FULL BENCH

Before S S. Sandhawalia, C.J., S. C. Mital, B. S. Dhillon, A. S. Bains and S. S. Dewan, JJ.

MAHANT TEHAL DASS,—*Appellant.*

versus

SHIROMANI GURDWARA PARBANDHAK COMMITTEE,—*Respondent.*

First Appeal from Order No. 263 *of* 1971.

February 22, 1978.

Sikh Gurdwaras Act (VIII of 1925)—*Sections* 2(4) *(iv)*, 7, 8, 9 *and* 16—*Constitution of India* 1950—*Article* 26—*Petition under section* 8 *by a person claiming to be 'hereditary office holder'—Locus standi of the petitioner challenged—Such objection—Whether to be decided by the Tribunal—Tribunal finding the petitioner not a hereditary office holder—Assertion by the petitioner that the institution is not a Sikh Gurdwara—Tribunal—Whether bound to record a finding on this issue—Right of a religious denomination to challenge the nature of an institution—Whether taken away by section* 8—*Section* 8—*Whether ultra vires Article* 26.

Held, (per majority S. S. Sandhawalia, C.J., B. S. Dhillon, A.S. Bains and S. S. Dewan, JJ., S. C. Mital, J. contra.), that the jurisdiction of the Sikh Gurdwara Tribunal to go into the question of limitation or in a petition filed by the worshippers under section 8 of the Sikh Gurdwaras Act 1925, to enquire about the qualifications of the worshippers as prescribed under section 8 has been ousted by the Legislature by making specific provisions but in a case where the claim petition has been made by the hereditary office holder under section 8 of the Act the enquiry, whether such a person is hereditary office holder or not and consequently has *locus standi* to file the petition or not, has been left designedly by the Legislature to the jurisdiction of the Tribunal. It is not because of the provisions of Order 14, Rules 2 and 3 of the Code of Civil Procedure that the Tribunal is enjoined upon to decide the issue of *locus standi,* but it is because of the mandatory provisions of section 8 read with other provisions of the Act that such an issue, which the Legislature designedly left for the determination of the Tribunal, has to be decided by the Tribunal. The Legislature in enacting section 8 gave a right to object regarding the nature of the institution to or through two classes of persons namely, 20 or more worshippers and to the hereditary office-holder and to none else. As regards the 20 worshippers, the forwarding of the petition by the State Government to the Tribunal has been made final as the Tribunal cannot go into the question of *locus standi* in that

case but as regards the hereditary office holder, the scheme of the Act postulates that the said question of *locus standi* has to be decided by the Tribunal. Provisions made in section 8 of the Act provide the foundation on which the right to challenge the nature of the institution is based and this provision cannot be termed as merely procedural. If the issue of *locus standi* has not to be gone into by the Tribunal, then the provisions of section 8 will become redundant and in no case the Tribunal shall be determining whether the petition filed by the hereditary office holder is maintainable or not. Thus, a claim under section 8 of the Act can be made only by or through two specified classes of persons and if the said claim is not made by any of the said classes, the question whether the institution in question is a Sikh Gurdwara or not will not arise for determination before the Tribunal and there being no competent petition made under section 8 of the Act, the consequences as provided under section 9 of the Act are bound to ensue. (Paras 15, 19, 20, 22 and 24).

Held, (per majority S. S. Sandhawalia C.J., B. S. Dhillon, A. S. Bains and S. S. Dewan, JJ., S. C. Mital, J. contra.) that the provisions of section 8 of the Act have not debarred any religious denomination or part thereof from challenging the nature of an institution and any religious denomination or section thereof can challenge the nature of the institution either through hereditary office holder or through 20 or more worshippers. In order to constitute a denomination or any section thereof, there has to be a collection of individuals classed together in the same name. As is clear, section 8 makes a provision that twenty or more worshippers of the institution in question can lay claim to the institution that the institution is not a Sikh Gurdwara. A collection of individuals classed together under the same name which does not go even 20 in number, can hardly be classed a denomination or part thereof. Since section 8 does not take away the rights of any religious denomination from challenging the nature of an institution, it does not violate Article 26 of the Constitution of India 1950. (Paras 30, 31 and 32).

Held, (per S. C. Mital, J. contra.) that if in any proceeding before a tribunal it is disputed that a gurdwara should or should not be declared to be a Sikh Gurdwara, the tribunal shall before enquiring into any other matter in dispute relating to the said gurdwara, decide whether it should or should not be declared a Sikh Gurdwara. It is only when the tribunal records a finding that a gurdwara should be declared a Sikh Gurdwara that the provisions of section 17 come into play and the State Government is informed to publish a notification declaring the said gurdwara to be a Sikh Gurdwara. In the nature of things, before a person who is in possession of the institution and has been managing it is deprived, not only of his Mahantship, but also of the institution, it becomes imperative to decide

whether the institution in question is a Sikh Gurdwara. It was, thus, obligatory upon the tribunal to decide the vital issue as to whether the institution in question was a Sikh Gurdwara or not.

(Paras 50 and 57).

Held, (per S. C. Mital, J. contra) that by denying *locus standi* to the Mahant in possession of the institution to prove that the institution is not a Sikh Gurdwara, the result is that the Mahant has been deprived of his Mahanship and the religious denomination in question has been made to vest in the body created by Part III of the Act for the administration of Sikh Gurdwaras. Section 8 of the Act restricting the right of the religious denomination to protect itself through a hereditary office holder as defined in section 2(4) (iv) of the Act is, therefore, *ultra vires* Article 26(d) of the Constitution. Assuming that any of the non-Sikh institutions like a mosque or a church happens to be notified under section 7(3) of the Act to be declared a Sikh Gurdwara, then naturally the office bearers or persons vitally interested in the mosque or the church would be completely debarred from challenging the notification, for the simple reason that under no circumstance can they satisfy the requirement of section 8 as regards the *locus standi* and on this score also section 8 of the Act is constitutionally invalid.

(Paras 57 and 58).

Case referred by a Division Bench consisting of Hon'ble Mr. Justice M. R. Sharma and Hon'ble Mr. Justice Surinder Singh on 17th May, 1978 to a larger Bench for decision of an important question of law involved in the case. The larger Bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice S. C. Mital, the Hon'ble Mr. Justice B. S. Dhillon, the Hon'ble Mr. Justice A. S. Bains and the Hon'ble Mr. Justice S. S. Dewan returned the case to a Division Bench on 22nd February, 1979 for decision on merits.

First Appeal from Order of the court of the Sikh Gurdwaras Tribunal, Punjab, Chandigarh, dated the 29th June, 1971 dismissing the petition with costs under Section 8.

H. L. Sibal, Sr. Advocate, P. K. Pali, Advocate and R. C. Setia, Advocate with him, *for the appellant.*

Narinder Singh, Advocate, *for the respondent.*

JUDGMENT

B. S. Dhillon, J.—

(1) Pursuant to the provisions of sub-section (3) of section 7 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the Act), the State Government issued a notification, dated 26th June, 1966, regarding Gurdwara Smadh Baba Kair Dass situate within the revenue estate of village Faizulapur, Tehsil Sirhind, District Patiala. Mahant Tehal Dass, who claims to be a hereditary office-holder of the institution, which according to him belongs to the Udasi Bhekh, presented a petition under section 8 of the Act claiming that the Samadh Baba Kair Dass was not a Sikh Gurdwara. He claimed to be the hereditary office-holder of the institution and averred that the office descended from Guru to Chela.

(2) This petition was resisted on behalf of the Shiromani Gurdwara Parbandhak Committee, Amritsar, (hereinafter referred to as the Committee) and it was pleaded that Mahant Tehal Dass petitioner was not a hereditary office-holder of this institution and thus he had no **locus standi** to file a petition under section 8 of the Act. It was further claimed that the institution in question is a Sikh Gurdwara within the ambit of the provisions of section 16(2) (iii) of the Act.

(3) On the pleadings of the parties, the Sikh Gurdwaras Tribunal, Punjab, Chandigarh, (hereinafter referred to as the Tribunal) framed the following issues :—

1. Whether the petitioner is a hereditary office-holder ?
2. Whether the institution in dispute is a Sikh Gurdwara within the ambit of section 16(2) (iii) ?

(4) After a full-fledged trial, the Tribunal came to the conclusion that the petitioner had failed to prove himself as a hereditary office-holder and thus the petitioner had no **locus standi** to file the petition. The Tribunal consequently dismissed the petition.

(5) Mahant Tehal Dass challenged the order of the Tribunal in this appeal. The appeal came up before a Division Bench of this Court and the learned Judges constituting the Division Bench,— **vide** order dated 17th May, 1978, directed that the case be placed before my Lord the Chief Justice for constituting a larger Bench. The learned Judges constituting the Division Bench were of the opinion that the observations made in a Full Bench decision of this

Court in *Mahant Lachhman Dass Chela Mahant Ishar Dass* v. *The State of Punjab and others* (1) and another Full Bench decision of this Court in *Hari Kishan Chela Daya Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others,* (2) are irreconcilable and thus it was necessary to refer the matter to a larger Bench to resolve the controversy. It is in these circumstances that the appeal has been placed before a larger Bench.

(6) With a view to appreciate, if there are any irreconcilable observations made in the aforementioned two Full Bench decisions of this Court, it is necessary to make a mention of the ratio *decidendi* of the two Full Bench decisions. In *Mahant Lachhman Dass's case* (*supra*), the vires of the provisions of sections 3, 5, 7 to 14, 38 and, Schedule I of the Act were assailed on the grounds of the same being violative of Articles 13, 14, 19 and 26 of the Constitution of India. This attack was repelled by the Full Bench and it was held that the classification of the Gurdwaras enumerated in Schedule I on the one hand and the Gurdawaras to be dealt with under sections 7 to 14 of the Act on the other, is based on intelligible differentia having clear nexus with the objects of the Act and does not, therefore, suffer from constitutional inhibition of Article 14 of the Constitution. Section 8 of the Act was held to be not **ultra vires** Article 14 of the Constitution. It was further held that sections 3 to 7 of the Act do not infringe Article 26 of the Constitution and are, therefore, perfectly valid and **intra vires** the Constitution. It was further held that the word "Gurdwara" used in some of the provisions of the Act has reference to the "institution" comprising the "purpose" or "ideal" which owns all the property of the Gurdwara and not in the mundane sense implying the mass of earth, and the brick and mortar thereon, which is the physical place of worship in which Guru Granth Sahib may be installed.

(7) During the course of the judgment, the Full Bench while dealing with the contention of the learned counsel for the petitioner in that case, claiming the infringment of Articles 19(i) (f) and 26 of the Constitution, observed as follows :—

> "Mr. Gupta submitted that the basis of Article 19(i) (f) i.e., deprivation of property does not only apply to tangible

(1) I.L.R. (1968)2 Pb. & Haryana 499.
(2) AIR 1976 Pb. & Haryana 130.

property but even to an office. Counsel relied in this connection on the observations of the Supreme Court in the *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (3) wherein it was held that in the conception of Mahantship, as in Shebaitship, both the elements of office and property, of duties and personal interest are blended together and neither can be detached from the other, and that the word 'property' as used in Article 19(1) (f) of the Constitution, should be given a liberal and wide connotation and so interpreted, should be extended to those well-recognised types of interest which have the insignia or characteristics of proprietary right. The ratio of that judgment of the Supreme Court has, in my opinion no application to the cases before us. No office-holder of any non-Sikh institution is sought to be deprived of his office by any provision of this Act. Office-holders of Sikh institutions who could possibly be dispossessed of their offices were Mahants. In case of such office-holders, the property and the office remain separate and are not blended together as in the Supreme Court case. Mahants of Sikh Gurdwaras have been held to be mere custodians and managers in *Ram Parshad and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar and others,* (4). Moreover, provision is made in section 6 (in case of Schedule I Gurdwaras) and in section 11 (in respect of other Gurdwaras) for payment of compensation to any hereditary office-holder of a Gurdwara notified to be a Sikh Gurdwara or to his presumptive successor, etc. who may be sought to be deprived of his office on the vesting of the management of the Sikh Gurdwara in question in the S.G.P.C. The Act provides for full adjudication by the Tribunal, and as already indicated, provides various safeguards even after the declaration by the Tribunal and adjudication by the High Court that no one dispossessed of any property without having been provided with an adequate opportunity of being heard. The Act does not, therefore, place any unreasonable restriction on the fundamental right of the petitioners to acquire, hold or

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

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

dispose of property. It is, therefore, impossible to hold that Article 19(1)(f) of the Constitution has in any manner been infringed by any provision in part I of the Act.

Regarding the last contention advanced on behalf of the petitioners, i.e., the alleged infringement of Article 26 of the Constitution, it was half-heartedly argued by Mr. Gupta that the Act provides for machinery for taking away non-Sikh institutions, or their property from the persons in their possession and to hand them over to the Sikhs. It appears to me that no argument under Article 26 can arise in these cases as there is no claim in any of these petitions on behalf of a denomination or even on behalf of any section thereof. *Assuming, however, for the sake of argument that Lachhman Dass petitioner has come to this Court on behalf of Udasi Bhekh, it is significant to note that the Act does not even purport to deal with or touch any non-Sikh institution or its property.* It is not disputed and indeed it has been so held repeatedly that Udasis are not Sikhs though even Udasis do not conform to any single type. In the case of *Durgah Committee, Ajmer and another* v. *Syed Hussain Ali and others,* (5), it was held (paragraph 37 of A.I.R. report) that Article 26(c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. If the right to administer properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it, Article 26 cannot be successfully invoked. The Udasis neither had nor have claimed to have ever had any right to possess, or manage Sikh Gurdwaras. They can be effected only if they want to resist handing over a Sikh Gurdwara or its property. They have admittedly no such right. Article 26 has, therefore, no application to these cases."

(Emphasis Supplied).

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

(8) From the observations mentioned at the preceeding page, the learned Judges of the Division Bench construed that the Act does not purport to deprive anybody of his institution unless it happens to be a Sikh Gurdwara.

(9) In *Hari Kishan's case* (*supra*), another Full Bench decision of this Court, it was held that the Tribunal is not to decide whether the institution in question is a Sikh Gurdwara or not before adjudicating upon the *locus standi* of the person who claims himself to be the hereditary office-holder. This finding was arrived at in view of the scheme of the Act with special reference to the provisions of sections 8, 9, 12, 14 and 16 of the Act. It was held that where a claim under section 8 of the Act made on the basis of the claimant being a hereditary office-holder is found to have not been made by a hereditary office-holder, the petitioner has no *locus standi* to file the claim. In that case the petition has to be dismissed and it is not necessary for the Tribunal to determine the further issue as to whether the institution in question is a Sikh Gurdwara or not. This decision was construed by the learned Judges of the Division Bench to mean that even non-Sikh institutions could be declared to be Sikh Gurdwaras in case the claim petition is dismissed on the ground of *locus standi.*

(10) Since the correctness of the Full Bench decision of this Court in *Hari Kishan's case* (supra) was assailed by Mr. Sibal, the learned counsel for the appellant, it would be necessary to make mention about some of the relevant provisions of the Act. The Act was enacted with a view to provide for the better administration of certain Sikh Gurdwaras and for inquiries into matters and settlement of disputes connected therewith. This is so clear from the preamble of the Act. Section 2 of the Act provides for various definitions and section 2(4) (i) defines 'office' whereas section 2(4) (iv) defines 'hereditary office'. Section 3 makes a provision for forwarding of the list of property of the scheduled Gurdwaras to the State Government. Section 5 provides for petitions of claim to property included in a consolidated list; whereas section 6 provides for claim for compensation by a hereditary office-holder of a Notified Sikh Gurdwara or his presumptive successor. Under section 7 any fifty or more Sikh worshippers of a Gurdwara, of the qualifications prescribed thereunder, may forward to the State Government a petition praying to have a Gurdwara declared a Sikh Gurdwara.

The said petition has to be accompanied by the list of the property claimed for the Gurdwara and under sub-section (3) of this section, the State Government has to publish the petition and the list received. When a notification under sub-section (3) of section 7 of the Act has been published, any hereditary office-holder or any 29 or more worshippers of the Gurdwara may forward to the State Government within ninety days of the publication of the notification, a petition claiming that the Gurdwara is not a Sikh Gurdwara and may in such petition make a further claim that any hereditary office-holder or any person, who would have succeeded to such office-holder, may be restored to office on the grounds that such Gurdwara is not a Sikh Gurdwara and that such office-holder ceased to be an office-holder after that day. This petition may be made in view of the provisions of section 8. Proviso to section 8 is in the following terms :—

"8. * * * *

Provided that the State Government may in respect of any such Gurdwara declare by notification that a petition of twenty or more worshippers of such Gurdwara shall be deemed to be duly forwarded whether the petitioners were or were not on the commencement of this Act, (or in the case of the extended territories, on the commencement of the Amending Act, as the case may be), residents in the police station area in which such Gurdwara is situated, and shall thereafter deal with any petition that may be otherwise duly forwarded in respect of any such Gurdwara as if the petition had been duly forwarded by petitioners who were such residents."

(11) If no petition has been presented in accordance with the provisions of section 8 of the Act in respect of a Gurdwara to which a notification published under sub-section (3) of section 7 of the Act, relates, the State Government has to publish a notification declaring the Gurdwara to be a Sikh Gurdwara and in that case the publication of a notification under the provisions of sub-section (1) of section 9, shall be conclusive proof that the Gurdwara is a Sikh Gurdwara and the provisions of Part III shall apply to the Gurdwara with effect from the date of the publication of the notification. This has been so provided under section 9 of the Act.

(12) Under the provisions of section 10 of the Act, any person may make a petition of claim to property included in the list published under sub-section (3) of section 7 of the Act. Under section 11, a claim for compensation by a hereditary office-holder is entertainable.

(13) Section 12 provides for the constitution and procedure of the Tribunal for the purposes of deciding the claims made in accordance with the provisions of the Act.

Section 14 of the Act is as follows :—

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

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

(14) In view of the provisions of section 15 of the Act, the Tribunal has been empowered to join parties to the proceedings pending before it and to award costs.

Section 16 of the Act is in the following terms :—

"16 (1) *Notwithstanding anything contained in any other law in force,* if in any proceeding before a Tribunal it is disputed that a Gurdwara should or should not be declared to be a Sikh Gurdwara, the Tribunal shall, before enquiring into any other matter in dispute relating to the said Gurdwara, decide whether it should or should not be declared a Sikh Gurdwara in accordance with the provisions of sub-section (2).

(2) If the Tribunal finds that the Gurdwara—

(i) was established by, or in memory of any of the Ten Sikh Gurus, or in commemoration of any incident in the life of any of the Ten Sikh Gurus and was used for public worship by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7; or

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

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

(iv) was established in memory of a Sikh martyr, saint or historical person and was used for public worship by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7; or

(v) owing to some incident connected with the Sikh religion was used for public worship predominantly by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7;

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

(3) Where the Tribunal finds that a Gurdwara should not be declared to be a Sikh Gurdwara, it shall record its finding in an order, and, subject to the finding of the High Court on appeal, it shall cease to have jurisdiction in all matters concerning such Gurdwara, provided that, if a claim has been made in accordance with the provisions of section 8 praying for the restoration to office of a hereditary office-holder or person who would have succeeded

such office-holder under the system of management prevailing before the first day of January, 1920, or, in the case of the extended territories, before the first day of November, 1956, the Tribunal shall, notwithstanding such finding, continue to have jurisdiction in all matters relating to such claim; and if the Tribunal finds it proved that such office-holder ceased to be an office-holder on or after the first day of January, 1920, or, in the case of the extended territories, after the first day of November, 1956, it may by order direct that such office-holder or person who would have so succeeded be restored to office."

(15) From the scheme of the provisions of the Act, reference to which has already been made above, it is clear that the Gurdwaras, which were mentioned in the First Schedule regarding which a list of property was received under the provisions of section 3 of the Act were declared as Sikh Gurdwaras without any further determination. However, the petition of claim to property included in the consolidated list was still maintainable. The Gurdwara regarding which the notification was published under sub-section (3) of section 7 of the Act and there having been no petition presented in accordance with the provisions of section 8 of the Act in regard thereto, is to be straightway declared a Sikh Gurdwara in view of the provisions of section 9. However, the claim regarding the property included in the list published under sub-section (3) of section 7 of the Act is permissible under section 10 of the Act to any person who may lay claim to the said property. Section 8 of the Act restricted the right of filing the claim petition through two categories of persons, namely, the hereditary office-holder of the institution of the Gurdwara or twenty or more worshippers of the Gurdwara. In view of the proviso to section 8, the forwarding of the petition filed by 20 or more worshippers by the State Government shall be considered to be sufficient compliance of the provisions of section 8 of the Act regarding the petition filed by the worshippers and the Tribunal has no jurisdiction to go into this matter. Similarly, in view of the provisions of sub-section (2) of section 14 of the Act, the forwarding of the petition by the Government to the Tribunal shall be conclusive proof that the petitions were received by the State Government within the time prescribed in sections 5, 6, 8, 10 or 11, as the case may be, and in the case of a petition forwarded by worshippers of a Gurdwara under the provisions of section 8, shall be conclusive proof that the provisions of

section 8, with respect to such worshippers were duly complied with. It would thus be seen that the jurisdiction of the Tribunal to go into the question of limitation or in a petition filed by the worshippers under section 8 of the Act, to enquire about the qualifications of the worshippers as prescribed under section 8 has been ousted by the Legislature by making specific provisions but in a case where the claim petition has been made by the hereditary office-holder under section 8 of the Act the enquiry, whether such a person is hereditary office-holder or not and consequently has *locus standi* to file the petition or not, has been left designedly by the Legislature to the jurisdiction of the Tribunal.

(16) It is in the background of the above mentioned provisions that the Full Bench of this Court in Hari Kishan's case (supra) held that the issue of *locus standi* has been designedly left by the Legislature to be determined by the Tribunal and in case the petitioner has no *locus standi,* being not a hereditary office-holder of the institution, the necessary consequence, which follows, is the compliance with the mandatory provisions of section 9 of the Act, which specifically provides that if there is no claim petition made in accordance with the provisions of section 8 of the Act, the institution in question should be declared as a Sikh Gurdwara. The issuance of notification under section 9 of the Act would be conclusive so as to declare the institution as a Sikh Gurdwara. When section 9 notification is issued, the institution is declared a Sikh Gurdwara. It cannot be successfully contended that in that case a non-Sikh institution has been declared to be a Sikh Gurdwara. Where no petition is filed in accordance with the provisions of section 8, the necessary consequence follows under section 9 and the institution is declared as Sikh Gurdwara. The ratio *deci dendi* of the case nowhere runs counter to the ratio *deci dendi* of the Bench decision in Mahant Lachhman Dass's case (Supra). The observations made in Mahant Lachhman Dass's case (supra), that the Act does not purport to deprive any body of his institution unless it happens to be a Sikh Gurdwara, were correctly made in the context of the back ground and the provisions of the Act. The paragraph in which the said observations were made is self-explanatory and it is not necessary to make any comment to appreciate the observations made therein. It is, therefore obvious that there is absolutely no conflict in the observations made in Mahant Lachhman Dass's case (supra) and Hari Kishan's case (supra). The issues involved in the said two cases, which fell

for determination, were completely different and the observations made thereon were in the context of the issues which were involved in the two cases. I am, therefore, inclined to hold that there is no conflict in the observations made in the above mentioned two decisions reference to which has already been made in the earlier part of the judgment.

(17) Faced with this situation, Mr Sibal, the learned counsel for the appellant, then assailed the correctness of the view taken in Hari Kishan's case (supra). The main burden of the arguments of the learned counsel is that the provisions of section 8 of the Act are procedural; it is not necessary for the Tribunal to decide the issue of *locus standi* and when a petition claiming to have been filed by a hereditary office-holder has been forwarded by the State Government to the Tribunal, the Tribunal has no jurisdiction to go into the question whether the petitioner is a hereditary office-holder and has *locus standi* to file the petition and that in all cases the Tribunal is duty bound to decide the question whether the institution in question is a Sikh Gurdwara or not. It has been contended by the learned counsel that the provisions of section 16 of the Act have to be given full effect, notwithstanding anything contained in section 8 or any other provision of the Act, as according to the learned counsel, the *non-obstante* clause in this provision would supersede all other provisions of the Act and section 8 has not to be read on the statute book while interpreting section 16. In the alternative, it has been contended that if the view of the above referred to provisions of the Act as taken in Hari Kishan's case (supra), is upheld, in that case, the provisions of section 8 of the Act should be declared *ultra vires* Article 26 of the Constitution. The contention is that section 8 of the Act takes away the right of a religious denomination to challenge that the institution in question is not a Sikh Gurdwara.

(18) I am unable to agree with the contentions raised by the learned counsel for the appellant. As regards the argument regarding the *non-obstante* clause in the provisions of section 16 of the Act, it may be observed that the interpretation sought to be given to the words "Notwithstanding anything contained in any other law in force" as contained in section 16, to mean that no other provisions of this Act even has to be taken into consideration, cannot simply be given keeping in view the scheme of the Act. It would be noticed that *non-obstante* clause in the Act has been provided in

many other provisions of the Act. Wherever the Legislature wanted that in applying a particular provision of the Act, the other provisions of the Act itself should be excluded from consideration, a specific provision in that regard has been made in the *non-obstante* clause of the said sections of the Act. For instance, in section 38 of the Act, it has been provided as follows :—

> "33. (1) Notwithstanding anything *contained in this Act* or any other Act or enactment in force ..... ".

Similarly, same language has been used in section 127-A of the Act, where it has been specifically provided that notwithstanding anything contained in any other law for the time being in force or *in this Act* etc. While enacting *non-obstante* clause in section 16 the Legislature designedly did not exclude the application of the other provisions of the Act.

(19) Faced with this situation, Mr. Sibal, the learned counsel for the appellant, then contended that the *non-obstante* clause in section 16 of the Act would preclude the application of the provisions of Order 14, Rules 2 and 3 of the Code of Civil Procedure and, therefore, the question of decision of the issue regarding the *locus standi* need not be decided by the Tribunal. This argument is again without any merit. It is not because of the provisions of Order 14, Rules 2 and 3 of the Code of Civil Procedure that the Tribunal is enjoined upon to decide the issue of *locus standi*, but it is because of the mandatory provisions of section 8 read with the other provisions of the Act that such an issue, which the Legislature designedly left for the determination of the Tribunal, has to be decided by the Tribunal. It is not disputed that the Act being a Special Act, its provisions so far as they are not inconsistent with the provisions of the Code of Civil Procedure, have to prevail. This is so because of the provisions of sub-section (11) of section 12 of the Act. It would thus be seen that the contention of the learned counsel for the appellant as regards *non-obstante* clause in section 16 of the Act is without any merit.

(20) For the reasons given in Full Bench decision in *Hari Kishan's case* (*supra*),it is difficult to hold that the provisions of section 8 of the Act are merely procedural. The Legislature in enacting the said provisions, gave a right to object regarding the nature

of the institutions, to or through two classes of persons, namely, 20 or more, worshippers and to the hereditary office-holder and to none else. As regards the 20 worshippers, the forwarding of the petition by the State Government to the Tribunal has been made final as the Tribunal cannot go into the question of *locus standi* in that case, but as regards the hereditary office-holder, the scheme of the Act postulates that the said question of *locus standi* has to be decided by the Tribunal. Provisions made in section 8 of the Act provide the foundation on which the right to challenge the nature of the institution is based. This provision cannot be termed as merely procedural. Provisions of section 8 read with other provisions of the Act to which reference has already been made leave no doubt that the provisions of this section in addition to being mandatory are the very source of the right to challenge the nature of the institution.

(21) It was contended by Mr, Sibal the learned counsel for the appellant, that the provisions of section 8 of the Act, will not become redundant as observed in *Hari Kishan's case* (supra) as in the cases where in addition to the declaration claimed under section 8 that the Gurdwara in question is not a Sikh Gurdwara, further relief is claimed that any hereditary office-holder or any person who would have succeeded to such an office-holder under the system of management prevailing before the date mentioned in section 8, may be restored to the office, in that case if the Tribunal comes to the conclusion that the Gurdwara is not a Sikh Gurdwara, then the issue of hereditary office-holder shall be tried by the Tribunal in accordance with the provisions of sub-section (3) of section 16 of the Act. On the basis of this argument, it has been contended that the provisions of section 8 of the Act will not become redundant.

(22) This contention of Mr, Sibal is again without any merit. As observed earlier, section 8 is the foundation of the right on the basis of which a claim to challenge the nature of the institution is based if the issue of *locus standi* has not to be gone into by the Tribunal as has been contended, then the provisions of section 8 will certainly become redundant and in no case the Tribunal shall be determining whether the petition filed by the hereditary office-holder is maintainable or not. Further it is clear, where no other claim is made with regard to the restoration of the hereditary office-holder or his successor in that case, admittedly again it will not be necessary for the Tribunal to go into the question of hereditary office-holder.

(23) Even in cases where further claim regarding the restoration of the hereditary office-holder or his successor is made, in that case also the question of *locus standi* will not be gone into by the Tribunal. The determinaiton of the question of hereditary office-holder in that case will be with a view to find out whether hereditary office-holder of a non-Sikh institution has proved himself to be so for the purposes of restoration to the office, will not be determining the issue of *locus standi.* It would thus be seen that if the interpretation of section 16 as put forth by the learned counsel for the appellant is accepted in all exigencies the provisions of section 8 will become redundant. When the Legislature enacted a mandatory provision like the provisions of section 8 of the Act restraining the right of the persons to object to the nature of the institution, the said provision cannot be made non-existent by giving an interpretation that in one possible exigency, the question of hereditary office-holder will be gone into by the Tribunal and that also completely in different context than that of *locus standi.* As has been said, section 8 clearly provides as to who has the *locus standi* to file the claim petition. Even in a case where the other claim regarding restoration of the office-holder is made the issue will not be that of *locus standi* but the only issue which may arise, may be "whether the relief of restoration claimed for the hereditary office-holder is liable to be granted or not." It would thus be seen that if section 8 is not interpreted in the way as has been interpreted in *Hari Kishan's case* (*supra*), the provisions of section 8 will completely become redundant as the issue of *locus standi* will never be required to be decided at any stage of the proceedings in any case. Thus the observations of the Full Bench in *Hari Kishan's case* (*supra*), that section 8 would become completely redundant, have been correctly made keeping in view the scheme of the provisions of the Act. It may further be noticed that if in a given case where the petition is found to be not having been presented in accordance with the provisions of section 8 of the Act, and if no notification is issued under section 9 in that case the mandatory provision of section 9, will be violated. Of course, it may not be correct to say that in that case, the provisions of section 9 will become redundant but the fact remains that the said mandatory provisions shall stand violated.

(24) The contention that when a petition under section 8 of the Act is, made, whether it is made by the persons who have been specified under section 8 or not, and if the same is forwarded by

the State Government to the Tribunal, the Tribunal is called upon to decide the claim and the counter claim regarding the nature of the Institution to its finality irrespective of the fact whether the petition has been made by the persons who had *locus standi* to make it or not, is without any merit as this interpretation is not warranted by the provisions of the Act, for which elaborate reasons have been given in *Hari Kishan's case* (*supra*). According to the scheme of the Act, when a notification under sub-section (3) of section 7 of the Act has been made and no petition is filed in accordance with the provisions of section 8, the matter rests there and a notification under section 9 of the Act is issued, but if a claim petition has been made under section 8 by the persons who claim *locus standi* to do. so, in that case, the said petition is forwarded by the State Government under the provisions of section 14 to the Tribunal for decision. As regards the petition by the worshippers, their age, qualifications of they being worshippers and about their residence, etc. cannot be gone into by the Tribunal in view of the provisions of the the Act itself. Similarly as regards Limitation of both types of petitions the Tribunal has been debarred to go into the said question. But as regards the *locus standi* of the hereditary office-holder, this question has to be determined by the Tribunal. It is pertinent to note that there is no mention of forwarding the petition published under sub-section (3) of section 7 of the Act by the State Government to the Tribunal under the provisions of section 14 of the Act. Under section 15, the Tribunal has been given the power to add parties and it is only when a party in pursuance of the publication, files a written statement challenging the claim made under section 8 of the Act, that the institution in question is not a Sikh Gurdwara, only then on the pleading of the parties the issues are framed by the Tribunal. The notification issued under sub-section (3) of section 7 of the Act, is not a party of the pleadings before the Tribunal. The claim petition validly made under section 8 by a person who has a *locus standi* to make the same, is the only claim before the Tribunal which is then contested by the persons joining the proceedings under section 15 of the Act. The original 50 worshippers, who made the petition to the State Government under section 7 are not parties to the proceedings before the Tribunal and no notice is enjoined upon by the Act to be issued to the said worshippers. It is, therefore, not correct to say that there is a claim made under section 7 of the Act before the Tribunal that the institution in question is a Gurdwara and that there is a counter claim made under section 8 of the Act

that the institution is not a Sikh Gurdwara. The observations made by the Full Bench of this Court in *Mahant Lachhman Dass* v. *S.G.P.C., Amritsar* (6), in this regard, have been made in a completely different context. It is no doubt true that in the said decision, petition under section 8 has been described at one stage to be a counter claim but in subsequent part of the judgment, the said petition has been designated to be a claim petition. Even if some observations have been made in that regard in that Bench decision, the same have not been correctly made and as it appears, the petition under section 7 of the Act by 50 worshippers is a claim before the Government and not before the Tribunal nor it is forwarded to the Tribunal and it never forms part of the proceedings before the Tribunal. It is only the claim under section 8 made by the persons who claim to have *locus standi* to make the same which is forwarded under section 14 of the Act to the Tribunal and if there is a contest to the said claim on the basis of the pleadings so pleaded before the Tribunal, the contest is adjudicated upon. The reference to the claim and counter claim made under sections 7 and 8 of the Act in the two Division Bench decisions of the Lahore High Court in *Sunder Singh and others* v. *Mahant Narain Das and others* (7) and *Basant Singh* v. *Kartar Singh and others* (8), have also been made in different context and not in the context as is being sought to be now interpreted by Mr Sibal. It would thus be seen that the scheme of the Act, which is a Special Act, and the vires of which have been upheld by their Lordships of the Supreme Court in *Dharam Das etc.* v. *The State of Punjab and others* (9), which was a judgment challenging the Full Bench decision of this Court in *Mahant Lachhman Dass's case* (supra), clearly provides that a claim under section 8 of the Act can be made only by or through two specified classes and if the said claim is not made by any of the said classes, the question whether the institution in question is a Sikh Gurdwara or not, will not arise for determination before the Tribunal and there being no competent petition made under section 8 of the Act, the consequences as provided under section 9 of the Act are bound to ensue. It is pertinent to note here that their Lordships of the Supreme Court in *Dharam Dass's case* (supra) usefully pointed

(6) I.L.R. (1976)1 Pb. & Haryana 594.
(7) A.I.R. 1934 Lahore 920.
(8) A.I.R. 1936 Lahore 213.
(9) A.I.R. 1975 S.C. 1069.

out that even regarding the scheduled Gurdwaras the right to challenge the nature of the institution would only accrue if the petitioner has a *locus standi* to challenge. Their Lordships made these observations while examining the contention that the petitioner has been refused the right to be heard on the question of the nature of the institution while repelling the contention, their Lordships observed as under :—

> "The question would only arise if he has a *locus standi* to do so. But if he has not, the question whether under the provisions of the Act he could challenge the inclusion of the Gurdwara as a Sikh Gurdwara in Schedule I or the declaration under sub-section (2) of section 3 that it a Sikh Gurdwara need not be gone into."

(25) Their Lordships of the Supreme Court in the abovementioned case while considering the question of *locus standi* of a person who filed the petition under section 8 of the Act, categorically recorded a finding that the issue of *locus standi* has to be decided by the Tribunal in the following words :—

> " .. ..
>
> As to whether a person is a hereditary office-holder at the time of the presentation of the petition under section 8, will always be a case for the Tribunal to determine having regard to well-established rules of evidence by which Courts determine these matters. The assumption that if there is a break before 100 years of succession between a Guru and Chela, present incumbent will not be considered as a hereditary office-holder, is purely hypothetical and this Court will not venture to express its view on such an assumption. It is for the Tribunal to apply the law for determining as to whether the person who challenges the notification is a hereditary office-holder and has *locus standi* to do so."

(26) As I read these observations, their Lordships of the Supreme Court in so many words held that the question of *locus standi* shall have to be determined by the Tribunal. In my considered opinion the law laid down in *Hari Kishan's case* (*supra*) finds approval of their Lordships of the Supreme Court as is clear from the above observations.

(27) It is also not disputed that the provisions of sections 8 and 16 of the Act have been consistently interpreted by various Courts as have been interpreted in *Hari Kishan's case* (*supra*). In the said judgment, reference has been made to the various decisions of the Lahore High Court where similar view was taken. The Act was enacted in 1925 and thereafter, decisions of cases were rendered by the Tribunal, by the High Court and the Privy Council. Similarly, when the Act was extended to the erstwhile territories of the Patiala and East Punjab States Union, decisions have been rendered by the Tribunal, various Benches of this Court and the Supreme Court and not a single decision has been brought to our notice which interpreted the provisions of sections 8 and 16 of the Act in the way as Mr. Sibal wants us to interpret now. The rule of *stare decisis* will come into play as the Courts will always lend the view whereof not to disturb the construction which has been accepted for such a length of time. This litigation appears to be at the fag end now and to give a construction contrary to the construction which has been given for the last more than 50 to 60 years, would be upsetting the whole law. In this connection reference may be made to a decision of their Lordships of the Supreme Court in *Raj Narain Pandey and others* v. *Sant Prasad Tewari and others,* (10) wherein it was observed as follows:—

> "In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of *stare decisis* can be aptly invoked in such a situation. As observed by Lord Evershed M. R. in the case of *Brownesee Haven Properties* v. *Poole Coron,* (11), there is well established authority for the view that a decision of long standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision."

(10) A.I.R. 1973 S.C. 291.
(11) (1950) Ch. 574.

(28) It was contended by Mr. Sibal that if the judgment in Hari Kishan's case (supra) is over-ruled, in that case the observations made in *Mahant Lachhman Dass* v. *S. G. P. C., Amritsar* (6 supra), touching the same point as decided in *Hari Kishan's case (supra)* shall have also to be over-ruled. That appears to be so, but since I have come to the conclusion that the judgment in *Hari Kishan's case (supra)* is the correct exposition of the provisions of the Act: therefore, the observations made in *Mahant Lachhman Dass v. S.G.P.C., Amritsar* (6 supra) have been correctly made.

(29) The only other contention which remains to be dealt with advanced by Mr. Sibal is that if the provisions of sections 8 and 16 are interpreted in the manner as has been done in *Hari Kishan's case (supra)*, the provisions of section 8 of the Act will be *ultra vires* Article 26(b) of the Constitution of India. This contention is also without any merit. Article 26(b) of the Constitution is as follows :—

"26. *Freedom to manage religious affairs* :—

Subject to public order, morality and health every religious denomination or any section thereof shall have the right—

(a) * * * * * *

(b) to manage its own affairs in matters of religion ;

(c) * * * * * *

(d) * * * * * *

(30) It has been argued that section 8 has debarred the religious denomination or section thereof from challenging the character of the institution. This contention is really without any merit. As is clear from the provisions of section 8 of the Act, the religious denomination or any section thereof, has not been barred. Any religious denomination or section thereof can challenge the nature of institution either through hereditary office-holder or through 20 or more worshippers. Their Lordships of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Nutt* (3 supra) relied

on the definition of the word "denomination" as defined in Oxford Dictionary, which is in the following words :

> "The word "denomination" has been defined in the Oxford Dictionary to 'mean' a collection of individuals classed together under the same name; a religious sect or body having a common faith and organisation and designated by a distinctive name."

(31) It would be seen from the definition that in order to constitute a denomination or any section thereof, there has to be a collection of individuals classed together in the same name. As is clear, section 8 makes a provision that twenty or more worshippers of the institution in question can lay claim to the institution that the institution is not a Sikh Gurdwara. A collection of individuals classed together under the same name which does not go even 20 in number, can hardly be classed a denomination or part thereof. Dealing with the similar argument, in different context their Lordships of the Supreme Court while upholding the vires of the Act, in *Dharam Dass's case* (*supra*) made observations which are useful for determining the point in issue. It is pertinent to note that the very provisions of section 8 of the Act were under challenge as being unconstitutional on the ground of discriminatory and unreasonable. It was sought to be argued that the right conferred by section 8 of the Act on any hereditary office-holder confers that right only on a person who could trace his office as a hereditary office-holder from an unbroken line of Gurus to Chela and if there is any hiatus in that, such as for instance, the death of a Guru before he nominates his Chela or where a Guru marries and is disqualified and another person is appointed as a Mahant that person is not given the right to challenge the notification under sub-section (3) of section 7 of the Act. This contention was repelled by their Lordships of the Supreme Court as follows :—

> "If a hereditary office-holder within the meaning of clause (iv) of section 2 (4) cannot be found, then Section 8 provides for a challenge to the notification under sub-section (3) of section 7 by 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 the Act a resident of a police station area in which the Gurdwara is

situated. *Surely, if as is contended the Bhekh of a Sampradaya is entitled to nominate a successor where a Mahant could not nominate his successor, we presume that the Bhekh will have more than twenty worshippers who could challenge the notification.* We cannot assume that the Bhekh which nominated the Mahant would be of less than twenty worshippers. *If it had lesser number of worshippers than 20, it could hardly be called a Bhekh.* There is, in our view, nothing unreasonable or discriminatory in this provision."

(Emphasis Supplied).

(32) From the abovementioned observations, it is obvious that the challenge to the very provisions of section 8 of the Act was repelled by their Lordships of the Supreme Court and it was held that if a Bhekh had lesser number of worshippers than 20, it could hardly be called a Bhekh. The word "religious denomination" connotes a collection of individuals classed together under the same name. Even though their Lordships were considering the argument regarding the Bhekh and while examining the same observed that if a Bhekh had lesser number of worshippers than 20, it could hardly be called a Bhekh, yet in my considered view, these weighty observations of their Lordships equally apply in a case where the challenge to the vires of section 8 of the Act is being made on behalf of a "religious denomination or a part thereof" as violative of Article 26 of the Constitution. In the said case, the challenge was on behalf of a Bhekh and in the present case the argument is being raised on behalf of a "religious denomination" which word is much wider in connotation then the Bhekh. From what has been stated above, in my considered opinion, the provisions of section 8 of the Act have not debarred any religious denomination or a part thereof from challenging the nature of the institution. The religious denomination can challenge the nature of the institution through a hereditary office-holder or through 20 or more worshippers. The provision of this very section has been held by their Lordships to be not unreasonable or discriminatory in Dharam Dass's case (supra) in view of the background under which the Special Act was enacted. It would be seen that the constitutional validity of section 8 of the Act has already been upheld by their Lordships of the Supreme Court as the said section was neither found to be discriminatory nor unreasonable. While upholding the vires of the provisions of the Act,

their Lordships usefully averted to the object for which the Act was enacted in the following words :—

> "It must not be forgotten that the whole object of the Act was to reduce the chances of protracted litigation *in a matter involving the religious sentiments of a large section of a sensitive people proud of their heritage. The long history of the struggle of the Sikhs to get back their religious shrines to which reference has been made in the Sikh historical books make it amply clear that the intensity of the struggle, sacrifice and shedding of blood had made the Government of the day realize that a speedy remedy should be devised and accordingly the procedures prescribed in Sections 3 and 7 have been innovated by the Act. The provision of law which shuts out further enquiry and makes a notification in respect of certain preliminary steps conclusive, does not involve the exercise of any judicial function."* (Emphasis supplied).

(33) In view of what has been stated above, the law laid down in *Hari Kishan's case* (supra) and in *Mahant Lachhman Dass's* v. *Shiromani Gurdwara Parbandhak Committee*, (6 supra) is the correct view of the interpretation of the provisions of the Act.

(34) As regards merits, the question whether the appellant is a hereditary office-holder or not, has to be decided on the evidence adduced on the record of the case. The case may now be sent to the Division Bench for deciding the same on merits.

S. S. Sandhawalia, C.J.

I have the privilege of perusing the exhaustive judgments recorded by my learned brothers S. C. Mital and B. S. Dhillon, JJ. I entirely agree with Dhillon, J.

A. S. Bains, J.—I also agree with Dhillon, J.

S. S. Dewan, J.—I also agree.

(S. C. Mital, J.)

(35) I have had the advantage of going through the judgment of my learned brother B. S. Dhillon, J., but with utmost respect, I have not been able to persuade myself to agree with him on the points discussed herein.

In *Dharam Das etc.* v. *The State of Punjab and others,* (9 supra) their Lordships observed :—

> "The scheme of the (Sikh Gurdwaras) Act was that there were certain places of worship about which no substantial doubt existed and those places were forthwith placed in Schedule I, Part III which describes and regulates the manner of management could be made applicable by the speedy assertion of the claim made on behalf of the shrines to the property alleged to belong to it, which assertion was to be by petition to the Local Government (*vide* Sections 3 to 6). Secondly whether any place not included in Schedule I should or should not be placed for management under the provisions of Part II could be determined in the manner provided for in Sections 7 to 11. In respect of these Gurdwaras under sub-section (1) of Section 7 fifty or more Sikh worshippers of a Gurdwara, each of whom is more than twenty-one years of age and was on the commencement of the Act or, in the case of the extended territories from the commencement of the Amending Act, a resident in the police station area in which the Gurdwara is situated, may forward to the State Government, through the appropriate Secretary to Goverment so as to reach the Secretary within one year from the commencement of the Act or within 180 days from the commencement of the Amending Act, a petition praying to have the Gurdwara declared to be a Sikh Gurdwara. Under section 8 (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 the 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, so as to reach the

Secretary within ninety days from the date of the publication of the notification, a petition signed and verified by the petitioner, or petitioners, as the case may be claiming that the Gurdwara is not a Sikh Gurdwara, and may in such petition make a further claim that the hereditary office-holder or any person who would have succeeded to such office-holder under the system of management prevailing before the first day of January, 1920, or, in the case of the extended territories, before the 1st day of November, 1956, as the case may be, may be restored to office on the grounds that such gurdwara is not a Sikh Gurdwara and that such office-holder ceased to be an office-holder after that day. Section 9 deals with the effect of omission to present a petition under section 8. It provides that the publication of a notification under the provisions of sub-section (1) of Section 9 shall be conclusive proof that the Gurdwara is a Sikh Gurdwara and the provisions of Part III shall apply to the Gurdwara with effect from the date of the publication of the notification. Section 10 provides for the filing of a petition claiming a right, title or interest in any property included in the list published under sub-section (3) of Section 7. If no claim has been made in respect of any of the properties within the specified period the State Government is empowered to publish a notification which was to be conclusive proof of the fact that no such claim was made in respect of any right, title or interest specified in the notification. Section 11 provides for compensation to a hereditary office-holder of gurdwara notified under Section 8 or his presumptive successor. Chapter III of Part I provides for the constitution and procedure of tribunal for purposes of the Act,—*vide* Sections 12 to 37. Part II Section 38 is concerned with the application of the provisions of Part III to gurdwaras found to be Sikh Gurdwaras by courts other than the Tribunal constituted under the Act. Part III Chapter V, as already stated, deals with the control of Sikh Gurdwaras."

(36) Coming now to the case in hand, it may be mentioned at the outset that the institution in question is situate in the erst-

while Patiala and East Punjab States Union. After the States Reorganisation Act, 1966, when the territories of the States were merged, the Sikh Gurdwaras Act, 1925 was made applicable to the places of worship situate in the areas by the Amending Act 1 of 1959. The institution in question is not the one included in Schedule I of the Act. Hence, the provisions of Sections 7 to 17 of the Act are applicable thereto.

(37) Under section 7(3) of the Act, the State Government issued a notification that the Gurdwara Baba Kair Dass, situate within the revenue estate of village Faizulapur, Tehsil Sirhind, District Patiala, be declared a Sikh Gurdwara. Mahant Tehal Dass challenged the notification by filing a petition under section 8 of the Act. He averred therein, *inter alia,* that the institution was not a Sikh Gurdwara, as defined in section 16 of the Act and the institution was known as Samadh Baba Kair Dass. The pictures of Bawa Siri Chand, Gola Sahib and Smadhs were worshipped there in accordance with the rites of Udasis. Guru Granth Sahib was never recited there. Mahant Tehal Dass claimed to be an Udasi and a hereditary office-holder and that he was appointed Mahant on 21st May, 1962, by the Bhekh as chela of Bada Ram.

(38) Shiromani Gurdwara Prabandhak Committee (S. G. P. C.) controverted the allegation that the institution was not a Sikh Gurdwara and asserted that all the Mahants had been Sikhs and that Guru Granth Sahib was the only object of worship and the Sikh residents used it as their place of worship. The *locus standi* of Mahant Tehal Dass to file the petition was also challenged.

(39) In due course, the Government in compliance with the provisions of section 14 of tht Act forwarded the petition of Mahant Tehal Dass under section 8, to the Tribunal constituted under the Act. Upon the pleadings of the parties, the following two issues were framed by the Tribunal :—

1. Whether the petitioner is a hereditary office-holder ? O.P.P.
2. Whether the institution in dispute is a Sikh Gurdwara within the ambit of section 16(2) (iii) ? O.P.R.

Issue No. 1 was decided against Mahant Tehal Dass and without recording any finding on Issue No. 2, the Tribunal dismissed his petition. The Tribunal also expressed the view that the Government may issue the notification under section 9 of the Act.

(40) In the course of the hearing of the present appeal instituted by Mahant Tehal Dass, M. R. Sharma and Surinder Singh JJ. considered the two Full Bench decisions of this Court in *Mahant Lachhman Dass Chela Mahant Ishar Dass* v. *The State of Punjab and others,* (1 *supra*) and *Hari Kishan Chela Daya Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others.* (2 *supra*). *In Lachhman Dass's case,* R. S. Narula, J. (as he then was) while dealing with the ratio of *Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* (3 *supra*) expressed the following view :—

> "No office-holder of any non-Sikh institution is sought to be deprived of his office by any provision of this Act. Office-holders of Sikh institutions who could possibly be dispossessed of their offices were Mahants. In case of such office-holders, the property and the office remain separate and are not blended together as in the Supreme Court case. Mahants of Sikh Gurdwaras have been held to be mere custodians and managers in *Ram Parshad and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar, and others,* (4 *supra*). Moreover, provision is made in section 6 (in case of Schedule I Gurdwaras) and in section 11 (in respect of other Gurdwaras) for payment of compensation to any hereditary office-holder of a Gurdwara notified to be a Sikh Gurdwara or to his presumptive successor, etc. who may be sought to be deprived of his office on the vesting of the management of the Sikh Gurdwara in question in the S.G.P.C. The Act provides for full adjudication by the Tribunal, and as already indicated, provides various safeguards even after the declaration by the Tribunal and adjudication by the High Court that no one dispossessed of any property without having been provided with an adequate opportunity of being heard. The Act does not, therefore, place any unreasonable restriction on the fundamental right of the petitioners to acquire, hold or dispose of property. It is, therefore, impossible to hold that Article 19(1) (f) of the Constitution has in any manner been infringed by any provision in Part I of the Act.
>
> "Regarding the last contention advanced on behalf of the petitioners, i.e., the alleged infringement of Article 26 of the

Constitution, it was half-heartedly argued by Mr. Gupta that the Act provides for machinery for taking away non-Sikh institutions, or their property from the persons in their possession and to hand them over to the Sikhs. It appears to me that no argument under Article 26 can arise in these cases as there is no claim in any of these petitions on behalf of a denomination or even on behalf of any section thereof. Assuming, however, for the sake of argument that Lachhman Dass petitioner has come to this Court on behalf of Udasi Bekh, it is significant to note that the Act does not even purport to deal with or touch any non-Sikh institution or its property. It is not disputed and indeed it has been so held repeatedly that Udasis are not Sikhs though even Udasis do not conform to any single type. In the case of *Durgah Committee, Ajmer and another* v. *Syed Hussain Ali and others* (5 *supra*), it was held (paragraph 37 of A.I.R. report) that Article 26 (c) and (d) do not create rights in any denomination or its section which it never had; they merely safeguard and guarantee the continuance of rights which such denomination or its section had. If the right to administer properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irretrievably lost to it, Article 26 cannot be successfully invoked. The Udasis neither had nor have claimed to have ever had any right to possess, or manage Sikh Gurdwaras. They can be effected only if they want to resist handing over a Sikh Gurdwara or its property. They have admittedly no such right. Article 26 has, therefore, no application to these cases."

(41) In the order of reference, M. R. Sharma J., then expressed the view :—

"As I look at them, the aforementioned observations mean that the Act does not purport to deprive anybody of his institution unless it happens to be a Sikh Gurdwara, whether an institution falls within the definition of a 'Sikh Gurdwara' or not has to be judicially determined. It is, therefore, implicit in the situation that the learned Tribunal has to give a declaration whether an institution is a Sikh Gurdwara or not provided of course the petition

is filed by a member of a known religious denomination who is in possession of the institution.

"However, in *Hari Kishan Chela Daya Singh* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar and others*, (2 *supra*) a Full Bench of this Court has held that it is incumbent upon the Tribunal to determine whether the petitioner, even if he belongs to a recognised religion institution, has the *locus standi* to file the petition or not. In other words, if there is some break in the line of succession and on that account if it is held that he does not fall within the definition of a 'hereditary office-holder' he can be straightaway deprived of the institution even though the character of the same is not determined by the Tribunal. The same view was taken in *Tehl Singh* v. *Harnam Singh and others*, (12), *Sunder Singh and others* v. *Mahant Narain Das and others*, (7 supra) and *Albal Singh and others* v. *Narain Dass and others*, (13). In my considered opinion, the observations made in the aforementioned two Full Bench decisions of this Court are irreconcilable."

It is in these circumstances that the matter has come up before this Bench. But, before dealing with the present case of Mahant Tehal Dass, it may be clarified that the Full Bench, which decided the case of Lachhman Dass, (1 supra) consisted of Mehar Singh C. J. R. S. Narula and P. C. Pandit JJ. The majority judgment was written by R. S. Narula J. with whom Mehar Singh C. J. agreed. An argument was raised before the Full Bench that the plea of constitutional inhibition of Article 19 was not entertainable in any of the cases on the ground that the necessary and definite pleas, supported by requisite material and averments, were wanting. P. C. Pandit J. agreed with the majority view as to the dismissal of the writ petitions but made the following observations :—

"I have gone through the judgment prepared by my learned brother, Narula J. and I agree with him that the preliminary objection taken by the respondents was well-founded. I am, however, of the opinion that in this state

(12) AIR 1934 Lahore 98.

(13) AIR 1936 Lahore 675.

of the pleadings, it is unecessary to examine the constitutionality of the provisions of the Act and I would, therefore, not like to express any opinion regarding that matter."

(42) Lachhman Dass then appealed to the Supreme Court and so did Dharam Dass and some other Mahant. Their appeals were decided by their Lordships of the Supreme Court and the judgment is now reported as *Dharam Dass etc. etc.* v. *The State of Punjab and others,* (9 supra). The main question in the appeals before the Supreme Court was : Whether the appellants had the right to challenge the provisions of the Act by and under which a Gurdwara or an institution is declared or assumed to be a Sikh Gurdwara, and placed forthwith in Schedule I of the Act ? Under section 3(1) any Sikh or any present office-holder of a gurdwara specified in Schedule I may forward to the State Government a list of property of the Scheduled gurdwara. Upon receiving the same, the State Government under section 3(2) has to publish a notification declaring the Gurdwara to which the list of property relates as a Sikh Gurdwara. Sub-section (3) of section 3 provides that notice of claim to property entered in the consolidated list be sent to persons shown as in possession. Sub-section (4) of section 3 is in the following terms :—

"The publication of a declaration and of a consolidated list under the provisions of sub-section (2) shall be conclusive proof that the provisions of sub-sections (1), (2) and (3) with respect to such publication have been duly complied with and that the gurdwara is a Sikh Gurdwara and the provisions of Part III shall apply to such gurdwara with effect from the date of the publication of the notification declaring it to be a Sikh Gurdwara."

(43) As regards a gurdwara not placed in Schedule I of the Act, the provisions already indicated in this judgment are : Petition under section 7(1) of the Act to the State Government by fifty or more Sikh worshippers thereof to have the gurdwara declared a Sikh Gurdwara. Sub-section (2) of section 7 requires that the list of property claimed for the gurdwara and of persons in possession thereof to accompany the petition forwarded under sub-section (1). Sub-section (3) of section 7 lays down that the State Government,

as soon as may be, publish the petition forwarded to it under sub-section (1) along with the accompanying list of property by notification. Sub-section (4) of section 7 requires the Government to send notices of claim to properties to persons shown in the list as in possession. Then sub-section (5) of section 7 is in the following terms :—

> "The publication of a notification under the provisions of sub-section (3) shall be conclusive proof that the provisions of sub-sections (1), (2), (3) and (4) have been duly complied with."

(44) With respect to the arguments raised in the light of the above-mentioned provisions of the Sikh Gurdwaras Act, their Lordships in Dharam Dass's case, (9 supra), made the following observations at page 1079 :—

> "The complaint in the appeals relating to Schedule I Gurdwaras is that the mere publication of a declaration of a consolidated list under sub-section (2) of Section 3 is by virtue of sub-section (4) of Section 3 conclusive proof of the fact that the application made under sub-section (1) of Section 3 was in fact made by a Sikh or any present office-holder of the Gurdwara in question specified in Schedule I of the Act that the notification and the consolidated list had been published in the prescribed manner at the headquarters of the District etc., and the fact that the State Government sent by registered post a notice of the claim etc. to each of the persons named in the list as being in possession of any such right etc., i.e., of the requisits of sub-sections (1), (2) and (3) of Section 3. The appellant Dharam Das further complains that sub-section (5) of Section 7 bars an enquiry into the fact whether the persons who made the application under sub-section (1) of Section 7 were in fact fifty or more or not, whether such persons were in fact Sikh worshippers of the Gurdwaras or not, and whether each one of them was more than twenty-one years of age or not at the relevant time. The publication of this notification is to be conclusive proof of the compliance with the requirements of sub-sections (1) to (4) of Section 7. These provisions have been challenged as offending Article 14

because the impugned presumptions have the effect of taking away the rights which are available to the parties in contesting their suits under Section 38 thus driving a wedge of invidious discrimination between cases tried under Part I of the Act on the one hand and those tried under Part II of the Act (Section 38) on the other, that the said presumptions are pieces of substantive law and not merely rules of evidence; and that the presumptions in question have the effect of taking away certain defences which are normally open to a litigant in an ordinary legal proceedings i.e. the plea as to the *locus standi* of a claimant either under sub-section (1) of Section 3 or under sub-section (1) of Section 7 by pleading and proving that such claimants did not possess the requisite qualifications entitling them to make the claim in dispute. These very contentions were argued before the High Court and negatived by it on a detailed consideration by reference to the case law."

It is in the above-quoted context that their Lordships further observed :—

"It must not be forgotten that the whole object of the Act was to reduce the chances of protracted litigation in a matter involving the religious sentiments of a large section of a sensitive people proud of their heritage. The long history of the struggle of the Sikhs to get back their religious shrines to which reference has been made in the Sikh historical books make it amply clear that the intensity of the struggle, sacrifice and shedding of blood had made the Government of the day realise that a speedy remedy should be devised and accordingly the procedures prescribed in Sections 3 and 7 have been innovated by the Act. The provision of law which shuts out further enquiry and makes a notification in respect of certain preliminary steps conclusive, does not involve the exercise of any judicial function."

(45) Upon facts, their Lordships of the Supreme Court found that the gurdwara with respect to which Lachhman Dass was laying his claim had been declared to be a Sikh Gurdwara long prior to the Constitution and was managed by the Interim Gurdwara Board.

Thus, Lachhman Dass had no manner of right to it. With regard to the questions of law canvassed before their Lordships, the conclusion arrived at was that the provisions of sub-section (4) of section 3 and sub-section (5) of section 7 of the Act did not suffer from any constitutional or other legal impediments. It deserves mention that the vires of section 8 was not in issue.

(46) Adverting now to the other Full Bench decision of this Court in *Hari Kishan chela Daya Singh* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar and others,* (2 supra) the background is that the appeal was first heard by Sandhawalia, J. (now the Hon'ble C.J.) and M. R. Sharma, J. Because of the difference of opinion, the appeal was referred to a third Hon'ble Judge. Finally, R. S. Narula, C.J., referred the following two questions to the Full Bench :—

(1) Whether the Tribunal is bound to decide if the institution in question is a Sikh Gurdwara or not before even adjudicating upon the *locus standi* of the person who claims to be a hereditary office holder ? and

(2) Whether the appellant in the present case has or has not been able to prove that he was in fact a hereditary office-holder ?

In relation to the constitutionality of the provisions of this Act, Mr. H. L. Sibal, learned counsel for Mahant Tehal Dass relied strongly on the observations of M. R. Sharma, J., in his judgment, but since the constitutionality was not the subject-matter of the reference, therefore, the Full Bench consisting of R. S. Narula, C.J., Bal Raj Tuli and B. S. Dhillon, JJ., did not deal with it. The Full Bench answered the two referred questions in the negative and dismissed the appeal.

(47) In *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamier of Sri Shriu Mutt,* (3 supra) their Lordships observed :—

"The word 'denomination' has been defined in the Oxford Dictionary to mean a collection of individuals classed together under the same name; a religious sect or body having

a common faith and organisation and designated by a distinctive name'. It is well known that the practice of setting up maths as centres of theological teaching was started by Shri Shankracharya and was followed by various teachers since then. After Shankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day.

"Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name,—in many cases it is the name of the founder—and has a common faith and common spiritual organisation."

(48) The rights of a Mahant to hold and administer the property of the institution were commented upon in following terms :—

"Thus in the conception of Mahantship, as in Shebaitship, both the elements of office and property, or 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. It is true that the Mahantship is not heritable like ordinary property, but that is because of its peculiar nature and the fact that the office is generally held by an ascetic, whose connection with his natural family being completely cut off, the ordinary rules of succession do not apply.

There is no reason why the word 'property' as used in Article 19(1) (f) of the Constitution should not be given a liberal and wide connotation and should not be extended to those well recognised types of interest which have the insignia or characteristics of proprietary right. As said above, the ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold

his office. To take away this beneficial interest and leave him merely to the discharge of his duties would be to destroy his character as a Mahant altogether.

"It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called to discharge. A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Mathadhipati down to the level of a servant under a State department. It is from this stand point that the reasonableness of the restrictions should be judged ....

.....

Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent Legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under Article 26 (d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law, and the law, therefore, must leave the right to administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose.

"*A law which takes away the right of administration from the hands of a religious denomination altogether and vests it*

in any other authority would amount to a violation of the right guaranteed under column (d) of Article 26."

(Emphasis added)

(49) The same view of law was reiterated in *Ratilal Panachani Gandhi and others* v. *State of Bombay and others,* (14), and in *Digyadarsan Rajendra Ramdass ji Varu* v. *State of Andhra Pradesh and another,* (15).

(50) Furthermore, while considering the history of the Sikh Gurdwaras, their Lordships of the Supreme Court in *Dharam Dass's case* (9 supra) observed at pages 1073 and 1074, of the report :—

"The position of the Gurdwaras changed during British regime. The Mahants who were in charge of the Sikh Gurdwaras could either be a Sikh Mahant or Udasi Mahant. It may here be stated that Udasis were not Sikhs. While the teachings of Sikhs were against asceticism and were opposed to Hindu rites, the Udasis though "using the same sacred writings as the Sikhs, kept up much more of the old Hindu practices, followed asceticism, were given to the veneration of Samadhis or Tombs and continued the Hindu rites concerning birth, marriage and Shradh". in Hem Singh and others *v.* Basant Dass and others.

Mr. H. L. Sibal vehemently urged that Tehal Dass claiming to be the Mahant of the Samadh Baba Kair Dass asserted that it was not a Sikh Gurdwara. That Mahant Tehal Dass is in possession of the institution and has been managing it is not in dispute. In the nature of things, before he is deprived, not only of his Mahantship, but also of the institution, it becomes imperative to decide whether the institution in question is a Sikh Gurdwara. Then and then alone, the emphatic observation made by the Full Bench of this Court in *Lachhman Dass's case* (1 supra) that "no office-holder of any non-Sikh institution is sought to be deprived of his office by any provision of this Act" will be carried out. The said observation is wholly in accord with the Preamble of the Act which reads :—

"Whereas it is expedient to provide for the better administration of certain Sikh Gurdwaras and for inquiries into

(14) A.I.R. 1954 S.C. 388.

(15) A.I.R. 1970 S.C. 181.

(16) (68 Ind. App. 8) at p. 201=A.I.R. 1963 P.C. 100.

matters and settlement of disputes connected therewith, and whereas the previous sanction of the Governor-General has been obtained to the passing of this Act, it is hereby enacted as follows :—"

To lend further weight to the observation of the Full Bench and the preamble of the Act, Mr. H. L. Sibal analysed the scheme of the Act, applicable to the case in hand, in the following way. The impugned notification was published by the State Government in compliance with section 7(3) of the Act that the institution in question be declared a Sikh Gurdwara. The relevant provisions of section 8 conferring right to raise objection to the notification may be read thus :—

"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 ..... claiming that the Gurdwara is not a Sikh Gurdwara, and may in such petition make a further claim that any hereditary office holder or any person would have succeeded to such office holder under the system of management ..... may be restored to office on the grounds that such gurdwara is not a Sikh Gurdwara and that such office holder ceased to be an office-holder."

Section 9 of the Act then provides that if no petition has been filed in accordance with the provisions of section 8, the State Government shall after the expiration of 90 days publish a notification declaring the gurdwara to be a Sikh Gurdwara. The publication of the notification shall be conclusive proof that the gurdwara is a Sikh Gurdwara. In case a petition under section 8 is presented, then the State Government under section 14(1) of the Act has to forward it to the Tribunal, constituted under the Act and the Tribunal shall dispose of the petition by order in accordance with the provisions of the Act. Now the important section 16 reads :—

"(1) Notwithstanding anything contained in any other law in force, if in any proceeding before a tribunal it is disputed that a gurdwara should or should not be declared to be a

Sikh Gurdwara, the tribunal shall, before enquiring into any other matter in dispute relating to the said gurdwara, decide whether it should or should not be declared a Sikh Gurdwara in accordance with the provisions of sub-section (2).

(2) If the tribunal finds that the gurdwara—

(i) was established by, or in memory of any of the Ten Sikh Gurus, or in commenmoration of any incident in the life of any of the Ten Sikh Gurus and (was) used for public worship by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7 ; or

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

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

(iv) was established in memory of Sikh martyr, saint or historical person and was used for public worship by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7 ; or

(v) owing to some incident connected with the Sikh religion was used for public worship predominantly by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of section 7 ;

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

(3) Where the tribunal finds that a gurdwara should not be declared to be a Sikh Gurdwara, it shall record its finding in an order, and, subject to the finding of the High Court on appeal, it shall cease to have jurisdiction in all matters concerning such gurdwara, provided that, if a

claim has been made in accordance with the provisions of section 8 praying for the restoration to office of a hereditary office-holder under the system of management prevailing before the first day of January, 1920 or, in the case of the extended territories, before the first day of November, 1956, the tribunal shall, notwithstanding such finding, continue to have jurisdiction in all matters relating to such claim, and if the tribunal finds it proved that such office-holder ceased to be an office-holder on or after the first day of January, 1920 or, in the case of the extended territories, after the first day of November, 1956, it may by order direct that such office-holder or person who would have so succeeded be restored to office."

Then comes section 17, upon which great emphasis was laid by Mr. H. L. Sibal. Section 17 is in the following terms :—

"When a tribunal has, under the provisions of sub-section (2) of section 16, recorded a finding that a gurdwara should be declared to be a Sikh Gurdwara and no appeal has been instituted against such finding within the period prescribed by section 34, or when an appeal has been instituted and dismissed; or when in an appeal against a finding that a gurdwara should not be declared to be a Sikh Gurdwara the High Court finds that it should be so declared, the tribunal or the High Court, as the case may be, shall inform the State Government through the appropriate Secretary to Government, accordingly, and the State Government shall, as soon as may be, publish a notification declaring such gurdwara to be a Sikh Gurdwara and the provisions of Part III shall apply thereto with effect from the date of the publication of such notification."

It need hardly be said, urged Mr. H. L. Sibal, that what to speak of a non-Sikh institution, even a gurdwara unless and until it falls within any of the five categories specified in section 176(2) of the Act, cannot be declared a Sikh Gurdwara. The marginal note of section 16 reads :—

"Issue as to whether a gurdwara is a Sikh Gurdwara to be decided first and how issue is to be decided."

Emphasis was then laid on the terms of section 16(1) of the Act laying down that if in any proceeding before a tribunal it is disputed that a gurdwara should or should not be declared to be a Sikh Gurdwara, the tribunal shall before enquiring into any other matter in dispute relating to the said gurdwara, decide whether it should or should not be declared a Sikh Gurdwara. It is only when the Tribunal records a finding that a gurdwara should be declared a Sikh Gurdwara that the provisions of section 17 come into play and the State Government is informed to publish notification declaring the said gurdwara to be a Sikh Gurdwara.

(51) On the other hand, Mr. Narinder Singh, learned counsel for the respondent contended that all along the procedure, confirmed by longstanding judicial precedents, has been that in case the Tribunal finds that the person filing the petition under section 8 of the Act is not a "hereditary office-holder" as defined in section 2 (4) (iv) of the Act, the petition, without going into the question whether the institution is a Sikh Gurdwara or not, is dismissed. Then follows a notification under section 9 of the Act. Accordingly, the principle of *stare decisis* was pressed into service by Mr. Narinder Singh.

(52) Mr. H. L. Sibal laid emphasis on the terms of section 9 of the Act which are as follows :—

> "(1) If no petition has been presented in accordance with the provisions of section 8 in respect of a gurdwara to which a notification published under the provisions of sub-section (3) of section 7 relates, the State Government shall, after the expiration of ninety days from the date of such notification, publish a notification declaring the gurdwara to be a Sikh Gurdwara.
>
> (2) The publication of a notification under the provisions of sub-section (1) shall be conclusive proof that the gurdwara is a Sikh Gurdwara, and the provisions of Part III shall apply to the gurdwara with effect from the date of the publication of the notification."

Mr. H. L. Sibal compared the provisions of section 9 with section 17 authorising the publication of a notification declaring a gurdwara to be a Sikh Gurdwara. Section 17 quoted already, in no uncertain terms says that when the Tribunal records a finding that the gurdwara should be declared a Sikh Gudwara, then the said notification is published. Obviously, the terms of section 9 envisage no such

situation, nor do the terms indicate the publication of the notification in the event of dismissal of a petition presented under section 8 of the Act, for want of *locus standi*. On the other hand, as clearly interpreted by their Lordships of the Supreme Court in *Dharam Dass's case* (9 supra) "section 9 deals with the effect of omission to present a petttion under section 8". That being so I fail to see how section 9 can be invoked for publishing the above-said notification in a case, like the present one, wherein the petition filed under section 8 has been dismissed by the Tribunal on the issue of *locus standi*.

(53) As already pointed out, a Full Bench of this Court in *Hari Kishan's case* (2 supra) held that the Tribunal is not bound to decide that the institution in question is a Sikh Gurdwara or not before adjudicating upon the *locus standi* of the person who claims to be a hereditary office holder. To further support this decision, Mr. Narinder Singh argued that if the question, whether the person presenting a petition under section 8 of the Act is or is not a "hereditary office-holder" is not decided by the Tribunal, then the occasions for so doing would be only when the institution is not declared to be a Sikh Gurdwara by the Tribunal and the Tribunal is asked to restore, the office to the petitioner. That is, of course, one situation in which the Tribunal would be required to decide the above-said question, but there are other occasions also envisaged by the Act. When a gurdwara is notified to be a Sikh Gurdwara and placed in Schedule I of the Act, then section 6 of the Act provides that any past or present hereditary office-holder of the gurdwara may forward to the State Government a petition claiming to be awarded compensation on the grounds that such office-holder had been unlawfully removed from his office. The other instance where the question whether the petitioner is a hereditary office-holder or not is required to be decided by the Tribunal, is to be found in section 11 of the Act, which lays down that any past or present hereditary office holder of a gurdwara in respect of which notification has been published under the provisions of sub-section (3) of section 7, may forward to the State Government, a petition claiming to be awarded compensation on the grounds that such office-holder has been unlawfully removed from his office. It deserves mention that under section 14 of the Act, it is incumbent upon the State Government to forward the petition under sections 6 and 11 received by it, to the Tribunal for disposal.

(54) For the foregoing reasons, I am of the considered view that the two Full Bench decisions under consideration (*Mahant Lachhman Dass Chela Mahant Ishar Dass* v. *The State of Punjab and others*, (1 supra) and *Hari Kishan Chela Daya Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others*, (2 supra) cannot be reconciled.

(55) Mr. Narinder Singh then invoked the principle of *stare decisis* in support of his contention that the petition under section 8 by a person, who fails to prove that he is the hereditary office holder, is liable to be dismissed and the institution in question is then declared a Sikh Gurdwara by publication of notification under section 9 of the Act.

(56) As already pointed out, Mr. H. L. Sibal placed strong reliance on the observations made by M. R. Sharma, J. in his judgment of *Hari Kishan's case*, rendered before the reference of the case to the Full Bench. The two questions referred to the Full Bench now reported as *Hari Kishan Chela Daya Singh* v. *The Shiromani Gurdwara Prabandhak Committee, Amritsar and others*, (2 supra), have already been mentioned above. As M. R. Sharma, J. was not a member of the Full Bench, his judgment does not find mention in the report. The observations made therein, though *obiter dictum*, do have a persuasive force. In his judgment, M. R. Sharma, J. referred to *In Young* v. *Bristol Aeroplane Co.*, (17). It was held that though a Court of appeal was bound to follow its earlier judgments, yet this principle was subject to the following exceptions :—

> "(1) The Court is entitled and bound to decide which of the two conflicting decisions of its own it will follow.
>
> (2) The Court is bound to refuse to follow a decision of its own which, though not expressly overruled, cannot, in its opinion, stand with a decision of the house of Lords.
>
> (3) The Court is not bound to follow a decision of its own if it is satisfied that the decision was given *per incuriam*, e.g., where a statute or a rule having statutory effect which would have affected the decision was not brought to the attention of the earlier Court."

(17) 1944 K. B. 718.

The above-mentioned exceptions 1 and 3, urged Mr. H. L. Sibal, were applicable to the facts of this case. The two Full Bench decisions of this Court (*Mahant Lachhman Dass Chela Mahant Ishar Dass* v. *The State of Punjab and others*, (1 supra) and *Hari Kishan Chela Daya Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others*, (2 supra) being conflicting. Exception No. 1 does appear to apply. As regards Exception No. 3, the authoritative pronouncement of their Lordships of the Supreme Court in *Dharam Dass's case* (9 supra) that "section 9 deals with the effect of omission to present a petition under section 8" is enough to negative the applicability of the principle of *stare decisis*. In this context, Mr. H. L. Sibal was at pains to argue that in none of the previous precedents relied on by Mr. Narinder Singh, the scheme of the Act as analysed by him (Mr. H. L. Sibal) was ever considered. In the result, I find merit in his contention that it was obligatory upon the Tribunal to decide the vital Issue No. 2 : whether the institution in question was a Sikh Gurdwara or not ?

(57) In the alternative, Mr. H. L. Sibal argued that it is nobody's case that the institution in question is not a religious denomination and that Tehal Dass is not its Mahant. In the nature of things, Tehal Dass is possessed of all the rights conferred on a Mahant by their Lordships of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras* v. Sri *Lakshmindra Thirtha Swamiar of Sri Shripur Mutt*, (3 supra). The following observations of their Lordships were again pressed into service :—

> "A law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under column (d) of Article 26."

By denying Mahant Tehal Dass the *locus standi* to prove that the institution is not a Sikh Gurdwara, the result of the decision of the Tribunal is that Tehal Dass has been deprived of his Mahantship and the religious denomination in question has been made to vest in the body created by Part III of the Act for the administration of the Sikh Gurdwaras. Thus, the argument of Mr.. H. L. Sibal that section 8 of the Act restricting the right of the religious denomination to protect itself through a hereditary office-holder as defined in section 2(4) (iv) of the Act, is *ultra vires* Article 26(d) of the Constitution, carries conviction.

(58) With respect to the argument of Mr. Narinder Singh, learned counsel for the respondent, that any twenty or more worshippers of the institution in question could file a petition under section 8, Mr. Sibal contended that in non-Sikh institutions like a mosque and a church people assemble to pray and not worship. If any such institution happens to be notified under section 7 (3) of the Act to be declared a Sikh Gurdwara, then naturally the office bearers or persons vitally interested in the mosque or the church would be completely debarred from challenging the notification, for the simple reason that under no circumstance can they satisfy the requirement of section 8 as regards the *locus standi*. Thus to say that section 8 has the saving feature of giving the right to "twenty or more worshippers of the gurdwara" to challenge the notification, is of no avail. On this score also, the constitutionality of section 8 of the Act was challenged by Mr. H. L. Sibal. In my view the challenge is tenable.

ORDER OF COURT.

(59) In view of the majority judgment, the case may now be placed before the Division Bench for decision on merits.

N. K. S.

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