FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital and C. S. Tiwana, JJ.

BALBIR DASS and others—*Appellants.*

versus

SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR—*Respondents.*

First Appeal from Order No. 117 *of* 1966

November 16, 1978.

Sikh Gurdwaras Act (VIII of 1925)—Sections 2(4)(i), (ii), (iv) and (v), 7(3) and 8—Objection petition under section 8—Failure to allege the institution as 'Gurdwara' therein—Such objections—Whether liable to be dismissed on that ground—Pleadings under section 8—Whether to be strictly construed.

Held, (per majority, S. S. Sandhawalia C.J. and S. C. Mital J., C. S. Tiwana, J. contra) that in compliance with section 8 of the Sikh Gurdwaras Act 1929 when a suitor uses the term of art claiming himself to be a hereditary office-holder, then by necessary implication from the definition itself he claims to be the hereditary office-holder of a Gurdwara. Once that is so, then the use of the term "hereditary office-holder" itself explicitly conforms to the alleged requirements of pleading the institution as a Gurdwara. If hereditary office-holder by virtue of its definition under the Act necessarily means one related to a Gurdwara, then to add afresh the word 'Gurdwara' thereto in the pleading would be either a mere surplusage or in terms would be tautologous. Having pleaded himself as a hereditary office-holder, an applicant, therefore cannot be necessarily compelled to repeat the word 'Gurdwara' when the same is explicit or in any case implicit in the term of hereditary office-holder. Again, the use of the word 'Gurdwara' with regard to the claim of hereditary office-holder in a petition under section 8 is no magic incantation that its mere absence should virtually render the most detailed, precise and explicit application thereunder as wholly infructuous. The larger purpose of the pleadings is no more than to indicate clearly and specifically the material stand of the parties. If the pleading in a petition under section 8 in terms makes it manifest that the claim of hereditary office-holder is being made with regard to the particular institution identified and notified by section 7(3) then by no rule of logic or principle can it be laid down that merely because the word 'Gurdwara' has not been used, the whole claim and the petition should be thrown out. (Paras 7 and 8).

Held, (per C. S. Tiwana, J. contra.) that if the institution in dispute is not alleged to be a 'Gurdwara', the petition under section 8 of the Act has necessarily to be dismissed. (Para 28).

Held, (per S. S. Sandhawalia, C.J. and S. C. Mital, J.) that an objection petition under section 8 of the Act is not in terms to be filed in a regular court of law or even before a Tribunal and in fact is merely to be forwarded to the Government under section 8 which may later go before the Tribunal for disposal. Such an objection petition may well emanate from a village or an obscure town. To hold that if one in such a petition misses to use the word 'Gurdwara' he should for no other cause be non-suited on that ground alone would be subscribing to the theory of strictness and technicality of pleadings which appears to be almost medieval. It is well settled and pleadings should never be strictly construed and this rule applies with even greater force with regard to presenting a petition to the Government under section 8 of the Act.

(Para 11).

Case referred by Division Bench consisting of Hon'ble Mr. Justice C. S. Tiwana and Hon'ble Mr. Justice Prem Chand Jain on April 25, 1978 to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice S. C. Mital and Hon'ble Mr. Justice C. S. Tiwana decided the question of law involved in the case.

First Appeal from the order of the Court of Shri Gurcharan Singh Member, dated 30th March, 1966 granting the respondent declaration that the institution notified as Gurdwara Sahib Dera Dewanain in the revenue estate of Handiaya, Tehsil Barnala, District Sangrur is a Sikh Gurdwara within the ambit of section 16(2)(iii) of the Sikh Gurdwaras Act, 1925.

Claim:—Petition under Section 8 of the Sikh Gurdwaras Act.

Claim in Appeal:—For reversal of the order of the lower Court.

B. S. Jawanda, Advocate, Naginder Singh, Advocate and R. S. Kathuria, Advocate, *for the appellant.*

Narinder Singh, Advocate, *for the Respondents.*

Balbir Dass etc. *v.* Shiromani Gurdwara Parbandhak Committee, Amritsar (S. S. Sandhawalia, J.)

S. S. Sandhawalia, C.J.

(1) I have the privilege of perusing the lucid judgment recorded by my learned brother C. S. Tiwana J. It is with considerable regret and equal diffidence that I feel compelled to record a view contrary thereto. Yet at the very outset it deserves to be highlighted that being conscious of the anomalous results that would necessarily follow from the interpretation he has placed on the relevant provisions of the Sikh Gurdwaras Act, 1925, my learned brother has categorically opined that there is a clear lacuna in the said statute which could only be remedied by the Legislature. I am unable to agree. Merely because the provisions of the Act pose some difficulties of interpretation would hardly be a ground for placing a construction thereon which leads to obviously anomalous consequences. One is straightaway reminded of the summing up of this principle in the authoritative work of Craies on Statute Law (Seventh Edition) at page 87:—

> "Therefore, if a too literal adherence to the words of the enactment appears to produce an absurdity or an injustice, it will be the duty of a court of construction to consider the state of the law at the time the Act was passed, with a view to ascertaining whether the language of the enactment is capable of any other fair interpretation, or whether it may not be desirable to put upon the language used a secondary, or restricted meaning, or perhaps to adopt a construction not quite strictly grammatical."

(2) The facts appear in full in the judgment of my learned brother. Nevertheless, to maintain the homogenety of this judgment, a brief resume thereof is inevitable. On an application preferred by 56 residents of village Handiaya, the institution known as Dera Dewana located therein was notified as a Sikh Gurdwara under section 7(3) of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the Act) on the 28th of July, 1961. Two applications under section 8 of the Act were moved against the aforesaid notification—one by Mahant Balbir Dass appellant individually and the other by the appellant along with 174 worshippers of the institution—claiming that the same was not a Sikh Gurdwara. Both the aforesaid petitions were forwarded to the Sikh Gurdwaras Tribunal under section 14(1) of the Act. A preliminary objection was raised on behalf of

the respondent that the appellant had not claimed himself to be a hereditary office-holder so as to entitle him individually to file a petition under section 8 of the Act. The appellant then presented an amended application making the necessary pleadings incorporating therein the specific plea that he was the hereditary office-holder and, therefore, entitled to challenge the notification as such and it is common ground that the same was allowed. Objection being then taken to the fact of the appellant being the hereditary office-holder, the following preliminary issue was struck by the Tribunal:—

> "Whether the petitioner is a hereditary office-holder to entitle him to bring the petition under section 8 of the Sikh Gurdwaras Act."

(3) This issue was decided in favour of the appellant by the Tribunal by an order, dated 23rd of March, 1965. But thereafter on the substantive issue whether the institution in dispute was a Sikh Gurdwara, the decision went against the appellant and he then presented the present appeal.

(4) During the course of the hearing of the appeal, however, a specific objection was raised on behalf of the respondent-Committee that because the appellant in his application under section 8 had not in terms alleged himself to be the hereditary office-holder of the *Gurdwara as such*, therefore, his petition was liable to be dismissed on that solitary ground alone. The Division Bench finding that the question was one of general importance and likely to arise in a number of other cases, has framed the following question for determination by this Full Bench:—

> "Whether the objections filed under section 8 of the Act by the hereditary office-holder or twenty worshippers are liable to be dismissed straightaway as the institution in dispute has not been alleged to be a Gurdwara?"

(5) Now, the core of the argument raised by Mr. Narinder Singh on behalf of the respondent-Committee is that unless the appellant (now represented by his legal representatives) had in terms pleaded himself as a hereditary office-holder of the Gurdwara or collectively as one of the twenty or more worshippers of the said Gurdwara, no petition under section 8 would be competent and he must be non-suited on that short ground alone. It was contended that the Act

being a special statute, is narrowly confined to determine only whether a particular institution is merely a Gurdwara or that it is a Sikh Gurdwara. It was contended that the *lis* under this jurisdiction cannot travel beyond this sphere and unless the appellant in terms pleads that the notified institution under section 7(3) is a Gurdwara of which he is either the hereditary office-holder or collectively one of the twenty worshippers of the same, the proceedings would be barred at the very threshold and the application under section 8 must be thrown out. It is, therefore, the respondent's stand that since the appellant had merely claimed himself to be the hereditary office-holder and averred that the said institution was a Dera, he should be put out of Court on this technical ground.

(6) It is manifest from the aforesaid contention that in essence the question framed and the argument raised on behalf of the respondent is clearly one related purely to the technicality of pleadings. In essence the claim on behalf of the respondent is that if the word 'Gurdwara' is not used for the institution with regard to which either the claim of the hereditary office-holder or being one of its twenty or more worshippers is made, then such a petition under section 8 should be rejected outright without more. With great respect I may say almost at the outset that such a stand appears to me as bordering on the hyper-technical and it cannot be easily countenanced. The relevant part of section 8 which relates to the presenting of a petition is as follows:—

> "When a notification has been published under the provisions of sub-section (3) of section 7 in respect of any gurdwara, any hereditary office-holder or any twenty or more worshippers of the gurdwara, each of whom is more than twenty-one years of age and was on the commencement of this Act or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be, a resident of a police station area in which the gurdwara is situated may forward to the State Government, through the appropriate Secretary to Government, so as to reach the Secretary within ninety days from the date of the publication of the notification, a petition signed and verified by the petitioner or petitioners, as the case may be, claiming that the gurdwara is not a Sikh Gurdwara ...".

(7) Now it is common ground that on the bare language of the aforesaid provision, it is mandatory for a single claimant thereunder to claim himself to be a *hereditary office-holder*. What, however, has to be forthwith borne in mind is the fact that this term is not one of common parlance and has been defined with meticulous precision in the Act itself. To understand its true connotation, one has, therefore to go back to the provisions of clauses (i), (ii), (iv) and (v) of sub-section (4) of section 2 of the Act and for facility of reference, these may be first set down:—

> "(1) 'Office' means any office by virtue of which the holder thereof participates in the management or performance of public worship in a gurdwara or in the management or performance of any rituals or ceremonies observed therein and 'office-holder' means any person, who holds an office.
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> (ii) 'Present office-holder' means a person who, on the commencement of this Act, or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be, holds an office.
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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.
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> (v) 'Present hereditary office-holder' means a person, who on the commencement of this Act or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be, is a hereditary office-holder."

It is manifest from the above that the terms "office-holder", "hereditary office-holder", etc., are defined with a degree of precision which deserves particular notice at the very inception. In particular it deserves recalling that the word 'office' as defined inevitably pertains to a Gurdwara. Once that is so, it is evident that the terms "office-holder", "past and present office-holders" and "past and present hereditary office-holders" are all terms inevitably related to a Gurdwara. It follows, therefore, that in compliance with section 8

when a suitor uses the term of art claiming himself to be a hereditary office-holder, then by necessary implication from the definition itself he claims to be the hereditary office-holder of a Gurdwara. Once that is so, even if the contention on the side of the respondent may be assumed to be correct (entirely as a matter of argument), then the use of the term "hereditary office-holder" itself explicitly conforms to the alleged requirement of pleading the institution as a Gurdwara. If hereditary office-holder by virtue of its definition under the Act necessarily means one related to a Gurdwara, then to add afresh the word 'Gurdwara' thereto in the pleading would be either a mere surplusage or in terms would be tautologous. The claim of the respondent that the word 'Gurdwara' must be used along with the term "hereditary office-holder" would, therefore, be one seeking a pointless repetition of something which is already implicit in a legal term of art well defined in the statute. Having pleaded himself as a hereditary office-holder, an applicant, therefore, cannot be necessarily compelled to repeat the word 'Gurdwara' when the same is explicit or in any case implicit in the term of hereditary office-holder.

(8) I am again unable to see how the use of the word 'Gurdwara' with regard to the claim of hereditary office-holder in a petition under section 8 is such a magic incantation that its mere absence should virtually render the most detailed, precise and explicit application thereunder as wholly infructuous. The larger purpose of the pleading is no more than to indicate clearly and specifically the material stand of the parties. If the pleading in a petition under section 8 in terms makes it manifest that the claim of hereditary office-holder is being made with regard to the particular institution identified and notified by section 7(3), by what rule of logic or principle can one lay down that merely because the word 'Gurdwara' has not been used, the whole claim and the petition should be thrown out? If the intent and the institution with regard to which the claim is made have been made manifest, I am unable to see or detect any magic in a formula or the necessary use of a particular word, be it a 'Gurdwara' or otherwise.

(9) In fact when confronted with the extreme technicality or, if one may say so, the untenability of his stand, Mr. Narinder Singh had attempted to make a tactical retreat. He conceded that the word

'Gurdwara' is not necessarily the magic formula without which no petition under section 8 of the Act should be competent. However, he attempted to take a slightly vacillating stand by contending that a least something synonymous with the word 'Gurdwara' must be used in the pleadings and the phrase he attempted to coin in its place was—"an institution claimed by the Sikhs." I am not at all impressed by the terminology sought to be coined but the stand of Mr. Narinder Singh in this context in fact answers the question referred to us in its strictness. Once it is conceded that the use of the word 'Gurdwara' is not utterly mandatory and in its place some other terminology may be used, then it is plain that the answer to the question referred to us must necessarily be in the negative.

(10) It is then significant to notice that, as in the present case and in innumerable other ones, the particular petitioner's claim under section 8 may specifically be that the institution notified under section 7(3) of the Act is one radically different from a Gurdwara. For instance, it may be the categoric stand of the petitioner that the notified institution is in fact an *Udasi Dera* or a Samadh wholly and radically at variance from a Gurdwara. Now it is not in dispute that a petitioner under section 8 is entitled to allege and sustain such a claim. Indeed, Mr. Narinder Singh conceded before us that in many cases the Tribunal on evidence was compelled to come to the conclusion that the notified institution under section 7(3) was in fact a *Udasi Dera* or a *Samadh* which cannot even remotely come within the ambit of the word 'Gurdwara'. If that be so, when the claim of a petitioner under section 8 in specific terms is that the notified institution is something radically opposite to a Gurdwara, one fails to see how he must be compelled to plead that he is the hereditary office-holder of a Gurdwara when his intent is entirely the opposite. It is well settled that a party is not easily allowed to travel beyond his pleadings. If the petitioner under section 8 is once compelled to plead, as is the claim of the respondent, that the notified institution is a Gurdwara, then probably he might well be prejudiced in the trial by inviting an objection that he could not lead evidence to prove that the institution was something entirely its opposite. I am, therefore, unable to see how a person claiming that the notified institution is something radically different from a Gurdwara is nevertheless to be compelled to first say that he is the hereditary office-holder of a Gurdwara and then go on to lead evidence to the contrary. Herein it is instructive to refer to the observations of

the Division Bench in *Mahant Davinder Singh* v. *Shiromani Gurdwara Parbandhak Committee and another* (1), in a slightly different though analogous context of section 5(3) of the Act:—

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

(11) As was said at the very outset, the question before us is obviously with regard to the strictness and technicality of the pleadings which later go for trial. It is worth recalling that an objection-petition under section 8 is not in terms to be filed in a regular court of law or even before a Tribunal and in fact is merely to be forwarded to the Government under section 8 of the Act which may later go before the Tribunal for disposal. As in the present case, such an objection-petition may well emanate from a village or an obscure town. The petitioner under section 8 may seek legal advice or otherwise whilst preferring the petition at that stage. To hold that if one in such a petition misses to use the word 'Gurdwara', he should for no other cause be non-suited on that ground alone would be subscribing to a theory of strictness and technicality of pleadings which appears to be almost medieval. It is well settled since the long, standing and oft repeated dictum of the Privy Council that in the moffussil, pleadings should never be strictly construed. Those observations were made even with regard to pleadings in a regular civil Court. By an analogy, that rule applies with even greater force with regard to presenting a petition to the Government under section 8 of the Act. The essence of the matter was picturesquely put in the following words by Bose, J., speaking for the Court, in *Kedar Lal Seal and another* v. *Hari Lal Seal* (2):—

> "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."

(1) A.I.R. 1929 Lahore 603.
(2) A.I.R. 1952 S.C. 47.

(12) In fairness to Mr. Narinder Singh, learned counsel for the respondent-Committee, it remains to take brief notice of some of his ancillary contentions as well. In the last resort, he had also sought to place some reliance on the language of section 8 itself. It was contended that the same requires that the claim under section 8 must be that the Gurdwara is not a Sikh Gurdwara and unless the pleadings are technically in conformity thereof, the objector should be non-suited. Herein again I am unable to find much merit in this. As is well settled, a statute has to be construed as a whole and every section or sub-section thereof is not to be interpreted as if in isolation or in a vacuum. The proximity and the language of section 8 has obvious reference to section 7 and when read in proper context it appears to me as obvious that the reference to the word 'Gurdwara' with regard to the claim must be construed as the alleged Gurdwara or the institution so notified under sub-section (3) of section 7. Therefore, in an objection-petition under section 8, the use of any appropriate term necessarily related to, or coloured as it must be, by the real nature of the institution notified under section 7(3), should be more than amply sufficient.

(13) Reference may now be made to *Basant Singh* v. *Kartar Singh and others* (3), on which reliance was placed by the learned counsel. A perusal of that short judgment would, however, show that the issue before us now was not even remotely raised before the Bench. It is further evident that the matter was not even remotely or adequately canvassed before the Bench and there is reference neither to principle nor any authority for the observation in the small passage upon which much stress was sought to be laid by Mr. Narindar Singh. It is well settled as laid in *Quinn* v. *Leathem* (4), that what is binding in a case is the ratio thereof and not every passing observation made therein. This canon has the express approval of their Lordships in *State of Orissa* v. *Sudhansu Sekhar Misra and others* (5).

(14) In fairness to Mr. Narinder Singh, it might also be mentioned that he had cited *Committee of Management of Bunga Sarkar and*

(3) A.I.R. 1936 Lahore 213.
(4) (1901) A.C. 495.
(5) A.I.R. 1968 S.C. 647.

others v. *Sardar Raghbir Singh and others*, (6), *and Sant Angere Sahib Gurbhai Sant Chandge Dass* v. *S.G.P.C., Amritsar* (7), which in my view are so completely wide of the mark that it is unnecessary to either refer to them in detail or attempt to distinguish them. I am, however, of the view that the Division Bench judgment in *Sunder Singh and others* v. *Mahant Narain Das and others*, (8), relied upon by the respondent and adverted to also by my learned brother Tiwana, J., far from helping the case of the respondent, on the other hand erodes the stand taken by it. The material observations therein at page 925 are as follows:—

> "At this stage I might say that, in my judgment, it is not open to a petitioner or petitioners under S. 8 to dispute the existence of a Gurdwara, which may here be interpreted *as meaning a place of worship.* It can only be claimed that it is not a Sikh Gurdwara, i.e., Sikh place of worship.
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> The trial of a petition under S. 8 must thus pre-suppose that there are at least more than 50 worshippers and that there is Gurdwara *or place of religious worship frequented by them.* It cannot be contended in such a petition that there is no Gurdwara *or place of worship.*" (Emphasis supplied).

With great humility it appears to me that the aforesaid observations and particularly the portion underlined (in italics) therein would clearly negative the stand of the respondent that the use of the word 'Gurdwara' is imperative. Instead it appears to be self-evident from the above that reference may also be made thereto as the place of worship and if necessary, a place of religious worship frequented by those who claim to be its devotees. The aforesaid observations indeed run counter to the stand that there is some magic in the use of the word 'Gurdwara' and the sense indicated thereby cannot be implied by using different terminology to indicate the institution notified under section 7(3).

(6) A.I.R. 1951 Simla 257.

(7) F.A.O. 151 of 1955 decided on 9th October, 1975.

(8) A.I.R. 1934 Lahore 920.

(15) Before parting with this judgment, it deserves highlighting that before us it was the common case of the parties that the position with regard to the hereditary office-holder and the twenty worshippers of the institution is identical and what in law would be true in the context of the hereditary office-holders, as discussed above in the present case, would be equally applicable *mutatis mutandis* in the case of the twenty or more worshippers who may jointly present a petition under section 8.

(16) To conclude I would hold (with great deference to my learned brother C. S. Tiwana, J.) that the underlying purpose of a petition under section 8 and the pleading therein can at the highest require that the person or persons preferring the same should make it manifest that the same is with regard to the institution which has been so notified earlier under section 7(3) of the Act. If the language of the petition and the averments therein clearly indicate with absolute clarity that it pertains to the said notified institution, no magic formula beyond that would be the requirement of either law or logic. It would, therefore, be adequate to refer to the said institution by any terminology proper to such a place of worship or even as an institution notified under section 7(3) of the Act. In my view, it is not at all imperative that in a petition under section 8, the word 'Gurdwara' with reference to the notified institution must necessarily be used. Inevitably, therefore, I would return an answer in the negative to the question framed in the reference.

(17) In the light of the aforesaid legal position, the appeal would now go back to the Division Bench for a decision on merits.

S. C. Mital, J.—I agree with S. S. Sandhawalia, C.J.

C. S. Tiwana, J.

(18) The following question for determination has been referred to the Full Bench :—

> "Whether the objections filed under section 8 of the Sikh Gurdwaras Act by the hereditary office-holder or twenty worshippers are liable to the dismissed straightaway as the institution in dispute has not been alleged to be a Gurdwara."

(19) The reference was made by the Division Bench consisting of myself and Prem Chand Jain, J., during the course of the hearing of an appeal under section 16 of the Sikh Gurdwaras Act, hereinafter referred to as the Act. The appeal is on behalf of Balbir Dass and is directed against the order dated March 30, 1966, passed by the Sikh Gurdwaras Tribunal whereby Gurdwara Sahib Dera Dewanian situated at Handiaya in district Sangrur was declared to be a Sikh Gurdwara. Balbir Dass having died, his son and chela Sukhmindar Dass continued with the appeal as a legal representative of the original appellant. An application was forwarded by fifty-six Sikh worshippers of the Gurdwara to the State Government and then a notification dated July 28, 1961, under section 7(3) of the Act was published in the *Punjab Government Gazette*. Balbir Dass presented a petition dated October 16, 1961, to the Home Secretary under section 8 of the Act and the same was then forwarded to the Tribunal for its disposal. Balbir Dass, hereinafter referred to as the appellant, asserted that no Gurdwara was in existence. He himself was said to be in possession of the property of the Dera. He made this grievance that the notification under section 7 of the Act had been got issued by some Sikh persons who wanted to convert the Dera into a Gurdwara. It was further contended by him that he was the *mohtmim* of the property attached to the Dera. In answer to the notices issued by the Tribunal neither those fifty-six worshippers who had made a move for the declaration of the Gurdwara as a Sikh Gurdwara nor any of the one hundred and seventy-four objectors who had joined the appellant in raising the objections made their appearance before the Tribunal. The petition of the appellant was only opposed by the Shiromani Gurdwara Parbandhak Committee which was impleaded as a respondent by the order of the Tribunal dated January 29, 1963. It raised this preliminary objection that the appellant had not claimed himself to be a hereditary office-holder so as to entitle him to file a petition under section 8 of the Act. The appellant then presented an application for amendment which was allowed by the Tribunal. The appellant then introduced the following amendment at the end of the previous paragraph 1 of the petition :—

> "The Dera and its property have devolved upon the petitioner from his Guru Mahant Harbachan Dass. The petitioner is a hereditary office-holder and as such is entitled to make this petition."

The Shiromani Gurdwara Parbandhak Committee being not satisfied with the claim of the appellant then couched its preliminary objection in the following words :—

> "The petitioner is not a hereditary office-holder according to the provisions of the Sikh Gurdwaras Act. He must show that succession to the office of Mahant had devolved on 1st November, 1956 according to hereditary right. Each Gurdwara is bound by its own custom. The petition is silent about usage of this Gurdwara. The matter has not improved even by the amendment. Petition, therefore, merits dismissal on account of petitioner's admission in some paras of the petition."

On merits of the case the Shiromani Gurdwara Parbandhak Committee urged that the Gurdwara had been established for the 'use' of the Sikh worshippers and was still being used as such. Thus the plea of the respondent in fact was that the Gurdwara in dispute was a Sikh Gurdwara, which could be declared as such by taking into consideration the provisions of section 16 of the Act.

(20) At first the following preliminary issue was tried by the Tribunal :—

> "Whether the petitioner is a hereditary office-holder to entitle him to bring the petition under section 8 of the Sikh Gurdwaras Act".

This issue was decided in favour of the appellant by the Tribunal by an order, dated March 23, 1965. Thereafter the following issue on merits was framed:—

> "Whether the institution in dispute is a Sikh Gurdwara?"

This issue having been decided against the appellant, he alone and not any of the other worshippers felt aggrieved and filed the appeal in June, 1966.

(21) Before the Division Bench the respondent challenged the finding of the Tribunal on the preliminary issue and tried to show by the averments made in the petition by the appellant and then in the statement given by him as P.W. 1 in support of the preliminary

issue that he cannot at all be deemed to be an office-holder of the Gurdwara and for that reason he did not have any *locus standi* to put forward any objection to the issue of the notification under section 9 of the Act declaring the Gurdwara to be a Sikh Gurdwara. The point for determination which has been referred to the larger Bench was considered to be of general importance which was likely to arise in a large number of cases.

(22) The word 'office' has been so defined in the Act as to mean any office by virtue of which the holder thereof participates in the management or performance of Public worship in a Gurdwara or in the management or performance of any rituals or ceremonies observed therein. The 'office-holder' is said to mean any person who holds any office. The term 'hereditary office' has then been separately defined. It is apparent that unless the appellant had asserted that the institution in which he was holding any office was a Gurdwara he could not have filed a petition under section 8 of the Act in his capacity as a hereditary office-holder. It is provided therein that hereditary office-holder or any twenty or more worshippers of the Gurdwara could file such a petition which could be sent to the Tribunal for determination of this fact whether the Gurdwara was not a Sikh Gurdwara. It is then claimed by taking note of the provision contained in section 9 of the Act that unless any of the two categories of the competent persons existed the State Government has necessarily to declare a Gurdwara to be a Sikh Gurdwara. It was thus incumbent both on the appellant and the other worshippers to make this allegation in the petitions filed by them that they wanted relief in respect of such an institution which was a Gurdwara. Unless this was done their *locus standi* could be succesfully challenged by the respondent. The Tribunal in its order, dated March 23, 1965, did not at all advert to this fact that the appellant was required to plead that he was an office-holder of a Gurdwara. It proceeded to determine this fact whether the appellant had a hereditary right without saying anything on the point whether the institution in dispute was a Gurdwara. There is discussion on this point that the succession of the mahants had been from guru to chela and on that reasoning the appellant was held to be hereditary office-holder of the institution in dispute without specifically giving a finding whether he claimed to be an office-holder in respect of a Gurdwara.

(23) The words 'Gurdwara' and 'Sikh Gurdwara' have been used at different places of the Act. 'Gurdwara' has nowhere been defined but some categories of Gurdwaras have been given in section 16 of the Act, so as to show what was meant by a Sikh Gurdwara. This much is, however, evident from the use of words 'Gurdwara' and 'Sikh Gurdwara' in the Act that there can be a Gurdwara which may be a non-Sikh Gurdwara. However, before there can be determination of a Sikh Gurdwara the institution has to be a Gurdwara. 'Gurdwara' can be said to have been used in the Act by keeping in view the dictionary meaning. A description of the Gurdwara has been attempted in the 'Encyclopaedia of Sikh Literature' by Kahn Singh of Nabha, which is a standard work for finding out the meaning of Punjabi words. 'Gurdwara' literally means a house of the Guru. The Guru referred to in this definition is none other than Shri Guru Granth Sahib. There could thus be no Gurdwara without a *parkash* of Shri Guru Granth Sahib. It has further been mentioned by Bhai Kahn Singh that there can be a school for students, a hospital for sick persons and a kitchen for the needy persons attached to a Gurdwara. It can also be used for giving protection to women and providing resting place for travellers. It can further be used for propagation of religion. All these are additional attributes of a Gurdwara, but the presence of Shri Guru Granth Sahib is an essential factor. Thus 'Gurdwara' virtually means such a public place of worship where Shri Guru Granth Sahib is installed. It is a point to be considered by this Bench whether a person who denies this very fact that the institution in dispute is a Gurdwara could have called upon the Tribunal to determine whether it was a Sikh Gurdwara or not. The petition of the appellant was under section 8 of the Act. Shorn of superfluous words and clauses not relevant for this case, section 8 would read as follows:—

> "When a notification has been published under the provisions of sub-section (3) of section 7 in respect of any gurdwara, any hereditary office-holder or any twenty or more worshippers of the gurdwara may forward to the State Government a petition signed and verified by the petitioner claiming that the gurdwara is not a Sikh gurdwara."

The claim has thus necessarily to be that the institution is a Gurdwara though this fact can be got determined from the Tribunal that it is not a Sikh Gurdwara.

(24) A particular difficulty has arisen for the appellant in this case that he felt aggrieved by a notification issued by the Government showing that the institution of which he was the head was notified to be a Gurdwara. He was unable to think of a better forum for the determination of his claim and he, therefore, filed a petition under section 8 of the Act. The Act does not contemplate the holding of any inquiry before the publication under section 7 of the Act and thus it was a case of real hardship for the appellant to think of any other relief which could be available to him. The scheme of the Act is that any fifty or more Sikh worshippers of an institution may claim it to be a Gurdwara and then get it declared from the State Government to be a Sikh Gurdwara. On receiving the petition it is incumbent on the State Government as provided in sub-section (3) of section 7 of the Act that it shall publish the petition. After it is so published, right to challenge that the institution is not a Sikh Gurdwara is given only to two specified categories of persons. The objector has to be a hereditary office-holder or has to join some other persons claiming themselves to be the worshippers of the Gurdwara. In the absence of any of these two bodies of persons in existence raising any objection to the notification, the State Government has necessarily to issue a further notification declaring the Gurdwara to be a Sikh Gurdwara under section 9 of the Act. Thereafter the publication of the notification becomes conclusive proof that the Gurdwara is a Sikh Gurdwara as provided by sub-section (2) of section 9 of the Act. The provisions are such that they clearly bar anybody from getting a determination whether the institution was in fact a Gurdwara or not. I consider it to be clearly a lacuna in the Act which has to be remedied by the legislature. Learned counsel for the appellant has raised some arguments for showing that the determination of this kind of dispute can be made by the Tribunal and that any mistake committed by it can be rectified in appeal by the High Court.

(25) The argument of the learned counsel for the appellant is that when the appellant in the amended petition asserted himself to be hereditary office-holder he should be deemed to be such an office-holder as defined in the Act. It is then urged that the words of section 8 of the Act already quoted above should be so interpreted that hereditary office-holder need not be of the Gurdwara. According to him, the words 'any hereditary office-holder' and 'any twenty or more Sikh worshippers of the Gurdwara' should be read disjunctively. Thus, according to him, the worshippers are to be of the

Gurdwara but the office-holder need not be of the Gurdwara. Let the words be read in the manner desired by the learned counsel for the appellant and yet, to my mind, such a reading does not resolve the difficulty. We have to read 'office-holder' by taking into account the definition of 'office' given in the Act, and if this is so, the office has to relate to a Gurdwara. When in the present case the appellant is denying the existence of a Gurdwara, it looks rather a contradictory stand that he should be deemed to have placed that he was claiming to be hereditary office-holder in respect of a Gurdwara. Learned counsel for the appellant made a reference to a special difficulty which existed for him to plead that any office in relation to a Gurdwara was claimed. According to him, it would have struck a death-knell of the case of the appellant if he had in the petition itself claimed that the institution was a Gurdwara. If it was in the back of the mind of the appellant not to admit about the existence of the Gurdwara it cannot now be urged that by pleading that he was an office-holder it should be deemed that he had taken up this position that the office was being claimed in respect of a Gurdwara.

(26) The second argument of the learned counsel for the appellant, though a bit more plausible, is that this Court should read into the provision of section 8 of the Act some words which do not exist and thereby resolve the difficulty. It has been urged that for the words 'claiming that the Gurdwara is not a Sikh Gurdwara' the words 'claiming that the alleged Gurdwara is not a Sikh Gurdwara' should be read. If it is once held that there is some lacuna in the Act, I do not consider it to be fair to remove that lacuna by effecting an amendment which is the province of the legislature. Furthermore, the Tribunal has a limited jurisdiction under section 16 of the Act for deciding whether a Gurdwara in respect of which a notification has been issued is a Sikh Gurdwara or not. If the argument of the learned counsel for the appellant was to be accepted, the jurisdiction of the Tribunal would be enlarged so as to decide whether a particular institution was in fact a Gurdwara or not. I am of the view that the case has to be decided on the basis of the actual words used and not by the addition of some other words at various places of the enactment.

(27) There are two authorities for the view that I intend to take, and no authority to the contrary has been cited. One of them is

mentioned in the order of reference. It is a Single Bench case and is *Basant Singh* v. *Kartar Singh and others* (3 supra). The following is the quotation from this authority:—

> "Moreover, if a person wishes to claim the benefiit of the section (section 8 of the Act), he must expressly assert that the place is a Gurdwara and that he holds any hereditary office attached to it. Not having done so, the plaintiff was not competent to lodge the petition and consequently has *no locus standi* to present the appeal.

The second is a Division Bench authority and is *Sundar Singh and others* v. *Mahant Narain Das and others,* (8 Supra). At page 925 the following holding occurs:—

> "At this stage I might say that, in my judgment, it is not open to a petitioner or petitioners under S. 8 to dispute the existence of a Gurdwara, *which may here be interpreted as meaning place of worship.* It can only be claimed that it is not a Sikh Gurdwara, i.e., Sikh place of worship..... The trial of a petition under Section 8 must thus presuppose that there are at least more than 50 worshippers and that there is Gurdwara or place of religious worship frequented by them. It cannot be contended in such a petition that there is no Gurdwara or *place of worship.*"

(28) Thus my answer to the question referred to is in the affirmative. If the institution in dispute is not alleged to be a Gurdwara, the petition under Section 8 of the Act has necessarily to be dismissed.

Order of the Court.

(29) In accordance with the majority view, the answer to the question before the Full Bench is hereby returned in the negative.

(30) The appeal is directed to be placed before the Division Bench for decision on merits.

N. K. S.