FULL BENCH

Before D. S. Tewatia, M. M. Punchhi and S. S. Sodhi, JJ.

DHARAM DASS (MOHANT),—*Appellant.*

versus

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

First Appeal From Order No. 216 *of* 1975

July 22, 1986.

Sikh Gurdwara Act (XXIV of 1925)—Sections 2(4)(iv) 7, 8 and 16—Application under Section 7 filed by the S.G.P.C. seeking declaration that the institution in question is a Sikh Gurdwara—Petition under Section 8 filed in reply thereto by a person claiming to be a hereditary office holder in terms of Section 2(4)(iv)—Such person claiming to hold such office by virtue of devolution according to hereditary rights—Locus standi to file petition under Section 8 disputed—Petition referring only to succession to the property and not to the office. Mode of descent or the special custom regulating succession also not pleaded—Absence of such particulars—Whether disentitles the petitioner to prove that he is a hereditary office holder—Pleadings—How to be construed—Petition—Whether liable to be dismissed for insufficiency of pleadings—Determination of institution as a Sikh Gurdwara—Facts necessary to be established.

Held, that the expression 'devolved according to hereditary right' in Section 2(4)(iv) of the Sikh Gudwara Act, 1925, has to be interpreted literally as signifying "descended and capable of descending by inheritance from an ancestor to a heir-at-law. In the Act, the Legislature has refrained from enacting any particular rule or mode of inheritance and it is a question for determination in each particular case. Every institution of the kind has its own custom governing the mode of inheritance whereby the 'Mahantship' or 'managership', an expression which is assimilated to the term 'office' used in the Act, descends from one office holder to the other, i.e., from the predecessor to the successor of that office. The pleadings in the moffussil should never be strictly construed. The pleadings are not to be construed literally and technically and one has to see the essence thereof and the intention flowing therefrom. The 'Dera' is a juristic person and such a person does not die. So the question of the property of the juristic person devolving on some one does not

arise. The property, which is in the name of the institution — a 'juristic person' — would always remain in the name of the juristic person. Only the property of such a juristic person is managed and appropriated by the Mahant. In other words, the management and right to use the property of such a person can devolve on no other person than the Mahant of the institution. In the pleadings where it is mentioned that the property of the Dera in question devolves on the Chela or Mahant after his demise or if it pleases the Mahant in his lifetime, the reference is to the devolution of the office from Guru to Chela by inheritance. The custom of inheritance is evolved in the course of time only if in its history the institution had come to face the given eventualities in regard to succession. The manner in which the problem in the given eventualities comes to be solved becomes part of the custom of that institution dealing with the mode of descent. However, the petition under Section 8 of the Act is not liable to be dismissed on the ground that special custom providing for the eventualities regarding succession is not pleaded. As such the absence of the above stated particulars do not disentitle the petitioner to prove that he is a 'hereditary office holder' and the petition under Section 8 of the Act is not liable to be dismissed for insufficiency of pleadings.

(Paras 2, 7, 9, 10 and 13)

Held, that a reading of clause (iii) of sub-section (2) of Section 16 of the Act would show that two facts have to be established in order to prove the institution as a Sikh Gurdwara (1) that the institution was established for use of public worship for Sikhs and (2) that in the institution Sikhs continued to publicly worship after the establishment of the institution upto the date of the filing of the petition under Section 7 of the Act. Both the above facts have to be established cumulatively and even if one of them is not established, the institution cannot be declared to be a Sikh Gurdwara.

(Para 39)

First appeal from the judgment of the Sikh Gurdwaras Tribunal, Punjab, Chandigarh dated 18th April, 1975 declaring that the institution described as "Gurdwara Sahib Padshahi Naumi, Sadhan" situate within the revenue estate of Nanhera, Tehsil and District Patiala to which Notification No. 318-GP, dated the 17th February, 1961, relates is a Sikh Gurdwara under the provisions of the Sikh Gurdwaras Act and we record an order accordingly and both the issues have been found against the petitioner, his claim under section 8 of the Act must fail and dismissing the petition.

Case referred by Division Bench consisting of Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice Surinder Singh on 1st November, 1985 to a Larger Bench as an important question of law is involved in the case. The Larger Bench consisting of Hon'ble Mr. Justice D. S. Tewatia, Hon'ble Mr. Justice M. M. Punchhi

and Hon'ble Mr. Justice S. S. Sodhi finally decided the case on 22nd July, 1986.

P. K. Palli, Sanjay Joshi, B. S. Shant, and Anant Viney, Advocates, *for the Appellants.*

Narinder Singh and B. S. Guliani Advocates, *for the Respondents.*

JUDGMENT

D. S. Tewatia, J.

(1) The State Government on receiving a petition under section 7(1) of the Sikh Gurdwaras Act, 1925, hereinafter referred to as the Act, seeking a declaration that the institution known as 'Gurdwara Sahib Padshahi Naumi, Sadhan' at village Nanhera, Tehsil and District Patiala, be declared a Sikh Gurdwara and after issuing a notification in terms of section 7(3) of the Act, issue a notice to Dharam Dass petitioner, appellant herein (hereinafter referred to as the petitioner), under section 7(4) of the Act. The petitioner, in turn, filed a petition under section 8 of the Act seeking a declaration that the institution in question asserted to be a Sikh Gurdwara was not such a Gurdwara.

(2) The Sikh Gurdwaras Tribunal appointed in terms of section 12 of the Act on receiving the petition of the petitioner on being forwarded to it by the State Government under section 14 of the Act tried the same. On the basis of the pleadings, the Sikh Gurdwaras Tribunal, hereinafter referred to as the Tribunal, framed only one issue viz. 'whether the Gurdwara in dispute is a Sikh Gurdwara ?', as the preliminary objection that 'the petition was incompetent because the petitioner has not specifically averred that he had moved the application as a hereditary office-holder' was not pressed in view of the contents of paragraph 4 of the petition by the counsel for the respondent Shiromani Gurdwara Parbandhak Committee, Amritsar, hereinafter referred to as the respondent S.G.P.C., on 15th November, 1962. However, later on, by order dated 29th July, 1964, the Tribunal framed the second issue viz. 'Whether the petitioner is a hereditary office-holder.

(3) The Tribunal decided both the issues against the petitioner and in favour of the respondent S.G.P.C. Aggrieved by the said order the Tribunal, the petitioner approached this Court in appeal.

(4) The Division Bench, before whom the appeal (F.A.O. 216 of 1975) came up for hearing by its order, dated 1st November, 1985, referred the appeal to be decided by a larger bench. That is how this appeal is before us.

(5) It is authoritatively settled by a Full Bench of five Judges of this Court in *Mahant Tehl Dass* v. *S.G.P.C.* (1), that competency of the petitioner, if called in question, has to be pronounced upon first, because once it is held that the person moving the petition under section 8 of the Act is not competent to file the petition, then there is no petition before the Tribunal to be decided and, therefore, it is not necessary to proceed to decide the question as to whether the institution in question is or is not a Sikh Gurdwara. Hence, it is the question of the competency of the petitioner to move the petition under section 8 of the Act that is to be dealt with first.

(6) Under section 8 of the Act, any hereditary office-holder, *inter-alia,* is competent to move the petition. The petitioner has allegedly moved the present petition in that capacity. In order to see as to whether the petitioner is a hereditary office-holder, it would be necessary to know as to what the expression 'hereditary office-holder' means. This expression comprises two meaningful words' 'hereditary office' and 'holder'. The expression 'heriditary office' has been defined by clause (iv) of sub-section (4) of section 2 of the Act in the following words :

> "2. In this Act, unless there is anything repugnant in the subject or context—
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> * * * * *
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> (4) * * * *
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> (iv) 'Hereditary office' means an office the succession to which before the first day of January, 1920, or, in the case of the extended territories, before the 1st day of November, 1956, as the case may be, devolved, according to hereditary right or by nomination by the office-holder for the time being, and 'hereditary office-holder' means the holder of a hereditary office."

(1) I.L.R. 1979(2) Pb. & Hary. 131.

It is not in dispute that the petitioner is the Mahant and Manager of the institution in question and so was his predecessor Karan Parkash and, therefore, the petitioner, or for that matter his predecessor Karan Parkash, has to be considered to be the 'office-holder'. The important question, however, that clamours for an answer is as to whether the office, which is held by him, is a 'hereditary office.'. The given office is to be considered a 'hereditary office' if its incumbent succeeded to it, before the first day of January, 1920 or in the case of the extended territories before 1st November, 1956, either according to hereditary right or by nomination by the office-holder for the time being, as envisaged by clause (iv) of sub-section (4) of section 2 of the Act.

(7) Now the question that arises for consideration is as to what do we understand by the expression 'devolved according to hereditary right'. This expression has not been assigned any special meaning in the Act. Therefore, as observed by Tek Chand, J. in *Gurdial Singh* v. *Central Board and Local Committee Sri Darbar Saheb, Amritsar,* (2), it has to be interpreted literally as signifying 'descended and capable of descending by inheritance from an ancestor to a heir-at-law'. In the Act, the Legislature has refrained from enacting any particular rule or mode of inheritance and it is a question of determination in each particular case. It is well-known and it has been so recognised judicially that every institution of the kind has its own custom governing the mode of inheritance whereby the Mahantship or managership, an expression which is assimilated to the term 'office' used in the Act, descends from one office-holder to the other, that is, from the predecessor to the successor of that office. There is also the judicial concensus that, for the purpose of satisfying the requirement of succession from ancestor to an heir-at-law in the case of institutions dealt with under the Act, the concept of spiritual relationship between the successor and the predecessor has been approximated to the content of agnatic relationship.

(8) While there has not been any judicial controversy as to the meaning and import of the expression 'devolved according to hereditary right', there has, however, been some confusion as to what should be pleaded in this regard and in the present case, the controversy between the parties as to the sufficiency of pleadings in this regard constitutes the core question.

(2) A.I.R. 1928 Lahore, 337.

(9) Before examining the contentions of the parties in regard to the sufficiency or insufficiency of the pleadings, it would be advisable to enlighten ourselves from the judicial precedents as to the stance that the Courts must adopt while interpreting the pleadings. In this regard, we would content ourselves by referring to the Full Bench decision of this Court in which Sandhawalia, J. (as he then was), who delivered the majority opinion in *Balbir Dass and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar* (3), while repelling the contention of the S.G.P.C. that because the petitioner in his petition had not described himself as the 'hereditary office-holder' of a Gurdwara and had felt content by merely mentioning himself to be the 'hereditary office-holder', observed—

> "..... To hold that if one, in such a petition, misses to use the word 'Gurdwara' he should for no other cause bench-suited on that ground alone would be subscribing to the theory of strictness and technicality of pleadings which appears to be almost medieval."

Sandhawalia, J. backed up his above view with the dictum of the Privy Council that in the moffussil, pleadings should never be strictly construed and the following observations of Bose, J. In *Kadar Lal Seal and another* vs. *Hari Lal Seal,* (4) —

> "The Court would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded."

The respondent S.G.P.C's. attack on the pleadings is two-fold : (1) that in the petition, the petitioner has merely referred to succession to the property and not to the office, and (2) that he has not pleaded the mode of descent or the custom regulating the inheritance. ...

Before examining the validity of the aforesaid two-fold criticism of the pleadings, it is at this stage necessary to reproduce the

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(3) I.L.R. (1979)1 Pb. & Hary. 257.
(4) A.I.R. 1952 S.C. 47.

relevant portion of the pleadings bearing upon the question :

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Petition Under Section 8, Sikh Gurdwaras Act, 1925 for declaration that institution mentioned as 'Gurdwara Sahib Padshahi Naumi, Sadhan' in the notification published in the Punjab Government Gazette, dated 17th February, 1961 is not a Sikh Gurdwara. The petitioner is a hereditary office-holder and is entitled to remain a Mahant in possession of the institution and its property.

Sir,

The petitioner prays as under :

* * * * *

3. That name of the institution has been wrongly mentioned with ulterior motives. The name is not 'Gurdwara Sahib Padshahi Naumi, Sadhan'. The institution is a Dera of the Udasi Sadhus Bhekh. It has Samadhan of the saints, which are worshipped by the people of the villages. It has a Mandir also which is worshipped by both Hindus and Sikhs of the locality.

4. This Dera has the property mentioned in the list published alongwith the notification. This property devolved on the Chela of the Mahant after his demise or if it pleases the Mahant in his life-time. The property devolves by inheritance and the petitioner is in possession of the property and the Dera as a Mahant and Mohtamim of the institution. He has every right, title and interest in the Dera and the property. No body else has got any right, title or interest in this Dera or property.

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A perusal of the aforesaid portion of the pleadings would show that in the title the petitioner has described himself a 'hereditary office-holder', in para 3 of the petition he has asserted that the institution has been wrongly mentioned as 'Gurdwara Sahib Padshahi Naumi,

Sadhan', and that, in fact, it is a Dera of Udasi Sadhu Bhekh, and in para 4 the petitioner has pleaded that the said Dera owns property which devolves on the Chela of the Mahant after his demise or if it pleases the Mahant in his life-time. The property devolves by inheritance and the petitioner is in possession of the property and the Dera as Mahant and Mohtamim of the institution.

(10) It is no doubt true that in para 4 of the petition the petitioner has not mentioned in so many words that the office of Mahantship devolves by inheritance from Guru to Chela nominated by his Guru after his death or if it pleases the Guru in his life-time. The petitioner has used the word 'property'. The pleadings however, are not to be construed literally and technically. One has to see the essence thereof and the intention flowing therefrom. In Para 4 of the pleadings it is mentioned that the Dera owns the property. The Dera is a juristic person. The juristic person does not die. So the question of the property of the juristic person devolving on someone does not arise. The property, which is in the name of the institution—a juristic person—would always remain in the name of the juristic person. Only the property of such a juristic person is managed and appropriated by the Mahant. In other words, the management and right to use the property of such a juristic person can devolve on no other person than the Mahant of the said juristic person. In other words, the Mahant is the *de facto* proprietor of the property attached to the Dera and it is so held by their Lordships of the Supreme Court in *the Commissioner Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Sirgur Mutt,* (5) In this regard, the following observations therefrom can be noticed with advantage :

> "In the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest, are blended together and neither can be detached from the other. The personal or beneficial interest of the Mahant in the endowments attached to an institution is manifested in his large powers of disposal and administration and his right to create derivative tenures in respect to endowed properties; and these and other rights of a similar character invest the office of the Mahant with the character of proprietary right which, though anomalous to some extent, is still a genuine legal right."

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

The petitioner, when he mentioned that the property of the Dera in question devolves on the Chela of the Mahant after his demise or if it pleases the Mahant in his life time, had, in fact, in his mind the office of Mahantship and had referred to the devolution thereof from Guru to Chela by inheritance.

(11) In view of the above, we find no merit in the first limb of the criticism of the pleadings.

(12) While dealing with the second aspect of the criticism of the pleadings that the petitioner had not pleaded the custom regulating the succession to the Mahantship, it would be necessary to notice from para 4 of the pleadings that the petitioner has pleaded that the property devolves by inheritance on the Chela from the Mahant after his death or if it pleases the Mahant in his life-time. We have already held that the petitioner, while referring to the devolution of property, has to be understood to be referring to the devolution of the office of Mahantship. When so read the petitioner has in para 4 of the petition pleaded that Mahantship devolved by inheritance from Guru to Chela after his death or if it pleases the Mahant during his life-time. In other words, the petitioner has pleaded the custom relating to the succession which, according to him, is from Guru to Chela.

(13) According to the learned counsel for the respondent — S.G.P.C., it was not enough to plead that succession was from Guru to Chela. He wanted to know to what would happen if there was more than one Chela or if the Chela was a minor or if the Guru neither left a Chela behind or nominated his successor or if the Chela left behind was unfit to hold the office. The learned counsel canvassed that the custom of the institution must have provided for all such eventualities and, therefore, the custom dealing with the mode of succession in all its comprehensiveness should have been pleaded. The learned counsel sought to sustain his aforesaid submission from a Full Bench decision of this Court reported in *Hari Kishan Chela Daya Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others* (6), and drew pointed attention to the following observations of Dhillon, J., who delivered the opinion for the Bench:

> It is well established that each institution is governed by its own usage and custom which must be specifically alleged

(6) A.I.R. 1976 Pb. & Hary. 130.

in the pleadings and proved consistently by cogent evidence. The rule of majority of shrines is no guide and particular custom of a particular shrine has, therefore, to be alleged and proved. Their Lordships of the Privy Council in Committee of Management of Gurdwara Panja Sahib *v.* Lieutenant Sardar Mohammad Nawaz Khan, A.I.R. 1941 P.C. 56, laid down as follows in the context of the succession to religious endowments :

'Ascetics and religious institutions exhibit great diversity of character and Udasis in Particular conform to no single type. In any case to presume that a particular Udasi shrine followed a certain practice because on account of all religious institutions throughout the province the practice was found to obtain in a majority of the cases is a course of reasoning unwarranted by principle or authority.'

Following the above decision, S.R. Das, C.J., in Pt. Behari Lal *v.* Raghu Nath Gir, 1950—52 Pun. L.R. 78 = (A.I.R. 1951 Punj. 365), further elaborated the rule and held that there was no general custom of succession governing all religious institutions, and that each institution is governed by its own usage which has to be pleaded in the pleadings and proved consistently by cogent evidence.

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

The custom peculiar to an institution is evolved in course of time only if in its history the institution had come to face the given eventualities in regard to the succession. The manner in which the problem in the given eventualities came to be solved, becomes part of the custom of that institution dealing with the mode of descent. Ex-

perience shows that except in those cases where the founder prescribes the mode of succession, (which is not the case here), institutions, the like of which we are now dealing with are not akin to Companies floated with a memorandum of association, that is, when the institution is founded, its founder does not draw up the rules dealing with the succession to the office of that institution. Let us take ourselves back to the point of time envisaged in clause (iv) of sub-section (4) of section 2 of the Act. Suppose, the Mahant holding the office before that point of time, that is, 1920 in one case and 1956 in the other case of extended territories, was only the second generation of the Mahant, that is, he was the first Mahant to succeed to the founder of the institution. Let us also suppose that he was the only Chela of the founder Mahant. If this Chela Mahant of the founder was to move a petition under section 8 of the Act, what custom could be plead, excepting to say that his predecessor founder Mahant was his Guru and he was his Chela and that he had succeeded him. Again, it is not beyond the pale of possibility that successive Mahants had only one Chela each and after the demise of each incumbent Mahant, his only Chela succeeded him. In such a case, what could a last Mahant, while moving a petition under section 8 of the Act, in his capacity as 'hereditary office-holder', plead except to mention that in the given institution the succession of Mahantship is from Guru to Chela and that he was the 5th in line or whatever is the number of his generation. Could such a petitioner be non-suited on the ground that he had not pleaded the special custom providing for the eventualities of the kind alluded to in the aforementioned observation in *Hari Kishan's case* (supra) in regard to the succession. The answer, with respect would be an emphatic 'NO'.

(14) However, in a given case, it may so happen that the evidence adduced on the record suggests a mode of descent different from what is pleaded by the petitioner in his petition under section 8 of the Act. For instance, the petitioner had alleged that succession was in a particular institution from Guru to Chela, but what transpires from the evidence is that it has not been always so and that instances had been brought on the record where either a Gur-Bhai or Chacha Guru or a Bhatija-Chela of a Gur-Bhai (Chela of a Gur-Bhai) had succeeded the deceased Mahant. Now such instances of succession are not in accord with the pleaded custom that a Chela succeeds the Guru. In such a case, the petitioner ought to have pleaded that normally Chela succeeded the Guru but in given eventualities persons as mentioned in the instances could also succeed.

It is only then that the pleadings would be in accord with the evidence of succession brought on the record. Precisely such was the situation in *Hari Kishan's case* (supra). There, the plea taken was that succession was from Guru to Chela who was nominated by the deceased Guru, whereas documentary evidence placed on the record suggested that there had been succession in that institution from Chacha Guru to Bhatija-Chela and it was in the context of such divergence between the mode of actual succession to the office and the mode of succession pleaded in the petition that Dhillon, J. felt the necessity of observing (which observations have been relied upon by the counsel for the respondent S.G.P.C.) that the petitioner must plead the custom regulating the succession peculiar to the given institution. The learned counsel for the respondent — S.G.P.C., with respect, is not right in adopting the stance that the ratio of *Hari Kishan's case* (supra) is that in all cases custom regulating the succession peculiar to a given institution dealing with all eventualities pertaining to the mode of succession must be pleaded. This, in our view, would be misreading of the judgment. That what the learned counsel for the respondent—S.G.P.C. considers to be the ratio of *Hari Kishan's case* (supra) is, in fact, not the true ratio of the said judgment is borne out from the later Full Bench decision in *Mahant Budh Dass and Mahant Purna Nand through his guardian Smt. Vidya Wanti Legal Rept. of Mahant Jiwan Mukta Nand* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar*, (7), in which the learned Judge, who delivered the opinion for the Bench in *Hari Kishan's case* (supra) was a member of the Bench. In *Mahant Budh Dass's case* (supra) the relevant portion of the pleadings was in the following words :

> "The landed property belonged personally to the ancestors of the present petitioner Mahant. The mutation stood in their personal names and the petitioner Mahant inherited the property given in the Schedule from his Guru. The succession devolves from Guru to Chela according to the custom of this institution and the Udasi Bhekh."

The aforesaid pleadings passed muster before the Full Bench, although the pleadings, so far as it concerned the succession, was merely this that succession devolved from Guru to Chela.

(7) A.I.R. 1978 Pb. & Hary. 39.

(15) In view of the above, we hold that the petition did not suffer from insufficiency of pleas in regard to the devolution of the office of Mahantship.

(16) Now the stage is set to consider the question as to whether the petitioner has established the fact that succession to Mahantship has been from Guru to Chela. The petitioner led oral as well as documentary evidence. Oral evidence in this regard comprised of the petitioner, Mahant Dharam Dass, himself as PW 5, Mahant Agya Ram, who claims to be the Siri Mahant of Udasi Bhekh, as PW 6; Mahant Karan Parkash, who claimed himself to be the Secretary of Udasi Bhekh, as PW 7; and Arjan Singh, a resident of village Nanhera, as PW 8. The documentary evidence dealing with this aspect comprises of Exhibit P. 9, which is an order dated 18th May, 1847 A.D. of the Collector (Deputy Commissioner) regarding measurement of land. This order pertains to the time when Nikoo Das Sadhu Udasi was Muafidar and the succession was described as Pusht Dar Pusht Chela Hai, that is, from Guru to Chela. Exhibit P. 10 is a pedigree—table of Harkook Malkan from fourth settlement. As per this pedigree-table, the record of rights starts from Hira Dass and goes upto Bhagat Ram. Exhibit P. 1, which is the settlement record of the first settlement, which both the counsel agreed was carried out in the State of Patiala and East Punjab States Union in the year 1861 BK. This document revealed that the land was held by Budh Dass Chela Nikoo Dass Fakir Udasi Muafidar as owner. Muafi was being held by him in his personal capacity. In this document, an extract from Kitab Bandobasti Doam pertaining to Khewat No. 69 relating to the village in question and forming part of Exhibit P. 1, shows Khasra No. 622, which is shown to be in the ownership of Budh Dass Mahant Muafidar measuring 1 Bigha and 14 Biswas, recorded as 'Ghair Mumkin, Samadh Fakirs'. Another extract from third settlement pertaining to Khewat No. 80, forming part of Exhibit P. 1, of this very village, in the column of ownership, records 'Budh Dass Chela Nikoo Dass Mahant Udasi'. Exhibit P. 4 is an extract from Muntkhib Khewat Asamiwar Khewat No. 77, Khatauni No. 80. This document indicates the land to be in the ownership of Shamlat of the village in question and Bhagat Ram Chela Budh Dass Sadh Udasi shown as occupancy tenant. Exhibit P. 5 is an extract from the same record as Exhibit P. 4 and pertains to Khewat No. 70, Khatauni No. 73. In this document, land is shown in the ownership of Bhagat Ram Chela Budh Dass and he is described as 'Qoam Sadh Udasi'. Exhibit P. 6 is an extract from fourth settlement Naksha Khewat Asaamiwar,

In this document, Bhagat Ram Chela Budh Dass Sadh Udasi is shown to be the owner of the land. Exhibit P. 7 is Naksha No. 3 Muafi from record of rights of fourth settlement pertaining to the year 1882 A.D. In this document, Bhagat Ram Chela Budh Dass is recorded as owner of the land. Exhibit P. 16 is Naksha Khasra Kishtwar showing Bhagat Ram Chela Budh Dass Sadh Udasi as Muafidar. Exhibit P. 17 is Naksha from Muafi Register of fourth settlement and shows Bhagat Ram Chela Budh Dass as Muafidar. Exhibit Petition 18 is an extract from the book containing fourth settlement. In this extract, the land is recorded under the ownership of Shamlat Deh and in the column of cultivation Bhagat Ram Chela Budh Dass Qoam Sadh Udasi is shown as occupancy tenant. Exhibit P. 19 is an extract from Jamabandis mentioned in Khewat Bandobast. This is an extract of the record of rights taken from the settlement record. In this document also, Bhagat Ram Chela Budh Dass Sadh Udasi is shown as occupancy tenant and Shamlat Deh is shown as the owner. Exhibit P. 2 is a copy of Mutation No. 88 regarding Muafi entered in the year 1913 and sanctioned on 19th January, 1914 by the revenue officer. In column No. 15, thereof, on the death of Bhagat Ram, Muafi is recorded in favour of his Chela Biram Dass and in the column of ownership, first Bhagat Ram is shown as owner of the land and on his death Biram Dass is shown as the owner. Exhibit P. 3 is a copy of Mutation No. 70/73 entered on 8th April, 1917 and sanctioned on 9th May, 1917. This document also refers to Biram Dass as Chela of Bhagat Ram. Exhibit P. 13 is a copy of Mutation No. 20 sanctioned by the revenue officer in favour of Biram Dass in respect of Muafi on 19th January, 1914 A.D. It shows that Mahantship on the death of Bhagat Ram devolved on his Chela Biram Dass and they are recorded as Udasi Fakirs Muafidars and owners of the land. Exhibit P. 8 is a copy of the Sanad Patta pertaining to the year 1868 BK, which reads:—

> "Sadhan Bhai Pherookean Dada-Ast-Sadhan-Bhai-ke Hasab Dastoor-Qadeem-Sadhan Sanad-Pa-Shad.",

and this is the oldest document on record. Exhibit P. 15 is a copy of Mutation entered on the death of Biram Dass in favour of his Chela Karan Parkash. The mutation is dated 2nd March, 1935. In this mutation, Karan Parkash is shown to have succeeded to his Guru Biram Dass as Chela. *The order further records that there is*

no other heir or successor. Exhibit P. 14 is an extract of Jamabandi for the year 1946-47 A.D. In this document, institution is described as Gurdwara Sahib Sadhan Be-eh-tman Karan Parkash Chela Biram Dass Sadh Udasi. In the column of remarks, reference is made to Sanad Muafi of 24th August, 1882 in favour of Gurdwara till existence of Mandir (templt). Exhibit P. 11 is a copy of the mutation of succession on the death of Karan Parkash in favour of Dharam Dass (petitioner in the present case) as his Chela which was sanctioned on 30th July, 1959.

(17) The stand projected by the respondent-S.G.P.C. through its oral evidence is that Mahant Bhagat Ram had two Chelas—Biram Dass and one Sodar—and Karan Parkash too had left behind lot of Chelas and in this case the fight for succession was between Puran Dass and Dharam Dass-the present petitioner, and that the successor used to be selected by the village Panchayat. The oral evidence in this regard comprises of RW 11 Sharam Singh; RW 12 Gurdev Singh; RW 1 Partap Singh; RW 2 Wazir Singh; and RW 9 Sobha Singh. No documentary evidence in support of the stand that there had been dispute regarding succession to Mahantship by more than one Chela of the deceased or that successor was used to be selected by the village Panchayat, has been adduced.

(18) RW 1 Partap Singh and RW 12 Gurdev Singh are the witnesses who have deposed to the fact that Bhagat Ram left two Chelas Biram Dass and Sodar Dass and that out of the two the Panchayat selected Biram Dass, Mahant Bhagat Ram must have died before the year 1913, because as per document Exhibit P. 2, which is a copy of the Mutation No. 88 regarding Maufi, the Patwari entered his report for sanctioning of mutation regarding Muafi in the year 1913. At that time, these two witnesses must be of very young age not more than 17/18 years in any case. It may be observed that it is the elders of the village who normally collect to decide any dispute in the village. Hence, their presence at such an occasion is not believable. One of these witnesses, namely, Partap Singh is no other person than the alleged murderer of Karan Parkash, Guru of the petitioner Dharam Dass. The judgment of the Sessions Judge acquitting Partap Singh (Exhibit P. 12) is on the record. His animosity and bias against the petitioner is evident. The other witnesses, namely, RW 11 Sharam Singh, RW 2 Wazir Singh and RW 9 Sobha Singh, stated that Karan Parkash left behind many Chelas, but the tie was between Dharam Dass and Puran Dass.

(19) On the other hand, there is the oral evidence of the petitioner's witnesses, which is unanimous, that Karan Parkash had only one Chela, Dharam Dass. Their evidence receives some support from the fact that Mahant Karan Parkash perhaps apprehended danger to his life and, therfore, before his death be got the land, which earlier stood in his name, entered in the name of Dharam Dass, as is evident from Jamabandi of the year 1954-55 annexed to Exhibit R. 3. Such an action is more in consonance with the factum of his having one Chela than with the factum of existence of more than one Chela.

(20) For the reasons aforementioned we hold that, in fact, neither Mahant Bhagat Ram had more than one Chela nor Karan Parkash had more than one Chela. As to Mahant in between these two Mahants, that is, Biram Dass, he too did not have more than one Chela, which fact is made evident by Exhibit P. 15, wherein it is mentioned that there was no other heir or successor to him.

(21) Question of choosing a successor arises when there is more than one person competing for succession. In the present case, there had been only one Chela and there had been no conflict with regard to succession to the Mahantship of this institution. Had there been any such conflict, it would have been reflected in the order of mutation. Hence, there is no question of successor to a Mahant being chosen by the village Panchayat. It is only in regard to the petitioner Dharam Dass that in the report of the Patwari it is mentioned in regard to 'Wasian walon' that he has been appointed as Mohtamin. This entry has to be judged in the context of the fact that prior thereto Mahant Karan Parkash had been murdered by Partap Singh RW 1 for the reason that Karan Parkash had thrown Granth Sahib into the well. The said entry by Patwari might have been made to create evidence favourable to the respondent-S.G.P.C.

(22) The office of Mahant was not a mere spiritual office to have been ignored by a contender—it carries wealth and power. The contender, if there had been any, would not have given it up without a fight and if there had been a fight, it would have been reflected in the mutation proceedings or through a dispute in the Civil court. However, whenever a successor is installed as Mahant, the other Mahants collect on that occasion, a symbolic turban is tied and at that stage it is normal for the villagers and other Tamashbins also to collect to watch the occasion.

(23) The documentary evidence adduced on the record by the petitioner clearly establishes that the founder Mahant was Hira Dass and the petitioner Dharam Dass was in the tenth generation, that is Hira Dass was succeeded by Har Log, who was succeeded by Sukh Chain, who was succeeded by Brahm Sura, who in turn was succeeded by Brahm Nikka (alias Nikko Dass), who was succeeded by Budh Dass, and Budh was succeeded by Bhagat Ram, who was succeeded by Biram Dass, who was succeeded by Karan Parkash, and Karan Parkash was succeeded by Dharam Dass Petitioner. Seven generations of Mahants are shown upto Bhagat Ram by pedigree-table Exhibit P. 10. Three further generations are represented by Biram Dass, Karan Parkash and Dharam Dass petitioner. Exhibit P. 9, which is an order of the Collector (Deputy Commissioner) regarding measurement of land for the purpose of grant of Muafi, was passed at the time when Mahant Nikoo Dass happened to be the Muafidar. In this document, the succession is described as Pusht Dar Pusht Chela Hai, that is, succession is from Guru to Chela. Exhibit P. 1 mentions Budh Dass as Chela of Nikoo Dass. Exhibits P. 5 to P. 7 describe Bhagat Ram as Chela of Budh Dass. Biram Dass is described as Chela of Bhagat Ram in Exhibits P. 2 and P. 13. Karan Parkash is described as Chela of Biram Dass in documents Exhibits P. 14 and P. 15. Budh Dass is described as Chela of Karan Parkash in Exhibit P. 11.

(24) For the reasons aforementioned, we hold that the petitioner has established that the Mahantship of the institution in question is a hereditary office, succession to which has devolved from Guru to Chela and that he is the current hereditary office holder of the said office, that is, he is the hereditary office-holder and, therefore, was competent to submit the petition under section 8 of the Act.

(25) Now coming to the second issue, it may be observed that the given institution is claimed to be a Sikh institution in terms of section 16(2) (ii) and (iii) of the Act, which provisions are in the following terms:

"16. (2) If the tribunal finds that the gurudwara—

(i) * * * * *

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

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

* * * *

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

* * * * * ."

The onus of this issue is upon the respondent -S.G.P.C. and it has to establish its case either under the provision of clause (ii) or clause (iii) of sub-section (2) of section 16 of the Act.

(26) The tradition that is sought to be established through oral evidence adduced by the respondent-S.G.P.C. is that the 9th Guru visited the Dera on his way to Delhi and asked the daughter of the Musand present there about the Musand and on being told that her father was out, 9th Guru is said to have cursed the Musand by saying that he (Musand) would always remain out; and that the institution was established to commemorate the visit of the 9th Guru.

(27) In regard to the tradition relating to the visit of 9th Guru to the Dera, the respondent-S.G.P.C. has led only oral evidence. The witnesses who have deposed to this fact are RW 1 Partap Singh who stated that his ancestors told him that the Gurdwara had been built in the memory of Padshahi Naumi and they had also told him that while Naumi Padshahi was on his way to Delhi and reached the village, he enquired as to where the Musand was. To this the daughter of the Musand replied by saying that her father was out. At this, the 9th Guru cursed the Musand by saying that he would always remain out; RW 2 Wazir Singh who stated that this Gurdwara was known as Gurdwara Padshahi Naumi Sadhan and that it was built in the memory of Padshahi Naumi. Padshahi Naumi was then

on his way to Delhi. Before Padshahi Naumi visited the place, there was a Gurdwara. It was managed by a Musand. He then narrated the same story as had been done by RW 1. The given story is said to have been narrated to him by Balwant Singh and Arjan Singh-both of them since dead, Balwant Singh having died two months before he gave evidence and Arjan Singh one year before the said date. They belonged to a village other than Nanehra; RW 3 Radha Singh who stated that according to the tradition, Guru Teg Bahadur passed through this village on his way to Delhi and it was in the memory of that that the Gurdwara was founded; RW 4 Didar Singh who stated that the Gurdwara was founded in the memory of the 9th Guru; RW 5 Chamel Singh who stated that the Gurdwara was built to commemorate the visit of the 9th Guru and to the same effect is the testimony of RW 6 Dalip Singh; RW 7 Sudagar Singh who stated that the Gurdwara was built in the memory of the 9th Guru, and that, people of the village say that it was founded for the worship of the Sikhs'; RW 8 Jagir Singh too related the tradition in regard to the Gurdwara that it was built in the memory of the 9th Guru when he visited this place on his way to Delhi; RW 9 Sobha Singh who stated that the institution was founded in the memory of the 9th Guru; and RW 10 who stated to the same effect that the Gurdwara was founded in the memory of the 9th Guru.

(28) The visit of a Guru to a place is treated as momentous and it could not be that there would not have existed any documentary or historical proof in that regard either in the revenue papers or in the books of Sikh history regarding the visit of the 9th Guru, particularly if a Gurdwara had been established in his memory. The name of the institution as Gurdwara Sahib Naumi Padshahi is not mentioned in any revenue record. What is more, there is no mention of this tradition either in the petition under section 7(1) of the Act or in the written statement of the respondent-S.G.P.C.

(29) In view of the above, the story regarding the given tradition appears to be an after-thought and the oral evidence in this regard cannot be treated to be reliable, or even be looked into for lack of pleadings.

(30) In order to establish the requirement of clause (iii) of subsection (2) of section 16 of the Act, the respondent-S.G.P.C. depends on the oral testimony, already referred to, and the documentary evidence comprising of Exhibits R. 1 to R. 9, whereas the case of the

petitioner in rebuttal rests on the oral testimony and the evidence comprising of Exhibits P. 1 to P. 19. Exhibits, R. 7, R. 8 and R. 9 are the same as Exhibits P. 11, P. 2 and P. 3.

(31) In order to see as to whether the respondent-S.G.P.C. has made out a case under the given provisions, it would be desirable to recapitulate the material evidence on the record, both oral and documentary. RW 1 Partap Singh, aged 70 years, resident of village Nanhera, stated that Guru Granth Sahib was the only object of worship in the Gurdwara in dispute; and that he had been seeing the said state of affairs from the time he achieved the age of discretion. He further stated that 500 Bighas of Muafi land was attached to the Gurdwara in dispute; that this land was donated to the Gurdwara by Bhai Sahib of Kaithal; that another 200 Bighas of land was also attached to the Gurdwara which was donated by the public; that Dharam Dass petitioner was the Mohtamim of the Gurdwara in dispute; and that when a Mahant of the Gurdwara dies, some Sadhus and public collect together and appoint another person as Mahant in his place. In cross-examination, he stated that Mahant Dharam Dass had succeeded Mahant Karan Parkash; that similarly Karan Parkash had succeeded Biram Dass; that Biram Dass and Karan Parkash were Udasi Sadhus and so is petitioner Dharam Dass. He admitted that he was prosecuted for the murder of Mahant Karan Parkash. He also admitted that a decree regarding Batai of the land attached to the Dera was passed against him. RW 2 Wazir Singh, aged 45 years, resident of village Dhurian, lent support to the testimony of RW 1 Partap Singh regarding the measure of the land attached to the Gurdwara. He stated that Guru Granth Sahib was the only object of worship in the Gurdwara. He had seen Guru Granth Sahib being worshipped in the Gurdwara for the last thirty years. In cross-examination, he admitted that he had seen three Mahants, namely, Biram Dass, Karan Parkash and Dharam Dass petitioner, who were all Udasi Sadhus. RW 3 Radha Singh, aged 75 years, resident of village Ghagga, stated that there was no object of worship apart from Guru Granth Sahib and that worship of Guru Granth Sahib continued right upto the day he came to give evidence. He also mentioned that there was no other historic Gurdwara in the village. RW 4 Didhar Singh aged 85 years, resident of village Chubki, too stated that the object of worship in the said Gurdwara was Guru Granth Sahib. He also stated that 561 Pakka Bighas of land was attached to the Gurdwara and that there was no other

Gurdwara in the village except the one in dispute. RW 5 Chamel Singh, aged 60 years, resident of village Buta Singh Wala, stated that the only object of worship was Guru Granth Sahib and that festivals like Gurpurbs were regularly celebrated there. The population of the neighbouring villages was predominently of Sikhs. He also stated that about 500 Bighas of land was attached to the Gurdwara and Bhai Udai Singh was the Principal donor of the land. In cross-examination, he stated that the petitioner and his predecessors, namely, Karan Parkash and Biram Dass, were Udasi Sadhus. RW 6 Dalip Singh, aged 60 years, resident of village Ugoke, deposed that the only object of worship was Guru Granth Sahib; that Gurpurbs and other festivals of the Sikhs were celebrated in the Gurdwara; that he had seen the Sikhs worshipping in the Gurdwara for the last forty years. RW 7 Sudagar Singh, aged 50 years, resident of village Nanhera, too stated that Guru Granth Sahib was the only object of worship ever since he came to age; and that the Gurdwara was accessible for public worship. He also stated that when he came to this village Mahant Karan Parkash used to read Guru Granth Sahib. He stated in cross-examination that the petitioner and his Guru might have been Udasi Sadhus. RW 8 Jagir Singh, aged 45 years, resident of village Nanhera, stated that the institution was used for public worship by the Sikhs and that the Gurpurbs were celebrated in this Gurdwara. In cross-examination, he stated that he was a refugee from West Pakistan. RW 9 Sobha Singh, aged 30 years, resident of village Nanhera, also a refugee, stated that eversince he came to this village he had seen the Gurdwara being used as a place of worship where Guru Granth Sahib was the only object of worship. RW 10 Rattan Singh, aged 32/33 years, resident of village Asmanpur, also a refugee from West Pakistan, stated that ever since he had come to village Asmanpur, he had been visiting the Gurdwara and that Guru Granth Sahib was the only object of worship in this Gurdwara. All these witnesses denied that there was any Samadh in or around the institution in question.

(32) The petitioner's witnesses in rebuttal have taken the stand that the institution was an Udasi Dera founded by Mahant Hira Dass connected with the petitioner in the 10th generation; that succession to the Gaddi was from Guru to Chela; and that Samadhs were worshipped in the institution.

(33) In regard to the oral testimony adduced by the respondent-S.G.P.C., it may be observed that only one person, who is the

original resident of village Nanhera, has come forward to lend support to the case of the respondent-S.G.P.C. and that is Partap Singh RW 1. 2/3 other witnesses are those who had come to this village after the partition of the country. The remaining witnesses are from other villages. None of the sixty persons, who had filed the petition under section 7(1) of the Act seeking the institution to be declared as a Sikh Gurdwara, has come forward to give evidence in support of the petition and the respondent-S.G.P.C.

(34) Oral evidence being by and large partisan and documentary evidence forthcoming on the record being in plenty, it would therefore, be safe to rest the Courts findings on the documentary evidence in regard to the origin of the institution and its true nature and character.

(35) Exhibit R.I is an extract from Jamabandi for the years 1929 relating to village Nanhera, Tehsil and District Sangrur (Jind State). In the column of ownership, the entry reads : 'Gurdwara Sahib Sadhan situate in this village under the management of Biram Dass, Chela Bhagat Ram Sadh Udasi'. In the column of remarks, the entry reads (in red ink): '*Vide* Sanad Muafi, dated 24th of August, 1882 Muafi is granted in respect of land measuring 153 Bighas 9 Marlas in favour of Guru Sahib under the management of Biram Dass till the existence of Mandir'. Exhibit R.2 is an extract from Jamabandi papers relating to village Nanhera for the year 1960-61 and in the column of ownership,, the entry reads: Gurdwara Sahib Sadhan situate in the area of the management of Karan Parkash, Chela Biram Dass Sadh Udasi'. Exhibit R.3 is the notification, dated 17th February, 1961 issued under section 7(3) of the Act, and published in the Punjab Government Gazette, dated 17th February, 1961. Exhibit R.4 is a copy of Robkar, dated 18th May, 1866, forthcoming on the record of case file No. 48, showing date of institution as 22nd March, 1879 and date of decision as 2nd April, 1879 relating to Muafi to land measuring 163 Bighas 12 Biswas situate in village Nanhera in favour of Budh Dass Sadh. The said Robkar reads :—

> "Today, Muafidar, aforesaid, appeared and the previous file perused. It is clear that the said land was granted Muafi as per order of the Financial Commissioner, with the approval of the Senior Commissioner Bahadur, till the life-time of Muafidar. The aforesaid Sadh is of very

good behaviour (character and also serves Guru Granth Sahib and also serves meals to the Fakirs and pilgrims. As an act of Dharam Arth, it is ordered that subject to the good behaviour (character) and (existence of) Ghar, the said land should remain Muaf for perpetuity and this Robkar having been placed on the file, its one copy be given to the Muafidar as Sanad (Certificate) and its one copy also be given in Tehsil Sangrur for placing the same on the file of Bandobast (settlement).

Sd. (In Urdu),

Dated 8th May, 1866."

Exhibit R.5 also relates to the Muafi enquiry, in which decision was taken on 29th of August, 1882, which when translated, reads:—

"On enquiry it is clear that there is Muafi to agricultural land measuring 167 Bighas 14 Biswas Pukhta, situate in village Nanhera in favour of Budh Dass, Chela Nikoo Dass, since past Muafidar produced copy of Robkar before Maharaja Sahib, deceased, in the Ijlas (meeting) on 24th July, 1864. Hence the Maharaja being of religious nature, he has granted Muafi for perpetuity regarding the given land, subject to good behaviour, rendering service to Guru Granth Sahib, giving meals to Sadhs and pilgrims in favour of Budh Das Chela Nikoo Dass Sadh."

A direction was also given to the officials not to demand new Sanad every year in respect of the Muafi land. The Muafidar was also directed that he should use himself the produce of the Muafi land.

(36) Exhibit R.6, an extract from Muafi File No. 591 pertaining to the year 1881 on the death of Budh Dass, Chela Nikoo Dass Sadh, in which it is recited that Muafi was granted to the deceased Mahant subject to good character and behaviour, performing path of Guru Granth Sahib and serving meals to the Sadhs and the pilgrims. As per previous practice, Muafi was granted in favour of Aad Ram Chela Budh Dass. It also contains a direction to the authorities not to demand new Sanad every year in respect of the produce of Muafi land.

(37) It is admitted even by the witnesses examined by the respondent, S.G.P.C. that succession to the Gaddi has been from Guru to Chela. The question of succession from Guru to Chela underscores a further fact that it is not a case of succession from father to son, who does not necessarily have to be incharge of any Dera, Gurdwara or other religious or charitable institution, whereas succession from Guru to Chela indicates that the Guru was a pious and religious man and was the head of some religious or charitable institution. The revenue records, starting from 1879 and before 1929, placed on the record, are primarily extracts from the Muafi file showing that the exemption from land revenue was granted to the Mahant in question on a consideration of the fact that the Mahant was of good character and he served Guru Granth Sahib and fed the Fakirs and way-farers. The Muafi in every case was granted in perpetuity to the Mahant in person, subject to continuous good conduct of the kind, including serving of Guru Granth Sahib.

(38) The Sikh Gurdwaras, as also some religious and charitable institutions like Deras of Sadhus—Udasi or Nirmala Bhekhs—existed in Punjab side by side. There were institutions, which were Gurdwaras but known as Deras or Dharamsalas and were managed by Mahants. The Mahants had been mismanaging such institutions which gave rise to a demand on the part of Sikh population to take over the management of their institutions from Mahants. That movement led to the passing of the Sikh Gurdwaras Act, 1925, providing for the declaration of religious institutions as Sikh Gurdwaras in accordance with the provisions of the Act. The area, where the present institution is located, was in the erstwhile Jind State, of which the ruler was a Sikh. We find for the first time from the Jamabandi of the year 1929 that the institution was not only being named as Gurdwara Sahib Sadhan, but also its being recorded in the column of ownership as owner of the land. Prior to 1929, starting from first settlement onwards, in the column of ownership, the name of the Mahant is mentioned and the institution has not been given any name whatsoever—neither of a Dera nor of a Gurdwara. The entry of column No. 4 of the year 1929 therefore naturally came to be repeated in the Jamabandi of the years (Exhibits P.14) 1946-47, 1954-55 and 1960-61. Jamabandi of the year 1954-55 is attached with the petition under section 7(1) of the Act moved by sixty worshippers to have the institution declared as a Sikh Gurdwara.

(39) To prove the institution as a Sikh Gurdwara under clause (iii) of sub-section (2) of section 16 of the Act, two facts have to be established; (1) that the institution was established for use of public worship by Sikhs: and (2) that in the institution Sikhs continued to publicly worship after the establishment of the institution up to the date of filing of the petition. Judicial concensus indisputably is that before the institution can be declared a Sikh Gurdwara, both of the above facts have to be established and if one of them is not established, the institution cannot be declared a Sikh Gurdwara. The institution being that old, obviously direct oral evidence of its establishment cannot be there. Therefore, if the documentary evidence is forthcoming on the record throwing light on the establishment and existence of the institution, then such evidence too would be a good evidence to form an opinion regarding the establishment of the institution.

(40) As already observed, the institution must have come into existence atleast in the life-time of Mahant Hira Dass. The earlier documentary record that we have pertains to the year 1868 BK. Exhibit P.8, which is Sanad Patta. The next document is Exhibit P.9, whch is an order of Collector (Deputy Commissioner) conducting an enquiry to find out as to whether the Mahant Muafidar was holding the land in excess of Muafi. In this document, the words used for Mahant Muafidar are 'Pusht Dar Pusht Chela Hai' and the Mahant Muafidar was at that time Mahant Nikoo Nath (Nikoo Dass).

(41) From the mere mention in the Muafi file pertaining to the exemption of payment of land revenue regarding the land owned by the Mahant that the Mahant is of good character and also serves Guru Granth Sahib or that he also reads Guru Granth Sahib, it is contended by Shri Narinder Singh, learned counsel for the respondent-S.G.P.C. that it must be presumed that the institution in question was a Gurdwara and must have been established for use by Sikhs as a place of public worship by them. The circumstances that Guru Granth Sahib was the only object of worship, as emerged from the oral evidence, was also pressed into service to reinforce the above inference.

(42) The learned counsel, Shri Narinder Sngh, placed reliance on unreported decisions of this Court in (*Shiromani Gurdwara Parbandhak Committee, Amritsar* v. *Sewa Dass Chela* (*Uttam Dass*), (8), (*Harchand Singh and others* v. *Shiromani Gurdwara*

(8) F.A.O. 106/65, decided on 24th December, 1970.

Parbandhak Committee, Amritsar and others), (9), (*Mahant Joti Sarup and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar and others,* (10), following *Sewa Dass Chela Uttam Dass's case*—supra (supra) of 1972 *Mahant Jawala Singh* v. *Shiromani Gurdwara,* (11), *Parbandhak Committee, Amritsar*), and (*Shri Sarup Dass* v. *Shiromani* (12), *Gurdwara Parbandhak Committee, Amritsar*), and also cited *Sohan Dass* v. *Btla Singh and others,* (13), *Puran Das Chela* v. *Kartar Singh and others,* (14), *Ram Kishan Dass* v. *S.G.P.C., Amritsar and another,* (15), *Ram Piari* v. *Sardar Singh and others,* (16), and *Gulab Das* v. *Foja Singh and others,* **(17).**

(43) Mr. Narinder Singh laid considerable stress on the fact that where the only object of worship in the institution for a long period is Guru Granth Sahib, the inference was irresistible that the institution was a Sikh Gurdwara. The main decision that he relied upon in this regard is by a Division Bench of this Court in *Sewa Dass, Chela Uttam Dass's case*—Supra (F.A.O. 106 of 1965), which has been followed later on in some of the unreported decisions mentioned above. The decisions relied upon are an authority for the peculiar facts of those cases, because such a broad proposition, in our view, may have relevancy when there is no documentary evidence indicative of the establishment of the institution and its character. Assuming that what is stated by the witnesses of the respondent-S.G.P.C., that Guru Granth Sahib was the only object of worship in the institution in question, to be correct would that be sufficient to conclude that the institution was established for use by Sikhs for public worship ? Such a question, their Lordships of the Supreme Court in *Shiromani Gurdwara Parbandhak Committee, Amritsar* v. *Mahant Kirpa Ram and others,* (18), posed to themselves in para 18 of the judgment, as would be evident from their

(9) F.A.O. 76/66, decided on 3rd May, 1978.
(10) F.A.O. 26/66, decided on 14th April, 1976.
(11) F.A.O. 38/72, decided on 13th September, 1982.
(12) F.A.O. 29/73, decided on 5th October, 1982.
(13) A.I.R. 1934, Lahore 180.
(14) 1934, Lahore 398.
(15) A.I.R. 1937, Lahore 290.
(16) A.I.R. 1937, Lahore 786.
(17) A.I.R. 1937, Lahore 826.
(18) A.I.R. 1984 S.C. 1059.

following observations:

> "It must be conceded that nearly a century after the setting up of the institution, Granth Sahib was venerated and read in this institution. Does it provide conclusive evidence that the institution was set up and used for public worship by Sikhs ?"

Their Lordships answered the question in the negative by observing that—

> "There is nothing to show that when Gulab Das Faquir Udasi Sect established the institution, he did it for use by Sikhs for the purpose of public worship. Later on, as the majority of the population of the village was follower of Sikh religion and as Udasis also venerate Granth Sahib, reading of Granth Sahib may have commenced and, therefore, generally speaking people may describe and revenue record may show it to be Gurdwara but that would neither be decisive of the character of the institution nor sufficient to bring the institution within section 16(2)(iii) of the Act."

In that judgment, their Lordships also held that Udasis were not Sikhs. They were between Sikhs and Hindus. They read and venerate Guru Granth Sahib and other Sikh scriptures and also subscribe to some of the Hindu practices and, therefore, in an institution of Udasi Sect one could visualise reading of Granth Sahib or veneration of Sikh scriptures. That itself was not decisive of the character of the institution. On the contrary, if the succession was from Guru to Chela and those Gurus were followers of Udasi faith and the institution was known as Dera of Udasi Bhekh and they followed some of the practices of Hindu traditional religion that would be completely destructive of the character of the institution as Sikh Gurdwara.

(44) A Division Bench of this Court in *Mihan Singh* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar*, (19) too held that from the mere fact that the only object of worship was Guru Granth Sahib, it could not be inferred that the institution was

(19) 1979 Curr. L.J. 21.

established for use by Sikhs for public worship. In this regard, the following observations are in point:

> "It was, however, argued that even if Gulab Singh had not established the said institution in its inception for the public worship by Sikhs, his Chela Mihan Singh, as his statement goes, had virtually converted it into a Sikh Gurdwara, as in his time Guru Granth Sahib was the only object of worship in the said institution and he himself, a Granthi, believed only in 10 Gurus and permitted everyone to enter the institution and worship. In support of this submission, reliance was placed on an unreported decision of this Court in (*Gurbachan Singh and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar and others,* (20). In that case with respect, the learned Judges of the Division Bench did not keep in view the requirements of clause (iii) of sub-section (2) of section 16 of the Act and also the fact that fulfilment of mere one requirement of the continued use, before or after the presentation of the petition by itself was not enough. To fulfil the requirement of clause (iii) it must also be established, in addition to that, that to begin with, the institution was established for public worship by Sikhs. The said decision, in our view, runs counter to the interpretation put by the Full Bench of this Court in the case of Mahant Budh Dass and Mahant Purna Nand (supra) on clause (iii) of sub-section (2) of section 16 of the Act, wherein fulfilment of all the three requirements of clause (iii) has been made obligatory before an institution can be declared a Sikh Gurdwara."

Another Division Bench of this Court in *Joginder Singh and others* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar,* (21), too, held that—

> "The fact that Granth Sahib is read in the institution, cannot also be a factor for treating the institution as Sikh Gurdwara, because the Udasis use the same sacred writings as the Sikhs and the recitation of Guru Granth Sahib in Udasi Dera is a common feature."

(20) F.A.O. 63/64, decided on 8th March, 1970.

(21) A.I.R. 1976 Pb. and Hry. 185.

In the present case, it is only in the year 1929 for the first time that the institution came to be described as Gurdwara Sahib Sadhan. Prior thereto, no name had been given to the institution at all. However, it is natural to infer that since the persons, to whom Muafi had been granted, have been described as Mahants, there must be in existence an institution, of which they were the Mahants. The expression 'Mahant', unless shown to the contrary, is connected with the institution known as Dera. Exhibit P.1 shows presence of Samadhs. Oral evidence adduced by the petitioner on the record shows that Samadhs were outside the building premises, which assertion has been admitted by one of the witnesses of the respondent—S.G.P.C. namely, R.W. 11. R.W. 11 even stated that 'the Samadhs of the previous Mahants are located in the lands of the institution in dispute.'

(45) The witnesses examined by the petitoner, on the other hand, stated that Samadhs are the only object of worship and, besides the Guru Granth Sahib, there are also the holy books of Hindus like Ramayan and Gita in the Dera and that no Gurpurbs are celebrated in the said Dera. The fact that no Gurpurbs are celebrated in this Dera is admitted by one of the witnesses of the respondent—S.G.P.C. and he is Sharam Singh, R.W. 11, who stated that—

> "I have been seeing the petitioner in the Dera ever since I shifted to Nanhera. I have never seen the festival of Gurpurbs being celebrated in the Gurdwara in dispute."

It is admitted by the witnesses of the respondent—S.G.P.C. that the petitioner and his Gurus were Udasi Sadhs. It is also beyond the pale of doubt that the Samadhs of the Gurus do exist outside the premises. The premises comprise of 5 rooms and a verandah—one room is 13′ × 16′, another room is 18′ × 28′, third room is 18′ × 13′ and fourth room is 18′ × 21½′ and a dilapidated room, the dimensions of which are not given, and then there is shown a small room without giving any dimensions, which is mentioned as Parkash Asthan,—*vide* Exhibit R.3/1, the site plan attached with the petition under section 7(1) of the Act by the sixty petitioners seeking the institution to be declared a Sikh Gurdwara.

(46) In a Sikh Gurdwara, Parkash Asthan is a focal point of the institution and that has to be the main hall, where the Guru Granth Sahib is read out to the congregation. The second distinguishing feature of a Gurdwara is the existence of a Nishan

Sahib (a flag post), as observed by their Lordships in *Pritam Dass Mahant* v. *Shiromani Gurdwara Parbandhak Committee,* A.I.R. 1984 S.C. 858. Their Lordships while distinguishing a Sikh Gurdwara from temple or Dera observed:

> "The Gurdwara is a place where a copy of Guru Granth Sahib is installed. The unique and distinguishing feature would always be the Nishan Sahib, a flagstaff with a yellow flag of Sikhism flying from it. This serves as a symbol of the Sikh presence.....There may be complexity of rooms in a Gurdwara for the building may also serve as a school or where children are taught the rudiments of Sikhism as well as a rest centre for travellers. Often there will be a kitchen where food can be prepared though *langar* itself might take place in the awning. Sometimes the Gurdwara will also be used as a clinic. *But its pivotal point is the place of worship and the main room will be that in which the Guru Granth Sahib is installed where the community gathers for diwan. The focal point in this room will be the book itself.*
>
> From the foregoing discussion it is evident that the *sine qua non* for an institution being a Sikh Gurdwara is that there should be established Guru Granth Sahib and the worship of the same by the congregation, and a Nishan Sahib as indicated in the earlier part of the judgment."

In the site pian, Exhibit R.3/1, there is no mention of the existence of Nishan Sahib nor there is any mention by any of the witnesses of the respondent—S.G.P.C. that there existed Nishan Sahib in the institution. The place shown in the site plan as Parkash Asthan, that is, the place where Guru Granth Sahib is read to the congregation, is the smallest place in the site plan, whereas the place for Parkash Asthan should have the biggest hall in the premises. To accord a small room for Parkash Asthan, in fact, fits in with the evidence of the petitioner that he used to read Guru Granth Sahib for himself. Since the Granth Sahib is not kept alongwith other books out of veneration, so a separate place is earmarked for keeping Granth Sahib and for its reading, even when read privately by the given individuals; and that is why it is the smallest place in the premises where Granth Sahib is shown to have been kept.

(47) In *Mahant Budh Dass's case* (supra)—A.I.R. 1978 Punjab & Har. 39—decided by a Full Bench of three Judges, evidence was forthcoming on the Muafi file showing that the Muafi was on account of travellers and wayfarers and that the Mahant was feeding the faqirs and those staying there. *It was further said that the Makan was kept in good condition and that Guru Granth Sahib was kept therein and Dhoop-Deep was performed. The respondent Committee, after referring to Exhibit R. 3, according to which the Muafi was till the existence of the Dharamsala as well as subject to the condition that Guru Granth Sahib was recited, urged that from the evidence on the record it was established that there was no other mode of worship except that of Granth Sahib in the Dera, that Granth Sahib was installed in the Dera and the Muafi was granted in favour of the Dera by a Sikh ruler and, therefore, according to the learned counsel, the only conclusion, which could be drawn, was that the institution known as Dharamsala or the Dera was established by Sikhs for the purpose of worship and use by the Sikhs.* The Full Bench repelled the contention with the following observations:

> "In *Arjan Singh* v. *Harbhajan Dass, A.I.R.* 1937 Lah. 280, the originator of the shrine was generally known as Udasi Fakir and the institution from its inception was more a charitable institution than the religious one. It was held that the mere reciting of the Guru Granth Sahib by Sikhs under the circumstances would not convert an institution which was Udasi from its inception into a Sikh institution. The facts in the present case are almost similar. It is clear from the discussion of the various documents referred to above, especially exhibit P. 22 that the Dera, to begin with, was founded by a Fakir Udasi, Mahant Garib Dass, and land was owned by him in his own name and the said Dera was more a cheritable institution than a religious one. Only Muafi was granted by a Sikh ruler subsequently. The mere fact that the grant of the Muafi was subject to the condition of the existence of the Dera as well as Guru Granth Sahib will not convert the Dera, in the present case, into a Sikh Gurdwara."

The facts are somewhat identical in the present case. Here also, the land had been shown in the ownership of the Mahants from the beginning right upto 1929. The institution must have come into

existence more than 100 years before the Muafi was granted. In the Muafi proceedings, the reference to the service of Guru Granth Sahib or reading of Guru Granth Sahib by the Mahant is referred to more as evidence of his good character and piety.

(48) Ratio of none of the decisions cited by the learned counsel for the respondent—S.G.P.C. covers the peculiar facts of the present case and, therefore, we do not consider it necessary to analyse them.

(49) For the reasons aforementioned, we hold that *Mahant Budh Dass's case* (supra), with respect, squarely covers the present case we have no hesitation in holding that the respondent—S.G.P.C. has failed to establish that the institution in question was established for use by Sikhs for the purpose of Public worship. In view of this, the institution cannot be declared as Sikh Gurdwara. We, therefore, allow this appeal and set aside the judgment of the Tribunal.

H.S.B.

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