. This suit was tried by the Tribunal on the following issues:—

(1) Whether the land in suit is covered by the decree ? (O.P.P.).

(2) Whether a valid committee has been constituted to file the suit ? (O.P.P.)

(3) Relief.

After trial, the suit was decided by the Tribunal against the petitioners, who were respondents in that. They have filed F.A.O. 2/1980 *Som Dass and others* vs. *S.G.P.C.* in this Court. *Vide* an order of a Bench of this Court, dated 11th of February, 1980, F.A.O. No. 2 of 1980 was directed to be listed for hearing with F.A.O. No. 449 of 1978. In view of this order, we will decide both the F.A.Os. with a common judgment.

12. A reference to some history as to how this land came to be attached with the Dharamshala, which is claimed by the worshippers to be a Sikh Gurdwara and has been so declared,—*vide* notification under section 9 of the Act, and which was stated by the petitioners in the petition to be a Udasi Dera under their management and control, seems necessary to be noticed. In jamabandi Exhibit P. 1 of 1961-62 B.K., Mangal Dass and Sunder Dass, Bhagat Ram, sons of Gopi Ram, Faqir Udasi were mentioned as owners in possession of the land. They had also mortgaged some of this land with some other persons. Village Bilaspur formed part of the erstwhile Patiala State. The Ruler of the Patiala State issued Farman-e-Shahi dated 10th of April, 1921, the contents of which are :—

"In future instructions be issued that so long the appointment of a Mahant is not approved by Ijlas-Khas through Deori Mualla, until the time, the Mahant is entitled to receive Turban, shawl or Bandhan or Muafi, etc., from the Government, no property or Muafi shall be entered in his name in the revenue papers.

It should also be mentioned that the land which pertains to any Dera should not be considered as the property of any Mahant, nor the same should be shown in the revenue papers as the property of the Mahant, but these should be entered as belonging to the Dera under the management of the Mahant and that the Mahants shall not be entitled to sell or mortgage the land of the Dera. Revenue Department be also informed about it and the order be gazetted."

13. On Maghar 10, 1985 BK at the instance of Rulia Singh and others right-holders of village Bilaspur, the Patwari made a report in compliance with the aforesaid Farman-e-Shahi for the change of the entries in favour of Guru Granth Sahib Baraiman Dharamshala Deh (Guru Granth Sahib being worshipped in the Dharamshala of the village) from the name of Atma Ram and others, the fore-fathers of the petitioners. At the time of sanction of mutation No. 692 dated Maghar 27, 1985 BK, Exhibit P. 8=R. 8 Narain Dass, Bhagat Ram and Atma Ram Sadh Bairagian appeared before the Revenue Officer and stated that their ancestors got this land as a gift for charity (Punnarth) from the proprietaries of the village. They had not got the land for any compensation or for any services rendered, but the condition was that they were to provide food and comfort to the travellers (Musafran) passing through the village. They further stated that they could not render this service as they were living in village Jasu Maira, Tehsil Kharar, in those days, situated in the British Indian territory. Kapur Singh, Inder Singh Lambardars and other right-holders of the village stated before the Revenue Officer sanctioning the mutation that their fore-fathers had given this land in the name of Guru Granth Sahib 'Baraj Man Dharamshala Deh' under the charge of the person in charge at that time for the purpose of providing food and comfort to the travellers. Atma Ram and others were not performing those duties, but on the other hand, in the last settlement got the land entered in their names in the revenue records. They further stated that they had approached the Deori Mualla to that effect. The Revenue Officer after enquiry observed that Atma Ram and others admitted that the land had been given to them without any compensation to provide food and shelter to the travellers, which function they were not performing at that time. He further observed that Atma Ram and others could not controvert the position asserted by the right-holders of the village about the giving of the land to them. After enquiry

he sanctioned the mutation in the name of Guru Granth Sahib Brajman Dharamshala Deh deleting the name of Atma Ram and others from the column of ownership of the land. He further observed that the question of appointment of Manager or Mohatmim was to be decided by the Deori Mualla where a case about that was pending at that time. Similarly, the other mutation No. 693, Exhibit P. 9 = R. 9 of 27th Maghar 1983 BK was sanctioned removing the names of Narain Dass, Bhagat Ram, sons of Gopi Ram and incorporating Guru Granth Sahib Brajman Dharamshala Deh in their place in the ownership column. Since that date till the filing of the petition the entries in the ownership column of the land continued in the name of Guru Granth Sahib Brajman Dharamshala Deh. At this stage it will be appropriate to notice the entries in the cultivation column in the subsequent jamabandies. In Exhibit P. 3 jamabandi for the year 1988-89 BK, that is, immediately following the sanction of mutations Exhibits P. 8 and P. 9, the name of Guru Granth Sahib Brajman Dharamshala Deh is entered in the ownership column. In the cultivation column, in some khasra numbers self-cultivation of the owner is recorded. In others, the cultivation is recorded of sub-tenants under Atma Ram and others recorded as tenants at will. In Exhibit R. 4, jamabandi for the year 2001—02 BK, similarly entries are repeated except that in some khasra numbers Atma Ram etc. were recorded as tenants at will. In Exhibit P. 5, jamabandi for 1951-52 A.O., similar entries were repeated. In Exhibit R. 6, jamabandi for the year 1955-56 A.D. the same entries were repeated with some difference in column No. 10, In this column for the first time it was recorded "Bashara Malkan Bawaja Dhoop-Batti" (as owners because of services of burning the incense and lighting the lamp). The same entry was repeated in jamabandi Exhibit P. 2 for the year 1959-60 A.D. and Exhibit P. 4 for the year 1974-75 A.D.

13-A. Shri T. S. Mangat, learned counsel for the appellants, at the outset arguing F.A.O. 449 of 1978 made a frontal attack on the mutations Exhibit P. 8 and P. 9 that these could not be entered in the name of Guru Granth Sahib, which is not a juristic person. According to him, it is only a sacred book of the Sikhs and in his view any gift or transfer in the name of Guru Granth Sahib is void as it does not fall within the ambit of juristic person. Shri Narinder Singh, learned counsel for the respondent, on the contrary, with

equal vigour, contesting the stand of Shri T. S. Mangat, cited certain judgments of this Court and referring to the mode of worship of Shri Guru Granth Sahib by the Sikhs argued that it is a juristic person, which can hold property and sue and be sued.

14. 'Juristic person' is a concept and creation of law and has its origin in a desire for doing justice by providing as it were centres of jural relations. According to Salmond, it may be of as many kinds as the law considers proper and the choice of the corpus in which the law should breathe in the breath of a fictitious personality is more a matter of form than of substance. It is different from a person in actual flesh and blood. Salmond in the Eleventh Edition on Jurisprudence has expressed about the 'Juristic person' in these words :—

> "It is not permissible to adopt the simple device of saying that a person means a human being, for even in the popular or non-legal use of the term there are persons who are not men. Personality is a wider and vaguer term than humanity. Gods, angels and the spirits of the dead are persons, no less than men are. And in the law this want of coincidence between the class of persons and that of human beings is still more marked. In the law there may be men who are not persons ; slaves, for example, are destitute of legal personality in any system which regards them as incapable of either rights or liabilities. Like cattle, they are things and the objects of rights ; not persons and the subjects of them. Conversely there are, in the law, persons who are not men. A joint-stock company or a municipal corporation is a person in legal contemplation. So also, in Hindu Law, idols are legal persons, and this has been recognised by the Privy Council. What, then, is the legal meaning of a 'person' ?
>
> So far as legal theory is concerned, a person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition. Persons as so defined are of

two kinds, distinguishable as natural and legal. A natural person is a human being. Legal persons are beings, real or imaginary, who for the purpose of legal reasoning are treated in greater or less degree in the same way as human beings."

The Privy Council recognised the established authority in favour of juristic personality of a Hindu idol more than half a century back and said in *Pramatha Nath Mullick* v. *Pradhyumna Kumar Mullick and another,* (1) :

"Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of Law, a 'juristic entity'. It has a judicial status with the power of suing and being sued. Its interests are attended to by the person who has the Deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir. It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established."

Applying this principle in Pramatha Nath Mullick's case and following the observations in *Mosque known as Masjid Shahid Ganj and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar,* (2), which was approved in *Mosque known as Masjid Shahid Ganj and others* vs. *Shiromani Gurdwara Parbandhak Committee, Amritsar,* (3), about the judicial status of a mosque, a Full Bench of this Court in *Mahant Lachhman Dass Chela Mahant Ishar Dass* v . *The State of Punjab and others,* (4), held that 'Gurdwara' is a juristic person entitled to hold property and capable of suing and being sued. The question whether Guru Granth Sahib has such personality cropped up in this Court in case *Shri Guru Granth Sahib Khoje Majra* v. *Nagar Panchayat Khoje Majra,* (5). The question was not

(1) A.I.R. 1925 P.C. 139.
(2) A.I.R. 1938 Lah. 369 (F.B.).
(3) A.I.R. 1940 P.C. 116.
(4) 1968(2) I.L.R. Pb. & Hry. 499.
(5) 1969 P.L.R. 844.

pursued by the learned Judge to the logical end and only these observations were made :—

> "Shri Guru Granth Sahib is accepted by the Sikhs as being the spiritual incarnation of all the ten Gurus because the preachings and sayings of the Gurus as well as certain other saints accepted by the Gurus are incorporated therein. A Gurdwara, therefore, in which Shri Guru Granth Sahib is established for worship would amount to an institution having the same character as a temple or a Math and would be a juristic person and its manager would be in the same position as the manager of a temple or any other debutter property. I have, therefore, no hesitation in holding that a Gurdwara is a juristic person which can own property and can bring a suit in its name to protect the property owned by it through its manager. In view of this, it is not necessary to go into the further question whether Shri Guru Granth Sahib is also a juristic person. Shri Guru Granth Sahib can exist only in a Gurdwara and as Gurdwara is a juristic person, the suit can always be brought in the name of a Gurdwara."

The matter again arose in another Single Bench case in this Court reported as *Piara Singh and others* v. *Shri Guru Granth Sahib Madnipur and others,* (6). Two questions arose in that case, which were noticed in the judgment as under :—

> "(1) That Shri Guru Granth Sahib and Shri Gurdwara Sahib Madnipur are not juristic persons and as such the suit was not maintainable ; and
>
> (2) that the will having been made in favour of Shri Guru Granth Sahib, which is neither a juristic person nor capable of holding property, is not valid."

The learned Judge observed in para 5 of the judgment :—

> "The due execution of the will has been held to be proved by both the Courts below and this finding has not been assailed before me. The contention that the will was invalid

(6) A.I.R. 1973 Pb. & Hry. 470.

as Shri Guru Granth Sahib, in whose favour it was made, was incapable of holding property, has been put forward for the first time and was never raised before in either of the Courts below. The property in dispute is situate in the areas which formed part of the erstwhile State of Patiala. It is an undeniable fact that under the Farman-e-Shahi by the Ruler of that State the properties attached to the religious institutions, though standing in the names of their Managers, were ordered to be mutated and entered in the name of Shri Guru Granth Sahib of those institutions. Whatever may have been the position in the other States, in the areas which formed part of India that was in British possession, it is abundantly clear that by an order of the Ruler of the Patiala State Shri Guru Granth Sahib installed and worshipped in religious institutions was recognised as capable of holding the property. Had the question of competency of Shri Guru Granth Sahib to hold property been agitated before the Courts below, the matter could have been fully gone into and adjudicated upon on merits. Under the circumstances, this question cannot be permitted to be raised at this stage."

On the basis of *Mahant Lachhman Dass's case* (supra), the Gurdwara was held to be a juristic person.

The matter again was raised in a Division Bench case of this Court in *Mahant Jaswant Dass* vs. *S.G.P.C.* (7), and more pointedly than in the other two Single Bench cases referred to above. The matter was discussed in more detail and it was held :—

"Faced with this situation, the learned counsel for the appellant contended that according to R. 8, i.e., the mutation, gift regarding the suit land had been made by Chela Sunder Dass, the then Mahant of the Dera, in favour of Guru Granth Sahib, which is not a juristic person and as such, such a gift or transfer has no existence in the eye of law and the suit land should be held to continue to be the property of the appellant as Mahant of

(7) F.A.O. No. 64 of 1966 decided on May 12, 1976.

the Dera Gopal Dass. This contention has no substance. It is too late in the day to urge that the property cannot be transferred in favour of Guru Granth Sahib. It is not a first case of its kind in which property cannot be transferred or donated in favour of Guru Granth Sahib. In innumerable cases decided by this Court and the Lahore High Court, properties had been donated in favour of Guru Granth Sahib and such gifts were held to be valid. If any authority is needed, reference may be made to *Piara Singh and others* v. *Shri Guru Granth Sahib Madnipur and others case* (supra), wherein Gurdev Singh, J., after considering a number of decisions including the decision of the Privy Council, came to the firm finding that gifts can be made in favour of the Gurdwara. It was held in *Mahant Lachhman Dass, Chela Mahant Ishar Dass* v. *The State of Punjab and others case* (supra), that a gift or a dedication of property can be made in favour of living or juristic person or in favour of an institution or corporation irrespective of whether such institution is a juristic person or not. After-all juristic personality is a mere creation of law and has its origin in a desire for doing justice by providing as it were centres for jural relations. It may be of as many kinds as the law considers proper and the choice of the corpus into which the law shall breathe, the breath of fictitious personality is more a matter of form than of substance. Besides, we have to bear in mind that the said transfer was made in favour of Guru Granth Sahib on the basis of an order by the then sovereign ruler of Patiala State as early as in 1979 Bk., when any word from the mouth of the ruler was law and no such law as the Transfer of Property Act, restricting gifts in favour of living persons was in force. The said order of the Ruler, as referred to in the mutation, R. 8, cannot be questioned now especially when the gift was also agreed to by the then owner Sunder Dass Chela of Gopal Dass. In fact, as we shall discuss later in respect of second issue, this gift was made in favour of Guru Granth Sahib installed in Dera Gopal Dass, which thus became the property of this Dera, and that, according to our opinion is no other than the notified Gurdwara. In these circumstances, it has to be held that the appellant has failed to establish himself as the owner

of the suit land which is clearly owned by Guru Granth Sahib."

The facts of this case were almost similar as in the case in hand. Under orders of the same Farman-e-Shahi, the ownership of the property was changed from the name of the Mahant in the name of Guru Granth Sahib in Dera Saran Dass through a mutation. The entries then in the later revenue records came in the name of Guru Granth Sahib and through Guru Granth Sahib in Dera Gopal Dass under the management of Jaswant Dass.

15. On behalf of the appellants, it was urged that in *Piara Singh's case,* the learned Judge inferred from the Farman-e-Shahi, which is the same as translated in para 11 of this judgment, to hold that it was under the orders of the ruler that Guru Granth Sahib installed and worshipped in religious institutions was recognised as capable of holding property. According to Shri T. S. Mangat, the Farman-e-Shahi does not specifically say so and in *Mahant Jaswant Dass's case,* the learned Judges referring to *Piara Singh's case* took it for granted that it was a settled law based on innumerable cases.

15-A. The mutation was sanctioned in compliance with the Farman-e-Shahi, which has been reproduced in para 11 above. The Rulers, whose word was law by order could create juristic persons and could recognise any institution in a juristic capacity. Farman-e-Shahi directed about the transfer of the land from the name of the Mahant to those of the institutions, Deras etc. For the purpose of mutation sanctioned under the Farman-e-Shahi, the actual transfer was to be seen and the donee could not be changed. The unequivocal assertion of the right-holders of village Bilaspur at the time of sanction of mutations Exhibits P. 8 and P. 9 was that the land had been given by their fore-fathers in the name of Guru Granth Sahib, the description of which for identification was given as "Barajman Dharamshala" of the village. This could not be controverted by Atma Ram, Narain Dass and Bhagat Ram, predecessors-in-interest of the appellants, who were present before the Revenue Officer and were heard. They had admitted the gift by the villagers of this land. The mutations were sanctioned in favour of the actual transferee under the Farman-e-Shahi, the purpose of which was that the land which had been usurped by persons acting on behalf of juristic persons should not be allowed to remain with them and they

should be divested of these rights which they had wrongly or illegally acquired by surreptitious means. The validity of the Farman-e-Shahi has been upheld by the Supreme Court in. *Banta Singh* vs. *Gurdwara Sahib Dashmi Padshahi and others* (8), to which I will refer at a later stage. In *Banta Singh's case,* it was held, 'Dera is a Gurdwara' with reference to Farman-e-Shahi.

16. I have noticed the aforementioned case of this Court on this point. Gifts were being made by the people in the name of Guru Granth Sahib. In the facts of the case reported in *Bisakha Singh* v. *Pt. Socha Singh,* (9), it is to be found :—

> "It has been established beyond any doubt that after the institution started in 1875 it fell down and that a new institution was built in 1910. According to the Mahant respondent he kept accounts of the expenses but he did not produce them. There is no doubt from the evidence that it was then built by Sikhs and that Sikhs made grants of land at that time and to the institution in the name of Guru Granth Sahib."

In *Gurmukh Singh* v. *Risaldar Deva Singh and others,* (10), it was observed:—

> "From time to time the proprietors of the village have made presents of land to the institution. In three cases the gifts were described in the revenue records as having been made in favour of the Granth Sahib."

Cases are thus on record where gifts were made by the faithfuls in the name of Guru Granth Sahib and conclusion deduced by Harbans Lal, J., who authored the judgment in *Mahant Jaswant Dass's case,* cannot be said to be unrealistic. Nothing was taken for granted by the Bench in *Mahant Lachhman Dass's case,* which has the effect of binding precedence, that Guru Granth Sahib is a

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

(9) A.I.R. 1937 Lah. 7.

(10) A.I.R. 1937 Lah. 577.

juristic person. Similarly, Gurdev Singh, J., in *Piara Singh's case* did not proceed only on assumptions. The Farman-e-Shahi directed the transfer of the property in the name of Deras, which were held to be Gurdwaras in *Banta Singh's case*. In case the land was originally gifted in the name of Guru Granth Sahib, then the mutation under the Farman-e-Shahi could only be in its name. When it was the case, it could be reasonably inferred to be under orders of the ruler having the force in law, in that State.

17. 'Sikh' is defined in section 2(9) of the Act. When a question arises whether one is a Sikh or not, the controversy is settled by the swearing of a declaration by the person about whom the controversy arises, which is appended to section 2(9) of the Act. It reads:—

> "I solemnly affirm that I am a Sikh, that I believe in *the Guru Granth Sahib*, that I believe in the Ten Gurus, and that I have no other religion. "(emphasis supplied)".

The word, 'Guru' before the words 'Granth Sahib' is not prefixed without any reason. This pre-fixing in the declaration has recognised the concept of the Sikhs that they not only take but treat the Granth Sahib as the living embodiment of the Ten Gurus and worship it as a Guru. There is a history for this, which has been recorded by historians, scholars and authors from time to time after the death of the Tenth Guru. Guru Gobind Singh, the Tenth Guru, on enquiry by the Sikhs, who had collected to bid him last farewell were told by him to take the Granth Sahib as the visible body of the Guru.

Macauliffe in his book "The Sikh Religion' 5th Volume, 1963 Edition, page 243, writing about the last congregation which the Tenth Guru had before he left this world and in which he directed the Sikhs to take the Guru Granth Sahib as the living embodiment of the Ten Gurus has recorded :—

> "When the Sikhs came again to take their last farewell of the Guru, they inquired who was to succeed him. He replied, 'I have entrusted you to the immortal God. Ever remain under His protection, and trust to none besides. Wherever there are five Sikhs assembled who abide by the Guru's teachings, know that I am in the midst of

them. He who serveth them shall obtain the reward thereof—the fulfilment of all his heart's desires. Read the history of your Gurus from the time of Guru Nanak. Henceforth the Guru shall be the Khalsa and the Khalsa the Guru. I have infused by mental and bodily spirit into the Granth Sahib and the Khalsa'.

After this the Guru bathed and changed his dress: He then read the Japji and repeated an Ardas or supplication. While doing so, he gave instructions that no clothes should be bestowed as alms in his name. He then put on a muslin waist-band, slung his bow on his shoulder and took his musket in his hand. He opened the Granth Sahib and placing five paise and a coconut before it solmenly bowed to it as his successor. Then uttering 'Wahguru ji Ka Khalsa Wahguru Ji ki fatah' he circumambulated the sacred volume and said, 'O beloved Khalsa, let him who desireth to behold me, behold the Guru Granth. Obey the Granth Sahib. It is the visible body of the Guru. And let him who desireth to meet me diligently search its hymns'."

The same narration is given in Mehma Parkash, Second Part by Sarup Dass Bhalla, which was published in 1857 and was republished in 1971 by the Language Department of the Punjab Government. The same thing is recounted in Twarikh-e-Guru Khalsa by a famous Sikh Historian Giani Gian Singh. In 'History of Sikh Gurus' by Hari Ram Gupta, M.A., Ph.D., D.Litt, 1963 Edition, the learned author has recorded the instructions of the Tenth Guru to the Sikhs before his demise as under :—

"The Guruship was hereditary in his family, and he had lost all his children. In order to avoid all possible family feuds as well as imposters and to check disruptive tendencies in future, Guru Gobind Singh thought it best to abolish the physical office of the Guru. He opened the Granth placed five paise and a coconut before it, bowed before it, then went around the holy book, bowed again, and declared it as the Guru for all times to come. He then sang his self-composed hymn:

Agya bhai Akal ki tabhi chalayo Panth, Sab Sikhan ko hukam hai Guru Manyo Granth. Guru Granth ji

manyo pargat Guran di deh Jo Prabhu ko milbo chahe khoj shabad men le Raj Karega Khalsa aqi rahe na koe Khwar hoe sab milange bache sharan jo hoe. (Under orders of the Immortal Being, the Panth was started, All the Sikhs are enjoined to accept the Granth as their Guru;

Consider the Guru Granth as representing Guru's body;

Those who want to meet God can find Him in its hymns; The Khalsa shall rule, and its opponents will be no more. Those separated will unite, and all the devotees shall be saved.).

He declared that he was entrusting the Khalsa to the care of Akalpurkh (God). In matters spiritual the Holy Granth would be their guide. Thus the Granth assumed the office of the living Guru and came to be called Guru Granth.

"The Sikhs dress it, decorate it, fan it and put to bed at night."

In the 4th Edition of 'The Gospel of the Guru Granth Sahib' by Duncan Greenless, page cxlviii, the author writes in these words :—

"It is a habit, therefore, with many a habit shared by men all over the world with their own scriptures—to open the book haphazard and to take the first verse seen by the eye as the Guru's counsel at that time. It may be 'superstitious', or it may not be, but experience shows how very helpful such consultation often is in pointing out the better way. Before the Guru Granth Sahib is read, a short prayer is offered, and the reading usually commences from the beginning of the stanza at the top left corner of any page where the book opens. So also names are chosen for new Sikhs by taking one beginning with the initial of the first word on the page whereat the Book first opens.

> The Granth Sahib is to be regarded, and, therefore, treated, as the very body of the Guru himself. Thus it is always kept in a clean silken cloth on a raised 'throne', is opened under a canopy, and a fly-whisk is constantly waved over it while it is being read. Those who enter the special room, or the Gurdwara, where it is kept, should have just bathed, put on clean clothes, and covered their heads; before taking their seat in its presence they bow to it as to the Guru."

Again at page 213, the learned author has referred to the last message of the Tenth Guru as :—

> "O beloved Khalsa, let him who desires to see me look into the Guru Granth. Obey the Guru Granth, it is Guru's visible body; and let him who longs to meet me search diligently its hymns.
>
> Read the Guru Granth, or listen to it; so shall your hearts receive consolation, and you shall certainly obtain a dwelling in the Guru's Heaven."

18. The history, which is not very old, but only of less than 300 years, which has been handed down and has been recorded by many historians and writers, the works of some out of whom have been quoted above, has recorded that Guru Gobind Singh—the Tenth Guru—commanded the Sikhs to look towards the Guru Granth Sahib as the living embodiment of the Sikh Gurus. Since then the Sikhs worship the Guru Granth Sahib as the living Guru. They perform Ardas (supplication) before it and bow to pay homage to it in the same way as is done to a living person. On ceremonial occasions verses from the Guru Granth Sahib are read as 'Hukam-Nama' (Order) to get directions on that particular occasion in connection with which recitals from it are arranged. These are all the attributes of a living Guru, which are found in the Sikh faith for the Gurudom of the Guru Granth Sahib. The Sikhs every year celebrate the day when Guriaee or the Gurudom to Guru Granth Sahib was accorded by the Tenth Guru, as a 'Gurpurab'.

It was for these reasons, the word, 'Guru' is prefixed before the 'Granth Sahib', which was a holy book prior to 3rd of October, 1708, the last day of the Tenth Guru on this earth. It was because of this that the word 'Guru' as referred earlier, has been incorporated

in the declaration under section 2(9) of the Act before the Granth Sahib.

19. Shri T. S. Mangat, learned counsel for the appellants, referred to certain judgements in which Guru Granth Sahib has been referred as a holy book, He has referred to *Dalip Singh and others* v. *Sikh Gurdwara Parbandhak Committee,* (11) where it was recorded :—

> "On behalf of the petitioners it was argued before us that by reason of the first gift in 1902 to the Guru Granth Sahib, Tara Singh had no power to make the subsequent gift in 1930 to the Gurdwara Guru Sar. There is no force in this argument for the gift to the Guru Granth Sahib was clearly void as indefinite."

The gift in this case was not declared void because of any defect in the matter of holding of the property by Guru Granth Sahib. It was held void because it was indefinite. The question of juristic person was not involved/nor was it raised for discussion or decided in this case. The judgment does not touch the question of juristic person at all.

In *Hem Singh and others* v. *Basant Das and another,* (12), Guru Granth Sahib was referred as a religious book in these words :—

> "It appears to their Lordships to be proved that the teaching of the Sikhs was against ascetipism and was inimical to many customary Hindu rites; that their chief form of worship was the reading of poems, exhortations, etc., which when collected later, became a sacred book called the Granth Sahib."

In this judgment, Guru Granth Sahib is referred as a sacred book, undoubtedly it was so prior to 3rd of October, 1708. There is no authority in support of the argument of Shri T. S. Mangat, which might have sounded a discordant note to the observations of the Division Bench in *Mahant Lachhman Dass's case,* (supra).

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(11) A.I.R. 1931 Lah. 668.
(12) A.I.R. 1936 P.C. 93.

20. In view of the practice of the Sikh community and the historical facts recorded by eminent writers and historians and the judicial authority, I am of the considered view that Guru Granth Sahib is a juristic person. It can hold property, sue and be sued. I want to add by way of clarification that everywhere the Guru Granth Sahib in every form is not a juristic person. If it is lying in the press or at a book shop or is worshipped in a private house, where public does not have an access, then it may not have that personality of a juristic person. It is simply a Guru in these circumstances but when it is publically worshipped in a Gurdwara, which cannot appropriately acquire its name unless Guru Granth Sahib is worshipped there and as owner of that building and property, if at all attached to/gifted in its name, that the Guru Granth Sahib acquires the position of a juristic person.

21. The next question which was raised is that the Farman-e-Shahi did not give any right to the revenue officer to sanction the mutation divesting Atma Ram, Narain Dass and Bhagat Ram, who were recorded as owners, of the title of the property entered in their name in the revenue records. The Farman-e-Shahi came up for consideration in the light of a similar argument as is now raised by Shri Mangat, by the Supreme Court in *Banta Singh* vs. *Gurdwara Sahib Dasmi Padshai and others case* (supra). The facts of the case were :—

> "The appellant's case is that his ancestors were the founders of the village Akbarpur Khudal where the land is situate and that land has always been his family's. His grandfather Nihal Singh had it during his lifetime, thereafter his father Tapa Singh owned it and on the latter's death about 1945, he, the appellant, became the owner of it. In July, 1950, the Dharam Arth Board, which presumably was a department of the Government of PEPSU, threatened to take possession of the land from the appellant whereupon he had to file the suit. The only evidence on which the appellant relied to prove his ownership was an entry in the record of rights of the year 1908-9 showing the appellant's father Tapa Singh as the owner and as cultivating the land personally. On April 8, 1926, however, the Tehsildar sanctioned a mutation in the record of rights showing the respondent Gurdwara as the owner of the land with Tapa Singh as its manager, and further showing that the land was under

the personal cultivation of Tapa Singh as such manager under the control of the Gurdwara. The appellant's case is that this mutation was done at the instance of the Committee of the Gudwara Sahib, Patiala and was wholly illegal as that Committee had no right to get the mutation made."

The mutation was sanctioned by the Tehsildar in that case under the Farman-e-Shahi, which is reproduced in para 11 of this judgment on the application of the Gurdwara Committee. The Supreme Court in this case observed :—

"The appellant's contention was that the Gurdwara Committee of Patiala had no right to move in the matter. It is difficult to appreciate this contention. If there is a public Gurdwara, which the respondent-Gurdwara appears to be as neither the appellant nor anyone else ever claimed that it was his personal Gurdwara—then anybody can take steps to protect its rights and properties and that being so, Gurdwara Committee, Patiala was certainly entitled to move for the correction of the revenue records in regard to the properties held by the respondent Gurdwara.

The trial Court and the first appellate Court seem to have taken the view that the entry of the mutation had been wrongly made because the Farman-e-Shahi did not prove the respondent Gurdwara's title to the land and there was no other proof of that title. The first difficulty in this reasoning appears to be that the absence of evidence would only show that the mutation had been sanctioned wrongly; it would not show that it had been done unlawfully. Section 44 makes an entry in the record of rights presumptive evidence of title when the entry has been made in accordance with the procedure laid down and it would make no difference for this purpose that the entry was wrongly made. An entry which is wrong on the merits can be set aside by proper proceedings taken in a civil court but till then it has the effect given to it by section 44. In the present case the appellant never contended that the mutation had not been made in accordance with the procedure laid down by law. As

an official act must be deemed to have been regularly done, we must in the absence of evidence to the contrary, proceed on the basis that the mutation had been made in the records in accordance with the procedure laid down by law and give the entry the effect mentioned in section 44 of the Punjab Land Revenue Act. In the second place, it seems to us that the trial Court and the appellate Court were not quite correct when they said that there was no evidence at all to show the title of the respondent Gurdwara to the land. As we have said earlier, the facts were that the respondent Gurdwara was situated on the land in dispute and the appellant never claimed that the Gurdwara was his own institution. We suppose from the fact that the respondent Gurdwara was on the land it would be legitimate to draw an inference that the land belonged to it, for no owner of land is likely to permit a public Gurdwara to be established on his own land. This should be *prima facie* evidence of the respondent Gurdwara's title to the land and provide sufficient justification for the mutation in favour of the respondent Gurdwara, especially as Tapa Singh, the appellant's ancestor, produced no evidence to support his title at all. Nor do the records and there is nothing else on which reliance can be placed to justify the contention that the mutation had been wrongly entered as it was done under the directions of the Gurdwara Committee, Patiala, only. We think that the proper reading of the orders, to which we have earlier referred, is that the Gurdwara Committee, Patiala, only moved the Patwari and the Tehsildar for making the mutation and thereupon these officers called upon Tapa Singh to produce evidence of his title to the land which he having failed to do, mutation in favour of the respondent Gurdwara was sanctioned. If it had been done under the orders of the Gurdwara Committee, Patiala, then there would have been no occasion to call upon Tapa Singh to produce evidence to support his title. If this view is wrong, then it would appear that the direction of that Committee had been given "in accordance with the orders of his Highness"; see Tehsildar's order of April 8, 1926, earlier quoted. Now it is well known that the orders of the Ruler of a State like Patiala were laws and it would follow that anything done in

accordance with such orders must be said to have been legally done. If the Tehsildar had not sanctioned the mutation after going into the merits of the competing claims, then he must be said to have done so at the orders of the Ruler communicated to him through the Gurdwara Committee. Even if this were so, it cannot be said that the mutation had not been done in accordance with law for the Ruler's order is the law.

What we have said so far would be enough to show that the appellant had not been able to establish his title to the land. On the other hand, the mutation would be *prima* facie proof of the respondent Gurdwara's title to it."

This judgment is a complete answer to the argument of Shri Mangat regarding the competency of the revenue officer to sanction the mutation. The validity of the Farman-e-Shahi was upheld and the competence of the revenue officer to sanction the mutation changing the ownership in favour of Guru Granth Sahib cannot be, in the light of this judgment, questioned.

Citing *Mahant Hari Dass* v. *State*, (13), it was urged on behalf of the appellants that the mutation was not in accordance with law. The facts of this case were that after the merger of Patiala State, in PEPSU the Under Secretary to the Government on 10th of February, 1951, forwarded the copy of this Farman-e-Shahi to the Deputy Commissioner, Patiala, and requested him to give effect to the said Farman-e-Shahi by mutating the "lands attached to different religious institutions, such as, Deras, temples, etc., situated in the covenanting States in the revenue record in the name of institution itself under the Mohtamimship of the present Mahant". For the information of the Deputy Commissioner, it was also mentioned in the Under Secretary's letter that "mutation of lands of the religious institutions belonging to the erstwhile Patiala State already stands in the name of the institution itself under the Mohtamimship of the Mahants." The Deputy Commissioner forwarded the Under Secretary's letter to the Tehsildar, Nabha, for necessary action and when it got into the hands of the Patwari in due course, he prepared two mutations. Ultimately, the revenue officer sanctioned mutations regarding the property in the name of the

(13) I.L.R. (1953) Vol. II, Patiala Series 63.

institution and removed the name of the Mahant from the ownership column. The matter was agitated by way of writ petition in the High Court on the ground that no notice was given to the affected persons. It was observed:—

> "What he however contended was that the cases of the present petitioners were not covered by the Farman. He particularly emphasised the opening words of the second part of the Farman and argued that there was nothing to show that the lands which have now been mutated in the name of the deras pertained to or were attached to the respective deras. I have no hesitation in holding that this contention is well-founded, because according to the entries contained in the proprietary columns of the jamabandies before the present mutations were sanctioned, the petitioners were the owners of the land, it is significant that they were not even described as mahants. Hari Dass was described as the chela of Narain Dass while Amar Dass was described as the chela of Jairam Dass. It was argued by the respondent's counsel that the lands were originally given to the *deras* of which the petitioners were respectively the mahants and since then they have decended from one mahant to the other. In my opinion, had this been the case the deras would have descended from one mahant to the other. In my opinion, had this been the case the deras would have been shown as proprietors in the revenue papers and in the possessory column petitioners would have been shown as the managers of karkuns or at least they would have been described as mahants. In any case the entries in the revenue papers as they stood before the mutations were sanctioned could give no indication that the lands were not the private properties of the petitioners and before the Farman-e-Shahi could be applied to them it was incumbent upon the revenue authorities to hold a sort of enquiry and to satisfy themselves that the lands pertained to or were attached to the *deras*."

The facts of this case are distinguishable from the facts of the case in hand. In *Mahant Hari Dass's case,* the affected persons were not heard nor any enquiry was made. In the case in hand Atma Ram, Narain Dass and Bhagat Ram were given notice and

were heard by the revenue officer at the time of sanction of the mutation. They at that time had nothing better to say than what was actually recorded. They admitted the contention of the right-holders about the transfer of the land for the service of the travellers. They could not disprove the contention of the right-holders of the village that the land had been given in the name of Guru Granth Sahib. They did not take any step to get the mutation set aside afterwards, nor claimed its ownership on the basis of title. *Mahant Hari Dass's case* thus does not extend any help to the appellants at all.

In view of the facts and circumstances discussed above and in the light of *Banta Singh* and *Mahant Jaswant Dass's cases* I am to hold that the mutations, Exhibits P. 8 and P. 9 were rightly sanctioned in favour of Guru Granth Sahib in accordance with Farman-e-Shahi issued by the ruler of erstwhile Patiala State, whose word was law.

22. It was then argued that there is no institution of the name as Dharamshala where Guru Granth Sahib is worshipped. On the basis of oral evidence examined by the appellants it is urged that the building is a residential house of the appellants. To appreciate this argument, mutations, Exhibits P. 8 and P. 9 require reference. Atma Ram, Bhagat Ram and Narain Dass admitted before the revenue officer sanctioning the mutations that the land had been given to their fore-fathers for providing food and shelter in the Dharamshala. They admitted the existence of that Dharamshala at that time. The right-holders in their presence, which they could not controvert, described the Dharamshala as that in which Guru Granth Sahib was being worshipped. This representation of the right-holders of the village even was not contested by Atma Ram and others. In this way, the presence of Guru Granth Sahib, which was being worshipped in Dharamshala in village Bilaspur on Maghar 27, 1985BK in charge of Atma Ram and others was accepted by the Revenue Officer sanctioning the mutations. Inspite of best efforts the appellants could not explain these facts, which are proved from the express and implied admissions of their predecessors-in-interest, that is, Atma Ram, Bhagat Ram and Narain Dass. Then the appellants filed the present petition under sections 8 and 10 of the Act. Para 5 of this petition is as :—

> "That the aforesaid institution is in fact an Udasi Dera under the ownership and management of the petitioners

jointly with Bachan Dass, Niranjan Dass sons of Bhagat Ram, Pritam Dass, Nikka Dass sons of Narain Dass, Hari Dass, Ishar Dass, Darshan Dass and Amar Dass sons of Sham Dass, from the time of forefathers of the petitioners and the aforesaid persons."

In para 9 of the petition it is averred :—

"The property and the land attached to Dharamshala in dispute along with the building itself are in possession and management of the petitioners and the aforesaid members of their family from the times of their fore-fathers generation after generation."

In para 10 of this petition, it is averred :—

".....whereas the institution is a Dharamshala and Dera of Udasian owned and managed by the petitioners and the aforesaid members of their families."

The petitioners are undoubtedly Udasi Sadhus, though incorrectly recorded as Bairagis in Exhibits P. 8 and P. 9. In the presence of Atma Ram, Bhagat Ram and Narain Dass, on their admission, on the contention of the right-holders of village Bilaspur, the institution was found to be that in favour of which the mutation was sanctioned, that is, Guru Granth Sahib Barajman Dharamshala Deh. They being Udasi Sadhus claimed this building to be Udasi Dera and projected themselves to be the managers. They also described it as a Dharamshala and claimed to be in possession of building and property attached to it. The institution is the same. After taking this categoric position in the petition on the basis of a statement in the replication they cannot get out of this admission. In place of explaining the admission of their fore-fathers and also made by them in the petition, they chose to deny the contents of the petition. A very weak and unconvincing argument was put forward that these matters were recorded in the petition by their lawyer without their instructions. Although the decision of the petition under section 8 of the Act, as also is conceded by Shri Narinder Singh, Advocate on behalf of the respondent, will not bind the parties, still it becomes a relevant fact that the institution has been notified as a Sikh Gurdwara under section 9 of the Act. The institution being Dharamshala is proved on the basis of these admissions.

The next question is where it is located. The boundaries given by the petitioners' witnesses tally with the boundaries of the building published in the Government Gazette No. 1702—G. P. dated 14th of September, 1962. After reference to the evidence of the witnesses examined by the parties, it is not difficult to locate it.. The statement of Tarlok Singh RW 1 about the existence of the chobara in the building in question, which is inconsistent with the other evidence, does not make any difference. The Sikh Gurdwara which is notified is the same which is admitted in the petition by the petitioners as a Dharamshala and in their possession and the plan of which is published in the Government Gazette.

24. About the land it is sought to be argued that the petitioners remained in its occupation after the mutations Exhibits P. 8 and P. 9 and by way of adverse possession, which has matured into ownership became owners. This plea was never raised and cannot be taken note of. Moreover, there is no material brought on the file to indicate that the possession of the petitioners or their predecessors was hostile to the owner after 27th of Maghar, 1985 B.K. The entries show the petitioners as tenants. It appears that as the question of Mohatmimship was not decided from the Deorhi Mualla, they continued cultivating the land in their capacity as tenants, which was entered in the revenue records of its management as claimed by them in the petition. The revenue entries are in conflict with the oral evidence. The petitioners' witnesses say that they were in occupation of the land as owners, but the revenue entries depict something different. It was for the first time in 1956 that in the jamabandi their possession was recorded as owners because of Dhoop Batti. The word 'Bawajja' before 'Dhoop Batti' is not to be read in isolation. They have to be in the light and subject to the entries in the ownership column of the jamabandies, where Guru Granth Sahib Barajman Dharamshala Deh is recorded as owner. Even if this entry is read to the utmost favour of the appellants, it is to mean that they were doing this service by which they were discharging the functions of a religious nature and because of this they have described themselves to be managing the property of the institution mentioned by them in the petition. This is the maximum extent to which it can be extended in favour of the appellants. 'Dhoop' means incense and 'Batti' means light. In context of the religious institutions, this function is well understood and it is done by the persons, who, either because of their faith worship the institution or do it in the capacity of managers, whether appointed or

self-styled. If it is viewed in the light of the mutations Exhibits P. 8 and P. 9 and the statements of the right-holders of the village at that time, then the petitioners were doing it for the reasons of the Mohtmimship. These functions are performed by none else than the Mohtmims. Since it is not proved that any Mohtmim, as was expected to be appointed by the revenue officer sanctioning Exhibits P. 8 and P. 9, was appointed, the petitioners, who had continued in possession of the land as well as the Dharamshala even after the mutations, took upon themselves to perform this duty or function of Dhoop Batti. In any case, the entry was made for the first time regarding ownership by way of Dhoop Batti in the jamabandi for the year 1955-56. They cannot deny the title of the owner. They never claimed any adverse title to the institution recorded in the revenue records under the Farman-e-Shahi nor challenged it in any Court of law. The entry about their tenancy was repeated for many years in the revenue records and now they cannot be heard when they plead ignorance about this.

25. At the late stage of filing petition, the petitioners described themselves as managing the institution. They claimed it to be a Udasi Dera. Their claim of the ownership of the land in ancestral share is inconsistent with that of the ownership as contained in the revenue records. They failed to prove right, title or interest in the property published in the aforesaid Government gazette, which belongs to Guru Granth Sahib Barajman Dharamshala Deh of the village and which is a Sikh Gurdwara. They were rightly non-suited by the Tribunal.

26. The argument that Dera is not a Gurdwara and is not covered by the Farman-e-Shahi for the entry of mutation is to be rejected in view of the Supreme Court judgment in *Banta Singh's case* (supra).

27. It was then argued that the law is now settled that after the Full Bench judgment of this Court in *Mahant Lachhman Dass's case*, which was affirmed by the Supreme Court in *Dharam Dass etc. v. The State of Punjab and others*, (14), that Gurdwara is a juristic person. According to Shri T. S. Mangat, if Guru Granth Sahib is also held to be a juristic person, them it would result in the existence of two juristic persons in the same institution. Support was

(14) A.I.R. 1975 S.C. 1069.

sought for this argument from *Thakardwara Pheru Mal of Amritsar* v. *Ishar Dass and others,* (15). It is this Guru Granth Sahib to which the property was donated by the villagers, which was being worshipped in the Dharamshala of village Bilaspur and as such was the owner of the property in dispute. It is described as such in the revenue papers. There are two other Dharamshalas in the village. There are two Gurdwaras also. It is nobody's case that those Dharamshalas ever acquired any property. There is no question of any other juristic person in the Dharamshala in the village. The institution was rightly held to be a Sikh Gurdwara, where the Sikhs of the village worshipped Guru Granth Sahib. Gurdwara as a structure of brick and mortar is not a juristic person. It is only when Guru Granth Sahib is worshipped there. It is actually the presence of Guru Granth Sahib, which gives the building name of a Gurdwara. Even in common parlance a Gurdwara is meant by that place where the Guru is presiding. In some cases, these Gurdwaras and Guru Granth Sahib become synonymous in their capacity to hold the property. Even if the properties are owned separately in the name of the Gurdwara and the Guru Granth Sahib, then they have to be dealt separately and cannot be mixed or inter-mingled. It is the choice of the donor to choose the endowment in favour of either of these two. The holding of property by them separately may not pose any practical difficulty as their status or capacity, one does not work to the exclusion of the other.

28. For the foregoing reasons, we do not find any merit in F.A.O. No. 449 of 1978 and affirming the order of the Tribunal, dismiss it. No order as to costs.

29. In F.A.O. 2 of 1980 only two grounds were raised. One is about the identity of the property. The Tribunal,—*vide* its order dated 22nd of May, 1979; had found that khasra number 456 as mentioned in the final order of the Tribunal was to include the min numbers out of that khasra number. In view of that order, the ground regarding the mis-description of the property or the suit not containing the whole area of the property in dispute does not arise.

30. The next question which was raised was that the annual income of the property of the institution was more than Rs. 3,000

(15) A.I.R. 1928 Lah. 375.

per annum and according to the provisions of section 87 of the Act a committee was required to be nominated for its management and that the S.G.P.C. did not have any right to file the suit. This point is covered against the appellants by a Full Bench judgment of this Court in — *Gurdwara Sahib Padshahi Dasvin* vs. *Mahant Kesar Singh Chela Tirath Singh* (16). In view of these facts even F.A.O. 2 of 1980 does not have any merit worth consideration. This too is dismissed with no order as to costs.

M. M. Punchhi, J.

(1) It has taken me a long time indeed to come to the opinion I hereby record. I had before me this while the judgment prepared by my illustrious brother K. S. Tiwana, J. which has been written in great painstaking erudition. I have gone through it carefully and cautiously. He could and has arrived at a conclusion for disposal of these two appeals. I am, however, unable to put thereto a note of concord and thus have chosen the all time cautious step for referring these matters to a larger Bench, preferably a Bench of five or seven Hon'ble Judges of this Court, and if it meets the pleasure of my Lord the Chief Justice suggestedly in the order of seniority: the most seasoned and wise by long innings. I opine this step for the sensitivity of the questions posed in these appeals, in the backdrop of the social set up and the people who would take themselves affected by the answers to the questions, though not intimately connected with these appeals.

(2) The foremost and the highly sensitive question which was canvassed in these appeals before us was whether the Guru Granth Sahib is a juristic person. We heard learned counsel for the parties for nearly eight dates on the subject and obviously were obliged to reserve judgment. The matter was canvassed before us more on the anvil of historical and traditional aspects rather than on the axis of known sources of law. Undeniably, Guru Granth Sahib is the holy book of the Sikhs and it has been so described in judicial decisions. But, for its being judicially recognised as a juristic person, it must firmly be established purely and mainly from known sources of law and not exclusively from historical and traditional sources.

(16) R.F.A. 165 of 1966 decided on 19th January, 1979.

(3) For poser of the question, let me take down a few minimal facts. From the earliest revenue record available on the record of these appeals, the land in dispute stood in the ownership of the ancestors of the present appellants. On 27th Maghar 1985 Bikrami,—*vide* mutation, Exhibit P. 8-D. 8, the Revenue Officer sanctioned mutation of the land in dispute in the name of "Guru Granth Sahib Virajman Dharamshala Deh" in substitution of the ancestors of the appellants ostensibly under the Farman-e-shahi of the Ruler of Patiala dated 18th April, 1921 but without appointing anyone, not to talk of the ancestors of the appellants, as Mohtmins. The ancestors of the appellants continued in possession of the land in dispute and after them the appellants. They kept portions of it let out to tenants and some of it even mortgaged with possession. Not a penny of rent they paid to anyone. Now from that event it is sought to be established by the Shiromani Gurdwara Parbandhak Committee respondent that a Sikh Gurdwara had come to be established or recognised within the meaning of section 16(2) (iii) of the Sikh Gurdwaras Act, 1925 (hereafter referred to as the Act).

(4) Section 16(2) (iii) of the Act requires that an institution before it can be termed as a Sikh Gurdwara must have been established for use by the Sikhs for the purpose of public worship and has been so used for that purpose upto the time of the presentation of the petition under section 7(1) of the Act. The mere fact that there exists a building known as Dharamshala in which was placed the Guru Granth Sahib would *per se* not establish that the institution is a Sikh Gurdwara. See *Naginder Singh* v. *Pal Dass* (17). For the purpose of ascertaining whether an old shrine was established for the use of Sikhs, no great stress can be laid upon the language used in revenue reports or the like made by the Government officials. See *Hem Singh* v. *Basant Singh* (18). It is predominantly on the basis of the aforesaid mutation that an institution is claimed to have been established and recognised as such in the subsequent revenue papers. But to declare an institution as Sikh Gurdwara under section 16(2) (iii) of the Act, it is necessary to prove that the institution was (a) *established for use* by Sikhs for such purpose of public worship and (b) that was *used for such*

(17) A.I.R. 1934 Lah. 60.
(18) 1936 P.C. 93.

worship by Sikhs before and at the time of the presentation of the petition under section 7(1) of the Act. The mere recitation of the Granth Sahib does not in itself convert the institution into a Sikh Gurdwara. See *Hardit Singh* v. *Gurdit Singh* (19). The Shiromani Gurdwara Parbandhak Committee has led some oral evidence to substantiate that at the time of the presentation of the petition under section 7(1) of the Act, there was a building in the village in which the Guru Granth Sahib was kept as an object of worship publicly by the Sikhs. On such state of evidence, it was sought to be argued that since the Dharamsala had Guru Granth Sahib placed in it, it was a Gurdwara ; that the revenue entries be read as if the mutation was in the name of the Dharamsala itself, and in any case it was the Guru Granth Sahib whose placement qualified a building to be a Gurdwara, and thus, Guru Granth Sahib was in reality the juristic person, even interchangeably. Presently, I do not propose to deal the case on merits for obvious reasons.

(5) In law, no general licence can be derived for the invention of fictitious persons — *entia non sunt multi-plicanda praeter necessitatem.* See *Mosque known as Masjid Shahid Ganj and others* v. *S. G. P. C. Amritsar and another,* (20). Under the Hindu Law, an idol is a known juridical person and so is a Math, and these two species of fictitious persons have been recognised by judicial precedent all over the country. The doctrine, however, is not extendable to include the building in which the idol is deposited as in some way itself becoming a religious institution as that would result in two juridical persons co-existing in the same institution, an anathema on which the law frowns upon. The extension of such doctrine has been held to be unwarranted. See *Thakurdwara Pherumal of Amritsar* v. *Ishar Dass and others* (21). No Court in the land has so far held that Guru Granth Sahib is a juristic person and the venture now is to confer the status of a juridical person on it. In my view, let many of this Court do it, if at all, and not the two of us, but after cool consideration.

(6) Under Hindu law, the idol as the deity in a temple stands as the representative and symbol of the particular purpose indicated by the donor. On that premises alone, it can figure as a legal

(19) A.I.R. 1936 Lah. 819.
(20) A.I.R. 1940 P.C. 116 (122).
(21) A.I.R. 1928 Lah. 375 (D.B.).

person. It is in that capacity alone that the dedicated property can vest in it. See *Joginder Nath Naskar* v. *Commissioner of Income-tax, Calcutta,* (22). The Supreme Court has ruled in that case that the juristic person in the idol is not the material image and *it is an exploded theory that the image itself develops into a legal person as soon as it is consecrated and vivified by suitable ceremonies* (emphasis supplied). In the same authoritative pronouncement, it has been held that it was not correct to say that the supreme being of which the idol is a symbol or image is the recipient and the owner of the dedicated property. The juridical status conferred on it is only in the sense that it has acquired the power of suing and be sued in its name. Yet its interests, however, are attended to by the person who has the deity in his charge and who in law is its manager with all the powers which would, in such circumstances, on analogy be given to the manager of the estate of an infant heir. Thus under the Hindu law, the legal position as settled by the Supreme Court is that the pious purpose symbolic in the idol in the temple and the pious purpose permeating in a math is the juristic person in whom the dedicated property vests and on that basis acquires the power of suing and be sued through its manager or head, as the case may be.

(7) In *Mahant Lachhman Dass* v. *The State of Punjab's case* (supra), R. S. Narula, J. (the ex-Chief Justice of this Court) quoted in extenso from the book "Hindu Law of Religious and Charitable Trusts by Shri B. K. Mukherjea" (later Judge of the Supreme Court) to arrive at the view that the "Gurdwara" used in the Act was intended to refer to the institution of the Gurdwara and not, to the physical Gurdwara in brick and mortar. The learned Judge observed, "The simple answer to the question ..... who owns the physical Gurdwara in the context of section 3 and Schedule-I appears to me to be..... 'the institution Guardwara owns the Gurdwara in brick and mortar and situated on any piece of land'. Bricks cannot own themselves." Thus, the Full Bench put the Gurdwara at par with that of a Hindu math representative of an idea or a purpose. Some of the views of Shri B. K. Mukherjea which were quoted by the Full Bench approvingly run counter to *Joginder Nath Naskar's case* (supra). Be that apart, the view taken by the Bench was that an idol can own corporeal property but corporate property

(22) A.I.R. 1969 S.C. 1069.

cannot own itself or other corporeal property. The appellate judgment from *Mahant Lachhman Dass's case* (supra) is found in *Dharam Dass, etc.* v. *The State of Punjab and others* (23), but this aspect of the case was not touched before that Court. In a different context, the Supreme Court observed as follows :—

> "The Sikhs believe in the Ten Gurus — the last of whom was Guru Gobind Singh. They further believe that there is no Guru after Guru Gobind Singh who enjoined on his followers that after him they should consider Guru Granth Sahib as the Guru. They do not subscribe to idol worship and polytheism nor do they have any smadhi in their shrines."

In the context, the Supreme Court explained that Guru Granth Sahib was to be treated by the Sikhs as the Guru as enjoined. The question did not arise and was not mooted that Guru Granth Sahib had thenceforth become a juridical person or an artificial person. Harbans Singh, J. (the ex-Chief Justice of this Court) in *Guru Granth Sahib, Khoje Majra* v. *Nagar Panchayat, Khoje Majra*, (24), was required to decide whether Guru Granth Sahib was a juristic person. Following *Mahant Lachhman Dass's case* (supra), the Hon'ble Judge took the view that a Gurdwara in which Guru Granth Sahib is established for worship would amount to an institution having the same character as a temple or a math and would be a juristic person and its manager would be in the same position as the manager of a temple or any other debuttor property. As in plain from the dictum of the Full Bench in *Mahant Lachhman Dass's case* (supra), the Bench had leaned in favour of putting the institution of a Gurdwara on the same platitude (Sic) as that of a math, more in the line that an idea therein was afloat and in consonance with the Sikh tenets which were against idolatory. It is undisputed that in a math there is no object of worship like the idol in a temple. Yet in the Hindu temples where the creed of idol worship is propogated and practised, the different images installed in the different temples do not represent separate divinity ; they are really symbols of one supreme being. See *Joginder Nath Naskar's case* (supra). As is plain from the dictum of the Full Bench *In Mahant Lachhman Dass's case* (supra), the Bench had clearly steered through the

(23) A.I.R. 1975 S.C. 1069.

(24) 1969 P.L.R. 844.

chance of making Gurdwara analogous to a Hindu temple but Harbans Singh J. in *Guru Granth Sahib, Khoje Majra's case* (supra) fused the terming of a Gurdwara as a juridical person interchangeably with that of a math or a temple. That, to my mind, was impermissible and contrary to the view and spirit of the Full Bench.

(8) My learned brother K. S. Tiwana, J., while taking note of the decision of Harbans Singh, J. in *Guru Granth Sahib, Khoje Majra's case* (supra), has now propounded a view that the question whether Guru Granth Sahib was a juridical person was not pursued by the learned ex-Chief Justice to its logical end. My learned brother has also taken into account the decision of Gurdev Singh, J. in *Piara Singh and another* v. *Guru Granth Sahib Madni Pur and others, case* (supra), in which the question whether Guru Granth Sahib was a juristic person was not allowed to be raised at that stage. The matter, however, was decided on another aspect. My learned brother has also taken into account the observations of a Division Bench consisting of B. S. Dhillon and Harbans Lal JJ. in *Mahant Jaswant Dass* v. *S.G.P.C.*, (25), in which it was taken that the sovereign ruler of Patiala State in the year 1979 Bk. passed a Farman-i-shahi whereby properties were ordered to be mutated in the name of Guru Granth Sahib. *Piara Singh's case* (supra) was cited by the Bench as one of the numerous examples. In this manner, it has been taken that when the word of the ruler of the Patiala State was law, and under his orders, properties had been mutated in the name of Guru Granth Sahib, a juridical person had come to be created as of law. My learned brother has equated the facts of the present case to be in accord with the said case. But I do not propose to enter into any factual controversy in the context except to the extent that the Farman-i-shahi quoted by Gurdev Singh J. in *Piara Singh's case* (supra) does not, to my mind, as at present advised, warrant that assumption. The ruler of Patiala State's word may be law but that Farman-i-shahi (which we were apprised of from the record of another case) does not cover the subject at all as it was assumed by Gurdev Singh J. to be. Moreover, the question was never fully agitated in the Courts below and Gurdev Singh J. explicitly pointed this out. That Farman-e-shahi, as I read it, only takes care of Dera properties. That Farman-e-Shahi is administrative and not legislative in nature and

(25) F.A.O. 64 of 1966 decided on May 12, 1966.

does not even remotely suggest that Guru Granth Sahib was being created as a juristic person. The persistent could cast thereby need be removed by an authoritative pronouncement by a high manned Bench in that regard.

(9) Lastly, my learned brother has relied on the historic event of giving to the Guru Granth Sahib the prefix of Guru by the Tenth Guru shortly before his departure from this world. On that score, it has been expounded that a juristic person had come into being, which the Sikhs, treating it to be the physical embodiment of the Tenth Guru, worship as the living Guru. I dare say that it may be so, as my learned brother has projected, for his knowledge on Sikh history and tradition is undoubtedly more than mine, yet the succeeding paragraphs would disclose the caution which I wish to be exercised before it is given judicial clearance by this Court. Section 87 of the Indian Evidence Act may usefully be referred to. It provides :—

> "The Court may presume that any book to which it may refer for opinion on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to be written or published."

Thus, the Court can only presume that the history was written or published by the person and at the time and place, by whom or at which it purports to have been written or published. The presumption is with regard to publication, authorship, etc. but not with regard to accuracy. See A.I.R. 1952 Madhya Bharat 146. Vernacular histories which have never received any recognition as historical works of value and reliability relating to matters of public or general interest, nor have been referred to in any well-known historical works are inadmissible in evidence. See for aid, section 57 of the Indian Evidence Act and A.I.R. 1943 Oudh 91 (D.B.). The glaring fact is that the historians are never present at the event which they tend to describe later. Distortions are bound to be. It is stated in Halsbury's Laws of England, Volume XV, Simond's Edition, page 404 :—

> "Accredited public histories are receivable in evidence as being in the nature of public documents or of general reputation to prove ancient facts of public but not of private

or local nature, and standard authors may be referred to as showing the opinions of eminent men on particular subjects but not to prove facts."

The bundle of histories which were produced before us vary in description. Pithily put, recent historians have tended to put the Guru Granth Sahib on the pedestal of an idol, which, if accepted without demur, can be the subject of a great controversy in a variety of fields. Pointed attention need be invited, on which the learned counsel for the Shiromani Gurdwara Parbandhak Committee was emphatic, on the self-composed hymn of the Tenth Guru, which has been reproduced by my learned brother as also its translation in english at page 22 of his judgment I would venture too to reproduce it as translated by me to the best of my ability :—

"1. AAGYA BHAI AKAL KI TABHI CHALAYO PANTH ;

(with the permittance of the Timeless one, the path was established).

2. SAB SIKHAN KO HUKAM HAI GURU MANYO GRANTH ;

[All the Sikhs are ordained to treat the book (Granth) as the spiritual guide (Guru)].

3. GURU GRANTH JI MANYO PARGAT GURAN DI DEH ;

(Believe the Guru Granth as born of the limbs of the manifested teachers.).

4. JO PRABH KO MILLBO CHAHE KHOJ SHABAD MEN LE ;

(Whoever wants to establish unison with God, let him search Him in its hymns.).

5. RAJ KAREGA KHALSA AQI RAHE NA KOE;

(God's chosen ones shall rule, the disobedient and rebels will vanish.).

6. KHWAR HOE SAB MILANGE, BACHE SHARAN JO HOE ;

(Those that suffer will subsume for in His refuge lies salvation.).

* — "I have this day started a new Path (Panth)...."

Dr. Gopal Singh, Ex-Member Parliament in 'The Prophet of Hope' (The Life of Guru Gobind Singh) 1967 Edition Page 40.

@ — "..... the Khalsa (or the God's chosen ones)"

As at Page 40 of 'The Prophet of Hope' by Dr. Gopal Singh.

£ — 'Aqi (Arabic) — (Agya Bhang Karan Wala) —

(Baghi) — One who disobeys orders — Rebel — See Guru Shahbad Ratnakar Mahan Kosh or Encyclopaedia of Sikh Literature by Kahn Singh of Nabha, 1930 Edition 1st Volume.

(10) The self-composed hymn of the Guru, however, finds mention only of late in 'History of Sikh Gurus' by Hari Ram Gupta, published in the year 1973 and not earlier ever. The learned author at page 187 of his book yet surprisingly mentions the fifth line of the self-composed hymn to have been uttered by the Guru, possibly at the time when the Khalsa was created in the year 1699, for it is mentioned in the Chapter thus titled. But again the learned author at page 237 of his book has recorded the self-composed hymn of the Guru, comprising of six lines. And yet at the same page, he has recorded the Guru's last words in the words of Bhai Nand Lal which are in a different rhyme and humn and additionally his thought confines only to the first four lines. Then he has remarked with a reference to the Guru Granth Sahib that the Sikhs dress it, decorate it, fan it and put it to bed at night. Khushwant Singh in his book "The Sikh Way of Life" has even described that the holy book is placed on a cot and wrapped in clothes, usually of embroidered silks and above it is an awning as the emblem of royalty. The discrepancy about the size and thought of the hymn would have to be resolved before accepting it judicially as historically correct and, to the present practical status being given to the Holy Book, in the eye of law.

(11) Much support was sought from the book of Macauliffe "The Sikh Religion". The learned author has devoted a full Chapter as 'Guru Gobind Singh against Idolatory'. He quotes at page 68 in his edition of 1963, a letter Guru Gobind Singh, the Tenth Guru, wrote to Emperor Aurangzeb to contain :—

> "I am the destroyer of the turbulent hillmen, since they are idolaters and I am a breaker of idols."

This was depicted as the Guru's consistent frame of mind and instances in that regard are multiplied in the Chapter. The historical event attributed to the Guru has been reproduced by him at page 244 of his book in these words:—

> "O beloved Khalsa, let him who desireth to behold me, behold the Guru Granth. Obey the Granth Sahib. It is the visible body of the Guru. And let him who desireth to meet me diligently search its hymns."

It is plain that the words quoted by Macauliffe are diametrically different and much short of the self-composed hymn of the Guru. How was Macauliffe remiss and was he at all? This requires cautious consideration before the hymn is given the judicial seal.

(12) S. Khushwant Singh, a renowned modern writer, in his book "The Sikhs Today", 1959 Edition, written in the post-independence period, has at pages 53 and 54 observed:—

> "The Singh Sabha movement started in the 1870's and aimed at a renaissance of Sikh religion through education and literature. ..... The Singh Sabha movement received active support from the Government for its educational programme. The Sikhs were given by the Viceroy Lord Landsdowne "the foremost place amongst the true and loyal subjects of Her Majesty the Queen Empress'. Men like the Governor of Punjab and the Commander-in-Chief became patrons of the organisation and assisted it in raising funds . ..... *The services of Mr. Macauliffe were procured to produce his volumes on Sikh religion.* It is to this day the chief work on the Sikh faith in the English language. ..... With the rise of political consciousness, the Singh Sabha, because of its close association with the Government and the upper

middle-class nature of its leadership, began to lose its popularity with the masses. Its political facet was represented by a body called the Chief Khalsa Diwan. *The politics of the Chief Khalsa Diwan were pro-British and indifferent if not hostile to the nationalist movement.*" (Emphasis supplied)

The strain in which S. Khushwant Singh has written about the role of the Singh Sabha and Macauliffe, his works in the context may be suspect requiring careful handling.

(13) I have also gone through the relevant parts of "Mahima Parkash', Part-II, Chapter-IX, republished by the Languages Department of the Punjab Government but confess that I have not been able to find the self-composed hymn of the Guru therein. I do not find it either in the "Tarikh Guru Khalsa', Part-I by Giani Gian Singh, or any other book like 'Sri Gurdwara Darshan Karta'. 'Sri Gur Partap Suraj Granth' and a few other books to which reference had been made. The aforesaid books are stated to be of old origin and some of them had received the attention of the Punjab Government recently who got them reprinted by its Languages Department. So is the case of the other books to which reference was invited as 'Pant Parkash' by Giani Gian Singh, written in 1874 A.D., published by the Punjab Language Department in 1978 and 'Guru Sagar Rattan Parkash' by S. Gurbax Shaheed, written in 1927.

(14) My learned brother K. S. Tiwana J. has finally in paragraph 20 of the judgment expressed his considered view that Guru Granth Sahib is a juristic person on account of the practice of the Sikh community and the historical facts recorded by the above-said eminent writers and historians, as also on judicial authority. Yet he has also put in a word of caution that Guru Granth Sahib is a juristic person only when it is publicly worshipped in a Gurdwara and not otherwise. And then again in paragraph 27 of his judgment, while meeting the argument of Shri T. S. Mangat, learned counsel for the appellants has observed that by recognising Gurdwara and the Guru Granth Sahib to be juristic persons, the argument that there would come in existence two juristic persons in the same institution must be met by taking the view that actually the presence of Guru Granth Sahib gives the building the name of a Gurdwara. He has further held that in some cases, the Gurdwara and Guru Granth Sahib become synonymous in their capacity to hold property.

He has further taken the view that even if properties come to be owned separately by the Gurdwara and the Guru Granth Sahib, it is the choice of the donor to choose the endowment in favour of either of these two and in that case they have to be dealt with separately and cannot be mixed or intermingled. Finally, he has observed that the holding of the property by them separately may not pose any practical difficulty as their status or capacity does not work to the exclusion of the other. As I understand my learned brother, he has put the publicly worshipped Guru Granth Sahib at the pedestal of an idol and when it is installed in a public place put the Gurdwara at the level of a Hindu temple; a result which would be counter to the Full Bench decision in *Mahant Lachhman Dass's case* (supra) and may possibly do violence to the avowed utterances of the Guru which were against idolatry.

(15) In "The Gospel of the Guru Granth Sahib" by Duncan Greenless, a book written under the aegis of the Theosophical Publishing House, Madras, the learned author observes :—

> "The Granth Sahib is to be regarded and, therefore, treated as the very body of the Guru himself. .....But no lights or incense are to be waved before it. No flowers to be offered as to an idol nor are bells to be rung at the worship. In the true sense that is due to God alone in His own proper person and no Sikh can be bibliolater."

The learned author then further observed:—

> "Yet it may be true here and there that, as Dr. Sher Singh says (page 90):
>
> 'The Granth is taking the place of an idol among the illiterate Sikhs—a Sikh finds a great artisan satisfaction in beautifully clothing the Granth, making it luxurious in a well decorated room, offering fllowers and washing floor of the room in which it is kept. .....Of course, such practices understandably as they may be constituting that part of the relapse into Hinduism against which the whole modern trend of Sikhism like the origin mission of Gurus is an open produce."

(16) Every copy of the publicly worshipped Guru Granth Sahib on this interpretation would become a juridical person, however short be its duration of placement at a particular place, and even if it is under the open sky, awning or canopy. Even a building for it to be raised would be unessential. But the issue to be decided under section 16 of the Act is whether a Gurdwara is a Sikh Gurdwara presupposing that there is a Gurdwara in brick and mortar to which the prefix 'Sikh' is or is not to be attached after adjudication. Then where goes the 'idea' as was expounded in Mahant Lachhman Dass's case (supra)? All this is baffling; a rage of cross current. Besides others, the view taken by my learned brother would even run counter to the settled principle of avoidance of duality. The Lahore High Court settled against it in *Thakurdwara Pherumal of Amritsar's case* (supra), as noted above. Having thus recorded my word of caution, on cool consideration of the matter, I do not propose to dwell on the other aspects of the case and even on merits at this juncture until these basic questions are settled authoritatively.

(17) For the foregoing reasons, let these papers be laid before my Lord the Chief Justice for constituting a larger Bench of the kind proposed in the opening part of this opinion to hear and decide the questions as spelled out and to test the correctness of the decisions of this Court and the Lahore High Court, more so on the anvil of *Joginder Nath Naskar's case* (supra), so that light dawns and reigns finally. Ordered accordingly.

Difference of opinion

K. S. Tiwana, J. :

In view of the difference of opinion, the case be placed before my lord the Chief Justice for constituting a larger Bench. I, however, do not agree with my brother for the constitution of such a large Bench, as suggested, and this matter be left to the discretion of my lord the Chief Justice.

Before Prem Chand Jain, A.C.J., D. S. Tewatia and S. P. Goyal, JJ.

Prem Chand Jain, Acting C.J.:

(1) These two appeals (F.A.Os No. 449 of 1978 and No. 2 of 1980) came up for hearing before a Division Bench of this Court. As difference of opinion arose between the learned Judges, the matter was referred for decision by a larger Bench.

(2) It may be observed at the outset that the learned counsel for the parties did not challenge the correctness of any of the judicial

decisions rendered by this Court. According to the learned counsel, the appeals have to be decided solely on merits and on the basis of the evidence available on the record. In this situation, the question that arises for consideration is whether the appeals preferred under section 34 of the Sikh Gurdwaras Act, 1925, in the event of difference of opinion between the learned Judges of the Division Bench hearing the same, is to be heard by a third Judge or is to be decided by a Full Bench. On this aspect of the matter, we have heard the learned counsel for the parties and find that the question posed before us is not *res integra* and has been decided by this Court in *Mahant Swaran Dass* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar* (26). None of the learned counsel challenged the correctness of that judgment and rather conceded that the appeals have to be heard not by a Full Bench but by a third learned Judge. It would be wasteful to re-write the reasons for holding that in the event of difference of opinion between the two learned Judges, the appeal under section 34 of the Sikh Gurdwaras Act, 1925, is to be heard by a third learned Judge as we are in respectful agreement with the view enunciated in *Mahant Swaran Dass's case* (supra). Our attention was drawn to a Full Bench judgment of this Court in *Hari Krishan Chela Daya Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others* (27), but in that case the point in issue was not decided and on the facts of that case the matter was heard and decided by a Full Bench. As earlier observed, we are in respectful agreement with the view taken in *Mahant Swaran Dass's case* (supra) and hold that the appeals have to be heard by a third learned Judge. We order accordingly.

D. S. Tewatia J.—I agree.

S. P. Goyal J.—I agree.

D. S. Tewatia, J.

(1) This appeal against the order of Sikh Gurdwara Tribunal was heard by K. S. Tiwana and M. M. Punchhi, JJ.

(2) The matter came up before the Sikh Gurdwara Tribunal through a petition under sections 8 and 10 of the Sikh Gurdwaras

(26) FAO No. 315 of 1971 decided on 9th October, 1980.
(27) A.I.R. 1976 Punjab and Haryana 130.

Act, 1925 (hereinafter referred to as the Act) filed by Som Datt son of Bhagat Ram, Sant Ram son of Narain Dass and Anant Ram son of Sham Dass of village Bilaspur claiming the institution namely Dharamsala Guru Granth Sahib located in the area of village Bilaspur, District Patiala and notified,—*vide* a gazette notification dated 14th September, 1962 under section 7, sub-section 3 of the Act as Sikh Gurdwara, to be a Dharamsala and Dera of Udasis being owned and managed by the petitioner and their predecessors since the time of their forefathers and themselves being the hereditary office holders of the said Dera in succession in accordance with their ancestral share. They also claimed to be in possession of the land attached to the said Dharamsala. The Tribunal which tried the said petition on being referred to it by the State Government held that the petitioners had failed to establish that they where hereditary holders of the given institution and therefore, the petition under section 8 at their instance was not entertainable. It was also held that the petitioners failed to establish that they were owners of the property attached to the given institution.

(3) One of the matters that came to be highlighted before the Bench which heard this appeal was the ineffectiveness of the change of entry in regard to the ownership in the revenue record from petitioners Som Datt son of Bhagat Ram, Sant Ram son of Narain Dass and Anant Ram son of Sham Dass to the name of Guru Granth Sahib by mutation No. 692 dated Maghar 27, 1985 B. K. Ex.P.8/R.8 in pursuance of Farman-e-Shahi dated 18th April, 1921, which reads as under:—

> "In future instructions be issued that so long the appointment of a Mahant is not approved by Ijlas-i-Khas through Deori Mulla, until the time, the Mahant is entitled to receive turban, shawl or Bandhan or Muafi shall be entered in his name in the revenue papers.
>
> It should also be mentioned that the land which pertains to any Dera should not be considered as the property of any Mahant, nor the same should be shown in the revenue papers as the property of the Mahant, but these should be entered as belonging to the Dera under the management of the Mahant and that the Mahants shall not be entitled to sell or mortgage the land of the Dera. Revenue Department be also informed about it and the order be gazetted."

In view of the fact that Guru Granth Sahib not being a 'juristic person', could not possess or own any property.

(4) Whereas Tiwana, J. held the Guru Granth Sahib to be a juristic person. Punchhi, J. held that Guru Granth Sahib was not a juristic person. Tiwana, J. reached his said conclusion by reasoning that since Tenth Guru, Guru Gobind Singh, had ordained Granth Sahib to be a Guru and to be treated after him as a living Guru, so Granth Sahib is a juristic person. The learned Judge, however, added a qualification that only that Granth Sahib is to be treated as a juristic person which is installed in a Sikh Gurdwara.

(5) Punchhi, J., on the other hand, held that in the historical books, the authenticity whereof is not in doubt, there is no mention of the fact that Guru Granth Sahib was ordained to be treated as living Guru after him and therefore, Guru Granth Sahib could not be considered to be a 'juristic person'.

(6) From the above, it would appear that it was the factum of Guru Granth Sahib being or not being a living Guru that had primarily weighed with the learned Judges in holding Guru Granth Sahib to be or not to be a juristic person.

(7) The controversy as to whether Guru Granth Sahib is held in the same veneration by the Sikhs as they had venerated the living Gurus, should be taken as having been set at rest by their Lordships in *Pritam Dass* v. *Shiromani Gurdwara Prabhandhak Committee* (28). In this regard, the following observations of Misra, J. who delivered the opinion for the Bench can be noticed with advantage:—

> "7. One of the most fascinating aspects of Sikhism is the process which began with human Gurus, continued during the period of duality in which there were human Gurus and a collection of a sacred writings and ended with the present situation in which full authority is enjoined by the scripture. In every respect the scripture is what the Gurus were.

(28) A.I.R. 1984 S.C. 858.

10. An important characteristic of the teachings of the Sikh Gurus is their emphasis upon the message, the Bani. It is this stress which made possible the transfer of Guruship to the scripture. The human Gurus were the instruments through whom the voice of God became audible.

11. The holiest book of the Sikhs is Guru Granth Sahib compiled by the Fifth Master, Guru Arjan. It is the Bible of Sikh. After giving his followers a central place of worship, Hari-Mandir, he wanted to give them a holy book. So he collected the hymns of the first four Gurus and to these he added his own. Now this Sri Guru Granth Sahib is a living Guru of the Sikhs. Guru means the guide. Guru Granth Sahib gives light and shows the path to the suffering humanity. Wherever a believer in Sikhism is in trouble or is depressed, he reads hymns from the Granth.

12. When Guru Govind Singh felt that his wordly sojourn was near, he made the fact known to his disciples. The disciples asked him as to who would be their Guru in future. The Guru immediately placed five pies and a coconut before the holy Granth, bowed his head before it and said:

"The Eternal Father willed, and I raised the Panth. All my Sikhs are ordained to believe the Granth as their preceptor. Have faith in the holy Granth as your Master and consider it the visible manifestation of the Gurus. He who hath a pure heart will seek guidance from its holy words."

The Guru repeated these words and told the disciples not to grieve at his departure. It was true that they would not see his body in its physical manifestation but he would be ever present among the Khalsas. Whenever the Sikhs needed guidance or counsel, they should assemble before the Granth in all sincerity and decide their future line of action in the light of teachings of the Master, as embodied in the Granth. The noble ideas embodied in the Granth would live forever and show people the path to bliss and happiness."

In view of the clear enunciation by their Lordships that because of this sacred Bani contained in the Guru Granth Sahib, the same is ordained to be a preceptor or a Guru and is so treated by Sikhs, it is unnecessary to make any reference to the literature referred to by the two learned Judges in their judgments.

(8) The next question that falls for consideration is as to whether it is sufficient for the purpose of holding Guru Granth Sahib to be a juristic person, that Guru Granth Sahib was ordained to be a Guru by Tenth Guru and is so treated by the Sikhs. But before dwelling upon this aspect, it would be appropriate first to consider some of the precedents cited by the counsel for the respondents—S.G.P.C. in support of the plea that Guru Granth Sahib is a juristic person.

(9) The first decision referred to by the learned counsel is a Division Bench judgment of the Lahore High Court in *Gurmukh Singh* v. *Deva Singh's case* (29). Attention of this Court was drawn to the following statement of fact occurring in the judgment:—

> "In three cases, the gifts were described in the revenue records as having been made in favour of the Granth Sahib."

The learned counsel held out the aforesaid statement of fact from the judgment as proof of the fact that the gifts could validly be made to Granth Sahib.

(10) In my opinion, the aforesaid judgment is not an authority for the proposition that Granth Sahib is a juristic person. The question before their Lordships was as to whether the given institution was proved to be a Sikh Gurdwara. For holding that the given institution was not a Dharamsala but a Sikh Gurdwara, reference was made in support of the said view to two facts; (i) that the petitioner and first manager of the institution has described his occupation as Granthi; and (ii) that proprietors of the village had made gifts to the Granth Sahib installed therein which fact goes to prove the fact that there was a Granth Sahib in that institution and there was a Granthi who must be reciting the said Granth Sahib. The question as to whether the gifts could be legally made to Granth Sahib or not was not in issue.

(11) Another judgement of the Lahore High Court in *Bisakha Singh* v. *Pt. Socha Singh's case* (30) relied upon by the learned

(29) A.I.R. 1937 Lah. 577.

(30) A.I.R. 1937 Lah. 7.

counsel for the respondent too falls in the same category. There too the question was as to whether the given institution was a Sikh Gurdwara and their Lordships in support of that fact made a reference to the fact that the gifts were made to Granth Sahib, which fact showed that Granth Sahib was installed in that institution, which along with other evidence unmistakably showed that the given institution was a Sikh Gurdwara. In this case also the question as to whether the gifts could be legally made to Granth Sahib was not in issue.

(12) The first judgment of this Court to which reference has been made by the learned counsel for the respondent is one rendered in *Jang Singh* v. *S.G.P.C.* (31). In this case also the question for determination was as to whether the given institution was a Sikh Gurdwara. Here too, as in the Lahore High Court judgments, reference was made to the fact that a mutation of gift was sanctioned in the name of Sri Guru Granth Sahib through Mahantani Gulab Kaur who had also made a statement that she was Sewadar of the property which belonged to Sri Guru Granth Sahib and that the property be mutated in the name of Sri Guru Granth Sahib. In this case also, the issue before the Court was not as to whether the mutation of property could be legally made in favour of Guru Granth Sahib.

(13) The reference may now be made to cases in which the question as to whether the gift could be made to Guru Granth Sahib came up for pointed attention. The first case in this regard is *Piara Singh* v. *Shri Guru Granth Sahib* (32). This was a case in which some property was given to Guru Granth Sahib through a will. The contention raised before Gurdev Singh, J. was that the will was invalid as Shri Guru Granth Sahib, in whose favour, it was made, was incapable of holding property. Gurdev Singh, J., refused to entertain the said contention observing that the said contention was never raised in either of the Courts below. In this regard his following observations are decisive:—

> "Had the question of competency of Shri Guru Granth Sahib to hold property been agitated before the Courts below, the matter could have been fully gone into and adjudicated upon on merits. Under the circumstnces this question cannot be permitted to be raised at this stage."

(31) FAO No. 199 of 1963 decided on November 27, 1969.

(32) A.I.R. 1973 Pb. & Hry. 47.

The learned Judge, however, expounded his views on the concept of juristic person with which one is not in disagreement. The learned Judge also made reference to the fact that the property in dispute was situated in the areas which formed part of the erstwhile State of Patiala that it was undeniable fact that under the Farman-e-Shahi by the Ruler of that State the properties attached to the religious institutions, though standing in the names of their Managers were ordered to be mutated and entered in the name of Shri Guru Granth Sahib of those institutions. Whatever may have been the position in the other States, in the areas which formed part of India that were in British possession, it is abundantly clear that by an order of the Ruler of the Patiala State, Shri Guru Granth Sahib installed and worshipped in religious institutions was recognised as capable of holding property.

(14) Since in the later decision in F.A.O. 64 of 1966 (*Mahant Jaswant Dass* v. *S.G.P.C.*) repeated reliance is placed on this judgment for two legal propositions; (i) that Guru Granth Sahib is a juristic person and (ii) that the factum of Guru Granth Sahib being a juristic person and can hold property, cannot be questioned in regard to the institutions falling in the territory of Patiala State where as a result of Farman-e-Shahi issued by Maharaja of Patiala, Guru Granth Sahib could hold property, so a detailed analysis of this judgment is called for.

(15) As already observed, the learned Judge did not entertain the contention raised before him that will in question in favour of Guru Granth Sahib was invalid as Guru Granth Sahib was incapable of holding property. Nor did he hold that the Guru Granth Sahib is a juristic person.

(16) The learned Judge did seek to silence the questioning of the legal capacity of Guru Granth Sahib to hold property in view of the Farman-e-Shahi of Maharaja of Patiala. The wording of Farman-e-Shahi is not produced in the judgment and therefore, it has to be held that in that case Farman-e-Shahi might have been to the effect that the land standing in the name of the Manager was to be mutated in the name of Guru Granth Sahib. Such is not the case here as will be clear from the perusal of the wording of Farman-e-Shahi which is reproduced in the earlier part of the judgment.

(17) The next judgment relied upon on behalf of the respondent —S.G.P.C. is one rendered in *Mahant Jaswant Dass Chela Mahant Saran Dass* v. *S.G.P.C.* (33). The contention that Guru Granth Sahib was not a juristic person and therefore, gift or transfer of property made in favour of Guru Granth Sahib had no existence in the eye of law was pointedly raised in this case. The learned Judges repelled the aforesaid contention with the following observations:—

> "It is too late in the day to urge that the property cannot be transferred in favour of Guru Granth Sahib. It is not a first case of its kind in which property cannot be transferred in favour of its kind donated in favour of Guru Granth Sahib. In enumerable cases decided by this Court and the Lahore High Court, properties had been donated in favour of Guru Granth Sahib and such gifts were held to be valid. If any authority is needed, reference may be made to *Piara Singh and others* v. *Sri Guru Granth Sahib Madnipur and others' case* (supra), wherein Gurdev Singh, Judge, after considering a number of decisions including the decision of the Privy Council, came to the firm finding that gifts can be made in favour of the Gurdwara. It was held in *Mahant Lachman Dass, Chela Mahant Ishar Dass* v. *The State of Punjab and others' case* (supra) that a gift or a dedication of property can be made in favour of living or juristic person or in favour of an institution or corporation irrespective of whether such institution is a juristic person or not. After all, juristic personality is a mere creation of law and has its origin in a desire for doing justice by providing as it were centres for jural relations. It may be of as many kinds as the law considers proper and the choice of the corpus into which the law shall breathe, the breath of fictitious personality is more a matter of form than of substance."

A perusal of the aforesaid observations would show that the learned Judges appeared to think that the fact that Guru Granth Sahib is a juristic person stood authoritatively concluded by the judgments of this Court and of Lahore High Court.

(18) With respect, the said assumption of the learned Judges is not well founded. In the Lahore High Court decision, as already

(33) FAO 64 of 1966 decided on May 12, 1976.

noticed, the question as to whether gifts to Guru Granth Sahib could be validly made did not come up for consideration. Same was the case with regard to unreported D. B. decision in F.A.O. No. 199/1963 (*Jang Singh* v. *S.G.P.C.*) So far as the decision of Gurdev Singh, Judge is concerned, he too did not give his considered opinion in regard to the question whether the Guru Granth Sahib is a juristic person for he declined to deal with the contention on the ground that this was being raised before him for the first time and he was, therefore, not prepared to entertain the same.

(19) There cannot be two opinions about the fact that charitable institutions, Deras, Matts, Sikh Gurdwara, Corporations etc. have been treated as juristic person and other institutions falling in the same category could also be treated as juristic person but from it, it cannot automatically follow that a sacred book installed in the said charitable institutions or places of worships too would be treated in law to be a juristic person.

(20) Counsel for the respondent—S.G.P.C. argued that since idols in a temple are held to be juristic persons and since there cannot be a temple without idol, just as there cannot be a Sikh Gurdwara without Guru Granth Sahib being installed therein, so like idol, Guru Granth Sahib too be treated as juristic person.

(21) There is no dispute with the proposition that a building is treated to be a temple only if idols are installed in it and similarly a Gurdwara is treated a Sikh Gurdwara only if Guru Granth Sahib is installed therein. But the learned counsel seems to overlook the fact that whereas Sikh Gurdwara is treated as a juristic person, the temple is not so treated. In case of temple only the idol installed therein is treated as a juristic person and not the temple.

(22) The question as to whether the concept of juristic person could be extended to the temple came up for consideration before a Division Bench of the Lahore High Court in *Thakardwara Amritsar* v. *Ishar Das's case* (supra). Dalip Singh, J., speaking for the Court returned an emphatic negative answer to the question as is evident from his following observations :—

> "In appeal before us it has been contended that the Thakardwara is a juridical person and can sue. In support of

this it has been urged that the Thakardwara must be taken as equivalent to a Matt and, therefore, is a juridical person as is also shown by the fact that the property dedicated was dedicated to the Thakardwara itself and not to the idol. In the alternative it was contended that the Thakardwara must be considered as equivalent to the idol and, therefore, a juridical person. The case that the Thakardwara is juridical person under either of these contentions has not, in our opinion, been at all made out. It seems to us that the rulings are clear that an idol is a juridical person by reason of the judicial recognition of Hindu religion and custom on this point. Similarly a Matt is a juridical person; but to extend this doctrine to include the building, in which the idol is deposited, as in some way itself becoming a religious institution is to our mind a most unwarranted extension of this doctrine and would result in two juridical persons co-existing in the same institution. We, therefore, repel this contention.

From the perusal of the above observations of Dalip Singh, J., it is clear that the contention that temple be also treated as juristic person was repelled because of the fact that would result in making to co-exist two juridical persons namely idol and the building in which the idol is installed.

(23) The juristic person is a fiction of law. The affairs of a juristic person are managed by a living person and therefore, law always envisages the existence of a manager of the juristic person. Hindu Law envisages a Shebait to be the Manager of the idol. The judicial precedents, therefore, came to recognise idol as the juristic person and not the temple as the Hindu law did not envisage a manager of a temple. Sikh Gurdwara which is treated as a juristic person on the anology of a Math is envisaged, under the Sikh Gurdwaras Act, to be managed by a Managing Committee. Learned Counsel for the respondent frankly conceded that there is no provision in Sikh Gurdwaras Act envisaging a Manager of the affairs of the Guru Granth Sahib installed therein.

(24) The property in law can be dedicated to an object if in law or custom a Manager is envisaged for managing the affairs of such object otherwise property dedicated to any managerless object or institution would be *res-nullius*. So, the condition precedent for

treating an institution or an object to be a juristic person is the existence of manager of its affairs in law or custom. Where the law as it exists does not envisage a manager of an institution or object, then such an institution or object cannot be treated as a juristic person. Guru Granth Sahib, to which law does not ordain any manager, cannot be considered to be a juristic person. Additionally Guru Granth Sahib cannot too be considered a juristic person for the very same reason on account of which a temple could not be considered to be a juristic person by Dalip Singh, J.

(25) As regards the contention that since Farman-e-Shahi had ordained the property standing in the name of the Manager of Dera to be mutated in the name of Guru Granth Sahib and Farman-e-Shahi being in law the last word, the mutation of the property in the name of Guru Granth Sahib in the present case shall be held to be valid, it may be observed that Farman-e-Shahi does not mention any such-thing. Farman-e-Shahi in clear words mentioned that land which pertained to any Dera should not be considered as the property of any Mahant but these should be entered as belonging to the Dera under the management of the Mahant. Revenue department be also informed about it and order be gazetted. Farman-e-Shahi in question, as is evident from the above, does not say that the land be mutated in the name of Guru Granth Sahib. The mutation of land in the present case in the name of Guru Granth Sahib was in clear violation of the aforesaid Farman-e-Shahi. The aforesaid Farman-e-Shahi merely required the land to be mutated in the name of the institution in question if the land pertained to the institution. Hence, in the present case it cannot be said that in view of the Farman-e-Shahi, the validity of the mutation of the land in favour of Guru Granth Sahib cannot be challenged.

(26) In view of the above, I hold that Guru Granth Sahib is not a juristic person. With this answer to the question as to whether the Guru Granth Sahib is a juristic person, I direct the office to place the F.A.O. before the Division Bench for finally disposing of the appeal on merits because Punchhi, J. had not dealt with other points raised in the appeal although Tiwana, J. had dealt with all the points raised in the appeal.

K. S. Tiwana, J.

In this case I have already decided the questions of law and facts. After I have expressed my views which are final it will not be possible for me to sit in the D. B. for the hearing of this case as I am not to review my judgment. The papers may, therefore, be placed before the learned Chief Justice for appropriate orders.

M. M. Punchhi, J. (Oral)

(1) On difference of opinion between K. S. Tiwana, J. and myself on the question as to whether Guru Granth Sahib was a juristic person and the ancillary question as to whether the Farman-e-Shahi, referred to by us in our respective orders, came to apply to the facts of the instant cases, the matter was referred to a third Hon'ble Judge for consideration. D. S. Tewatia, J. after hearing the matter has concurred with my view that Guru Granth Sahib is not a juristic person, for the law does not ordain any manager to it. Additionally, D. S. Tewatia, J. has come to the view that the Farman-e-Shahi in question did not ordain that the land be mutated in the name of Guru Granth Sahib and thus the mutations Exhibit P—8 equivalent to Exhibit R—8 and Exhibit P—9 equivalent to Exhibit R—9 were in clear violation of the aforesaid Farman-e-Shahi and further that the validity of the mutations in favour of Guru Granth Sahib were challengable. The matter after such opinion is now back before me in order to deal with other points raised in the appeal. I had even reserved that opportunity in my earlier order, for I had not dealt with the case on merits.

(2) A broad resume of the facts would not be out of place. On 31st May, 1960, 56 worshippers of village Bilaspur Tehsil Sirhind, district Patiala, situated in the erstwhile State of Pepsu, but now in district Ludhiana (Punjab) filed a petition under section 7(1) of the Sikh Gurdwaras Act, 1925, to the State of Punjab, claiming declaration that the Gurdwara known as 'Gurdwara Sahib Dharamsala Guru Granth Sahib' situated in village Bilaspur was a Sikh Gurdwara and be declared as such. Along therewith a list of properties claimed for the Gurdwara was also appended. This list, if one can broadly put it, claimed a building in the village itself to be housing the Gurdwara itself and the remainder contained parcels of agricultural land said to be owned by the Gurdwara. The State Government publicised the petition and the list in accordance with section 7(3) of the said Act as also issued notices of claims to persons shown in

possession of the properties. The appellants herein thus moved a composite petition under sections 8 and 10 before the State Government. Under section 8 it was claimed that the institution was not a Sikh Gurdwara and was rather a Dera Udasian and further that they were hereditary office holders of the institution. Under section 10 their claim whether in addition or in the alternative, was that the properties claimed to be belonging to the Gurdwara were infact private properties of the appellants having come to them from their ancestors. The composite petition was then referred to the Sikh Gurdwara Tribunal for decision on both these aspects under section 14 of the Act. The requisite notices under section 15 were issued to the public at large. The Shiromani Gurdwara Parbandhak Committee responded to the notice and filed a written statement refuting the claiming of the appellants.

(3) To begin with the claim of the appellants under section 8 of the Act was first gone into. The sole issue framed in the context was whether the petitioners (appellants) were the hereditary office holders of the institution in dispute? The Tribunal,—*vide* its order dated 9th February, 1965 Exhibit P—13 recorded the finding that there was overwhelming documentary evidence existing on the file to hold that the succession in the family had been throughout from father to the son and that the premises of the institution was not a place of public worship. To the contrary it was a residential house of the appellants where there was no object of worship. The claim of the appellants then, as averred in their petition, that the institution was a place of worship and that they held a hereditary office attached to it, was negatived. The appellants, challenging the order of the Tribunal, brought the matter in appeal to this Court in FAO No. 40 of 1965. That was dismissed by a Division Bench of this Court on March 24, 1976. This Court agreed with the findings recorded by the Tribunal to the above effect and also further observed that the appellants did not come within the ingredients of section 2(4) of the Act so as to be hereditary office holders. So this aspect of the case stood finalised and then the Tribunal took upon itself to decide the claim under section 10 of the Act.

(4) The Tribunal when deciding the claim under section 10 framed the following two issues:—

1. What right, title or interest have the petitioners (appellants) in the property in dispute?

2. What right, title or interest has the notified Sikh Gurdwara in the property in dispute?

It deserves mentioning here that the State Government in the meantime had declared "Gurdwara Sahib Dharamsala Guru Granth Sahib" in village Bilaspur to be a Sikh Gurdwara in accordance with the provisions of section 9 of the Act by issuing a notification for the purpose. It deserves also mentioning that the fact of the publication of the notification was that it stood conclusively proved that "Gurdwara Sabha Dharamsala Guru Granth Sahib" was a Sikh Gurdwara with effect from the date of the publication of the notification. In that light, the search of the Tribunal was as to what properties did that Gurdwara, established as an ideal in the village, own as was claimed by 56 worshippers in the list published in the notification under section 7(3) of the Act. In other words, it was nothing but a claim to the building/structure in the village and the landed properties said to be standing in the revenue records in the name of the Gurdwara. The Tribunal came to record findings that both the building as well as the landed property was owned by the Gurdwara and as such negativing the plea of the appellants dismissed the petition under section 10 of the Act. The appellants then filed the present appeal challenging the order of the Tribunal, which is FAO No. 449 of 1978. On the strength of the order of the Tribunal, Shiromani Gurdwara Parbandhak Committee (for short, SGPC) filed a suit for recovery of possession of the building/structure and the landed properties, under section 25-A of the Act before the Tribunal. Despite resistance of the appellants as defendants in that suit, the suit was decreed for the title of the Gurdwara to the properties in dispute stood established in the petition under section 10 of the Act. The result of the suit was in the circumstances thus a foregone conclusion. On the decreeing of the suit, the appellants have filed FAO No. 2 of 1980 in this Court which under orders has been listed for hearing along with FAO No. 449 of 1978. Thus, by means of this judgment both these matters shall stand disposed of.

(5) Now with regard to the landed property, some discussion can be found in the earlier part of my judgment, dated 1st April, 1983. At the cost of repetition, however, it is worthwhile to recall that from the earliest revenue record available on the file of these appeals, the landed property in dispute undeniably stood in the ownership of the ancestors of the present appellants. It also transpires that

the ancestors of the present appellants had divided the land in two separate branches according to their hereditary shares. Thus, in order to divest the ancestors of the present appellants two mutations Exhibits P—8 = R—8 and P—9 = R—9 were sanctioned by the Revenue Officer on 27th Maghar, 1985 equivalent to a date in November/December, 1928. By virtue of the mutations, the land in dispute was mutated from the names of the ancestors of the appellants to the name of Guru Granth Sahib Virajman Dharamsala Deh. This was ostensibly done under the Farman-e-Shahi of the ruler of Patiala dated 18th April, 1921, but without appointing any one, much less ancestors of the appellants, as Mohatimins. In the cultivation column, however, the ancestors of the appellants continued in possession of the land in dispute and then by succession it kept falling in the possession of their successors and finally to the appellants. For all these years, they kept portions of it let out to tenants and some of it was even mortgaged by them with possession. Never did they pay any rent to anyone. It is nobody's case that the land prior to the mutations stood in the name of any institution be that a Dera or Gurdwara. The land was directly in the names of the ancestors of the appellants. These mutations thus, on the strength of the concurrence which I have received from D. S. Tewatia, J., did not confer any title on Guru Granth Sahib — the one which was lying in the Dharamsala of the village ; for that is the literal translation of the entry. Guru Granth Sahib being not a juristic person was incapable of displacing the ownership of the ancestors of the appellants recorded in the revenue records. In other words, the divesture of title as suggested was void *ab initio*. As urged by Sardar Gurbachan Singh, learned counsel for the respondents, the mutations could under the Farman-e-Shahi of the ruler dated 18th April, 1921, divest the title of ancestors of the appellants so far as their personal title was concerned in order to put the land back in the name of the institution. But then the question arises was there an institution in whose name the land originally was and the same had been usurped by the Mahant or Mohatimin. A bare reading of the Farman-e-Shahi discloses that it was to put the records straight with regard to institutional properties that it was ordained that the personal names of the Mohatmins the lands be reverted back to the institution. No foundational facts in that regard have either been pleaded or proved wherefrom it is suggestive that the land prior to the questioned mutations ever stood in the name of any institution or in the name of any person

who styled himself as a Mahant. The descriptive title of the land all the while has been of live persons. No wonder that even the Tribunal while deciding the petition under section 8,—*vide* Exhibit P-13 observed that there was no hereditary office for the institution because the property had devolved from father to son and that finding had been upheld by the High Court. Thus, there is no evidence worth the name from which it can even faintly be argued or observed that the land in dispute vested in any institution, much less an institution which may be called a Sikh Gurdwara. Thus, for the twin reason that there was no recipient in the eye of law to receive title to the landed property, nor was there any occasion to cause divestiture of title thereof on the strength of Farman-e-Shahi, it is held that the ancestors of the appellants continued to be the owners of the landed property and thereafter the appellants, who have remained in possession throughout till date. Thus, it is held that the landed property as given out in the list of properties part of the notification under section 7 (3) does not vest in the Sikh Gurdwara.

(6) Now with regard to the building/structure in the village, the Tribunal took the view that it belonged to the Sikh Gurdwara because the plan attached with the Government notification described boundaries which tallied with the oral evidence led by the appellants, thereby identifying the property in their possession to be the building of the Gurdwara itself. Added thereto was the way the Tribunal read the evidence of the parties on the subject. My learned brother K. S. Tiwana, J., while dealing with the question, took the view that since the institution had been notified as a Sikh Gurdwara under section 9 of the Act and the institution had been described by the appellants as Dharamsala in their pleadings, the institution being a Sikh Gurdwara was thus proved on the basis of those admissions. With regard to the location, my learned brother K. S. Tiwana, J. took into account the boundaries given of the building in the Government Gazette notification, dated 14th September, 1962, afore-referred to, as also the evidence of the parties tallying with the boundaries thereto. My learned brother did not discuss the evidence of each witness. On that score the building was held to be belonging to the Sikh Gurdwara where it itself was situated.

(7) Much water has flown in the mean time. A Full Bench of this Court in *Mahant Lachhman Dass Chela Mahant Moti Ram* v. *Shiromani Gurdwara Prabandhak Committee, Amritsar* (34) has held

(34) 1986—(2) 90 P.L.R. 5.

that the entry made in column No. 1 of notification under section 7(3) is no evidence of the fact that as to where the institution declared to be a Gurdwara is located or situate. It has further been held that nothing contained in section 9(2) debarred the Court in a proceeding under section 10 of the Act from enquiring into as to whether the institution named in the notification is situate in the building claimed or claimed to be a Gurdwara and whether such property belongs to the Gurdwara or not. Thus, in view of this authoritative pronouncement it does not hold any more good that to whichever building or structure does information contained in column No. 1 of the notification under section 7(3) of the Act pertain, that *ipso facto* belongs to the declared institution of the Gurdwara. It has independently to be seen as to whether the building/structure belongs to the Gurdwara — the one which has been declared under section 9(2) of the Act to be a Gurdwara. The obvious overlapping and confusion having been removed by the Full Bench, the admission of the appellants in the instant case in their pleadings cannot be said to mean that they had claimed the building to be that of a Sikh Gurdwara. Rather the admission, if any, was to the effect that they were terming the institution in their possession to be a Dharamsala said to be in their possession from the time of their ancestors. In the context thus it becomes inevitable to examine now the oral evidence.

(8) In the sketch which is part of the said notification the building is shown as rectangular in shape. Towards the North there is a street and towards the South there is a shop of Murti Raghu Mal. On the West there is gate of the village and towards the East is the house of Som Nath and this Som Nath concededly is Som Dass, one of the appellants. The appellants do not deny that the Dharamsala in their possession has the same descriptive boundaries but deny that it is a Gurdwara or that Guru Granth Sahib is publically worshipped there. PW-1 Bagga Singh has categorically stated that there is no object of worship including Guru Granth Sahib in any of these houses in possession of the appellants. He maintained that there were two other Dharamsalas in the village and two Gurdwaras. It was not put to him in cross-examination as to whether there was any public worship of the Guru Granth Sahib in the building or that such worship continued till the filing of the petition under section 7(1) of the Act. That fact was a pre-requisite for the maintenance of the petition. Rather it was put to him

that there was Guru Granth Sahib in the house in possession of Som Dass appellant and others. Now this could well be for the private worship of the appellants. For the mere fact that there was a Guru Granth Sahib placed in the house did not automatically mean that a Sikh Gurdwara stood established. Even, as is plain, the house of Som Dass is adjacent to the building in question. It is the other members of the appellants' family which concededly live in the building in question, like Sant Ram appellant and others. To the same effect is the statement of Mihan Singh PW-2. He went on to maintain that there was no Guru Granth Sahib in the house in occupation of Sant Ram appellants and others. Not a single question was put to him about the public worship of Guru Granth Sahib by the Sikhs in this building. Bakhtawar Singh PW-3 also said to the same effect that Sant Ram appellant along with his other brothers and members of their family resided in the house in question. He said in cross-examination that the appellants were Udasi Sadhus. No question regarding public worship of Guru Granth Sahib was put to him. Lastly, Som Dass appellant came in the witness-box as his own witness as PW-4. He maintained that the house in dispute was in occupation of Sant Ram appellant, Nikka Dass and Pritam Dass, sons of Narain Dass, and that his house adjoined that house. He maintained that there was no *parkash* of Guru Granth Sahib in the house in their possession and there was no worship of Guru Granth Sahib in the house. In cross-examination he stated that though in his petition under sections 8 and 10, his lawyer had written that the house was an institution and an Udasi Dera, but this had been done without specific instructions on their behalf. The explanation he rendered was that it was not an Udasi Dera because no Samadhi existed in the premises of the suggested Dera and rather these Samadhis of their ancestors were in the agricultural land owned by them. He maintained that the landed property was the personal property of his family.

(9) Against the evidence of the appellants, the S.G.P.C. examined only two witnesses i.e. Tarlok Singh RW-1 and Inder Singh RW-2. They maintained that the house in possession of the appellants was a Dharamsala and hence a Gurdwara. So far as Tarlok Singh RW-1 is concerned, he said that the building on the ground floor was in possession of Nikka Ram and his brothers which comprised of three rooms, but the building of the Gurdwara consisted of one room on the ground floor. He maintained that the Chaubara on

the second floor was one of the rooms which was in possession of Nikka Ram. He admitted that there were two other Dharamsalas in the village besides two other Gurdwaras. The statement of Inder Singh RW-2 is discrepant in that regard. He maintained that Guru Granth Sahib was kept in the Chaubara constructed on the second floor. He further maintained that the Gurdwara building and the house in possession of Som Dass (Som Dass's house was adjacent to the building in question as observed earlier) was part of one property, yet significantly in the list attached to the notification the house in possession of Som Dass appellant was not claimed as belonging to the Gurdwara. Significantly, this witness also admitted that the rooms in possession of Sant Ram and Pritam Dass of the appellants' family belonged to them and these rooms were situated in the building in question. In this confused state of affairs, it is difficult to even locate as to were suggestedly was the *parkash* of Guru Granth Sahib, whether in the Chaubara or in any of the rooms on the ground floor. Secondly, neither of the two witnesses has stated that there was any public worship of the said Guru Granth Sahib and that too till the date of the institution of the petition under section 7(1) of the Act by the Sikhs. It is not out of place to recall here that the Tribunal had even recorded a finding in its decision under section 8 of the Act that there was no object of worship in the institution and rather it was in possession of the appellants and their family members to be their residential house. But independent of that, the evidence on the record leads us to that finding again that there is nothing in the building in question which is an object of worship. It is in the possession of the appellants and their family members as their residential house and that there is no reliable evidence from which it can be held that there is *parkash* of Guru Granth Sahib in the said building and that too for public worship by the Sikhs. The appellants even took care to examine further two witnesses in rebuttal i.e. Puran Singh PW-5 and Malkiat Singh PW-6. They rather belied the evidence of the S.G.P.C. to contend that there was no Chaubara on any portion of that house and that there was no *parkash* of Guru Granth Sahib in any part of the building. They were not cross-examined in that regard. Rather it appears that the non-existence of the Chaubara was accepted as a fact. This even totally belies one of the descriptive details given in the plan attached with the notification, for therein the *parkash asthan* is shown in the Chaubara. When there is no reliable

evidence to prove that there was a Chaubara, it logically follows that there could not be any *parkash asthan* as suggested therein for Guru Granth Sahib. Thus, it is conclusively proved that the building/structure in possession of the appellants and their family members is their personal property and not owned by the Sikh Gurdwara. Thus, issues Nos. 1 and 2 are decided in favour of the appellants and against the respondents holding that the properties claimed by the appellants, that is, the building/structure and the landed properties are owned by them and thus they have all the rights interest and title thereto and the Sikh Gurdwara conversely has no right, title or interest therein.

(10) As a result of the above discussion, F.A.O. No. 449 of 1978 is allowed and the judgment and decree of the Sikh Gurdwaras Tribunal, Punjab, is set aside. The basis of the claim of the Sikh Gurdwara and the S.G.P.C. having been knocked off the suit instituted by them to recover possession of properties does not remain maintainable any more and thus F.A.O. No. 2 of 1980 would logically have to be and is hereby allowed and as such the suit shall stand dismissed. The appellants shall have their costs in both the causes.

R. N. R.

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