

APPELLATE CIVIL

Before D. K. Mahajan and Pritam Singh Pattar, JJ.

AKHARA DHARAM DHAJAN SADHAN—Appellant.

versus

KEHAR SINGH, ETC.—Respondents.

L.P.A. 384 of 1971.

October 31, 1973.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 51(1)(c)—Religious institution carrying on charitable work also—Whether religious institution—Agricultural lands belonging to such institution—Whether exempt under section 51(1)(c).

Held, that according to clause (c) of section 51(1) of the Pepsu Tenancy and Agricultural Lands Act, 1955, the land belonging either to a religious or charitable institution or institutions which are religious and charitable is exempt from acquisition under the provisions of the Act. If a religious institution carries on charitable work also, it does not cease to be a religious institution and it is not deprived of the benefits of the Act, simply because it also does some charitable work. The word 'or' occurring in between the words 'religious' and 'charitable' in clause (c) of the section can be read as 'and' also. Hence agricultural lands belonging to such religious institution is exempt from the operation of the Act under clause (iii) of the Explanation to section 51(1)(c) of the Act.

Letters Patent Appeal under section 10 of the Letters Patent against the order of the Hon'ble Mr. Justice P. C. Jain, dated 24th May, 1971, passed in Civil Writ No. 1365 of 1967.

Kedar Nath Tewari, Advocate, for the appellant.

Surjit Singh, Advocate, for respondent No. 1.

D. N. Rampal, Assistant Advocate-General (Punjab), for respondents 2 to 5.

JUDGMENT

P. S. PATTAR, J.—This is a Letters Patent appeal under Clause X of the Letters Patent against the judgment dated 24th May, 1971 of a Single Bench whereby the impugned orders of the Assistant Collector 1st Grade, Patiala, the Collector Patiala and the Financial Commissioner dated 21st December, 1964, 29th March, 1966 and 16th February, 1967, respectively were quashed.

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(2) The facts of this case are that, Kehar Singh Respondent No. 1 is a tenant of Akhara Dharam Dhaja Sadhan, Nirmal Kot-appellant (hereinafter called the 'Akhara') on land measuring 253 Kanals and 2 marlas. Kehar Singh filed an application under section 22 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called the Act) for acquisition of proprietary rights in the land comprised in his tenancy, before the Assistant Collector 1st Grade, the prescribed authority, Patiala, on 8th May, 1964. The appellant Akhara admitted before the prescribed authority the tenancy of Kehar Singh during the period required by law and also the fact that the land attached to the Akhara was over and above the prescribed area under the Act. However, the Akhara opposed the application of Kehar Singh on the ground that the land was exempt from the applicability of the provisions of the Act. The Assistant Collector 1st Grade, Patiala *vide* his order dated 21st December, 1964 held that the Akhara is a religious place of public nature and its land is exempt under clause (iii) of the explanation to section 51(1) of the Act. Kehar Singh filed an appeal against this order before the Collector, Patiala, which was dismissed on 29th March, 1966. He then filed a revision petition against the order of the Collector before the Financial Commissioner who dismissed the same *vide* his order dated 16th February, 1967. Kehar Singh then filed a writ petition under Articles 226 and 227 of the Constitution of India to quash these orders of the Assistant Collector 1st Grade, the Collector, Patiala and the Financial Commissioner, Punjab, whose copies are Exhibits 'C', 'B' and 'A' respectively to the writ petition. The Akhara filed a written statement in the shape of an affidavit through Mahant Zora Singh, who controverted the material allegations made in the petition. It was averred that Akahra is a religious institution and the impugned orders were perfectly legal and valid and the writ petition may be dismissed. The learned Single Judge held that the Akhara is not a religious institution, that it is a charitable institution of a public nature within the meaning of clause (iii) of the explanation to section 51(1) of the Act, and, therefore, the land owned by the Akhara is not exempt from the provisions of the Act. As a result, the writ petition was allowed and the three impugned orders were quashed with no order as to costs. Feeling aggrieved, the Akhara has filed this letters patent appeal to set aside the order of the Single Judge.

(3) The Assistant Collector, 1st Grade, Patiala who was the prescribed authority under the Act after considering the oral and

documentary evidence produced before him held, *vide* his order dated 21st December, 1964 that the appellant Akhara is a religious institution of public nature and the land owned by it is exempt from the operation of the Act. The decision was upheld on appeal by the Collector, Patiala and the revision against that order was also dismissed by the Financial Commissioner (Revenue), Punjab. This is a finding of fact given by the authorities and it cannot be interfered with by this Court in its extraordinary jurisdiction under Articles 226/227 of the Constitution of India. In this connection reference may be made to *Union of India v. T. R. Varma* (1) wherein it was ruled that where there is a question on which there is a serious dispute, which can not be satisfactorily decided without taking evidence, it is not the practice of Courts to decide it in a writ petition. To the same effect was the law laid down in *State of Uttar Pradesh v. District Judge* (2) and *Kambham Ramamurthy Reddi v. The Revenue Divisional Officer, Kakinada and others* (3). Similar view was also taken in *Astham Dharam Dawari v. The Financial Commissioner, Punjab and others* (4).

(4) The counsel for Kehar Singh, Respondent No. 1, had contended before the learned Single Judge that the appellant Akhara was not a religious institution. The learned Single Judge held that the finding of the prescribed authority that the Akhara was a religious institution was given on conjectures without any evidence and such a finding is liable to be set aside by the High Court in its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India. If the Akhara is held to be a religious institution of a public nature, then obviously the provisions of the Act would apply and the land owned by the appellant-Akhara would be exempt from the operation of the Act.

(5) Now we proceed to determine whether the case of the appellant falls under section 51(1) of the Act or not. The relevant provisions of section 51(1) of the Act read as follows:—

“51. *Exemption of certain lands*:—

(1) The provisions of the Act shall not apply to—

* * * * *

(1) A.I.R. (1957) S.C. 882.

(2) A.I.R. 1972 All. 196.

(3) A.I.R. 1972 A.P. 354.

(4) 1965 Curr. L.J. 63.

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- (c) Lands belonging to any religious or charitable institution but not to a Mahant, Mohtmim or Manager thereof;

* * * *

* * * *

Explanation.—For the purposes of clause (c), religious or charitable institution means—

- (i) a temple,
- (ii) a gurdwara,
- (iii) any other religious place of a public nature,
- (iv) a wakf as defined in clause (1) of section 3 of the Muslim Wakf Act, 1954 (Parliament Act 29 of 1954), or
- (v) Any other institution of public nature the object of which is relief to the poor, education, medical relief or the advancement of any other object of general public utility including religious teaching or worship,

which the State Government may, by notification in the Official Gazette specify.”

While discussing this provision of law, the learned Single Judge in his judgment observed as follows:—

“Under clause (c) lands belonging to any religious or charitable institution are exempt from the applicability of the provisions of the Act. In clause (c) the words used are ‘religious or charitable’. The legislature by using the word ‘or’ between the words ‘religious and charitable’ clearly intended to treat both religious and charitable institution separately and independently otherwise it would have used ‘and’ instead of ‘or’ and the words would have read as ‘religious and charitable’. By treating the two types of institutions independently and separately the intention of the Legislature has been exhibited clearly that in either case the object should be primary. As to what is a charitable or religious institutions, the Legislature has defined the same by adding the Explanation.

The scheme of Explanation clearly shows that clause (iii) has been added to cover the cases of the institutions which are wholly and exclusively religious in character like temples and Gurdwaras. Clause (ii) would like its colour from clauses (i) and (iii) and would embrace those types of institutions which are similar in nature to those enumerated in clauses (i) and (ii). In our country there are so many religions that it would have been impossible for the Legislature to give names of all the religious places of public nature. It is in this situation that the Legislature thought it proper to add a comprehensive ground in the shape of clause (iii) to cover the cases of all the religious institutions of public nature, for example, church, mosque, etc. The institutions of which the object is secular or which have a combination of non-religious and religious objects, are covered by clause (v) of the Explanation. If I accept the contentions of Mr. Tewari, then clause (v) of Explanation would become redundant because in that case every institution with non-religious and religious objects would fall in clause (iii). The reading of clause (v) clearly shows that the institutions covered by it are primarily charitable in nature though some of them have some religious activities also. In the cases of institutions falling under clause (i) to (iv), exemption can be claimed by an institution only if it satisfies the conditions laid down therein, and a notification is issued by the Government specifying such an institution. Thus I hold that clause (iii) covers the cases of the institutions which have primarily religious object. Having arrived at this finding, it has now to be seen whether Akhara, respondent No. 5 is a religious institution of a public nature and has primary religious object."

This opinion of the learned Single Judge is not correct. In this connection we may refer to Maxwell on Interpretation of Statutes, Ninth Edition, 1946 at page 244, wherein he remarked as under:—

"To carry out the intention of the Legislature, it is occasionally found necessary to lead the conjunctions 'or' and 'and' one for the other. The 43 Eliz.c. 3, for instance, in speaking of property to be employed for the maintenance of 'sick and maimed soldiers', referred to soldiers who were either

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the one 'or' the other, and not only to those who were both".

This remark aptly applies to the present case. According to clause (c) of section 51(1), the land belonging either to religious institutions or charitable institutions or institutions which are religious and charitable is exempt under the provisions of the Act. If a religious institution is carrying on charitable work also, it would not cease to be a religious institution and it cannot be deprived of the benefits of this Act simply because it is also doing some charitable work. This view of the Hon'ble Single Judge cannot, therefore, be sustained. In view of the aforesaid remarks in Maxwell's book referred to above, the word 'or' in between the words 'religious' and 'or charitable' in clause (c) of section 51(1) can be read as 'and' also.

(6) Exhibit R. 1 is a letter dated 25th April, 1962, from the Under-Secretary to Government, Punjab, Revenue Department to the Deputy Commissioner, Patiala, stating that the Government approved issuing of notification exempting the religious and charitable institutions mentioned in "Statement I" of that letter from the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955 and the notification may be issued. The Statement No. 1 attached to this letter reads as follows:—

"Religious and Charitable Institutions in Patiala approved for exemption.

S. No.	Name of institution	Location of the institution.	
		Village	Tehsil
1.	Dera Baba Gandha Singh	Sarkara	Patiala.
2.	Dera Dharam Dhawja	Nirmalkot	Patiala.
3.	Gaushala	Moran	Patiala.
4.	Deras Chhata Magni Ram, Balmik Udasi Sampradey Mihan Sahib	Patiala	Patiala.
5.	Khalsa College	Patiala	Patiala".

It is clear from this letter and the statement No. 1 attached to it that the appellant Akhara Adharam Dhaja, Nirmalkot, district Patiala, which was a religious and charitable institution was approved for exemption from the provisions of this Act. The learned Single Judge held that the appellant Dera is a charitable institution within the meaning of clause (v) of the explanation to sub-section (1) of section 51 of the Act but since the Government had not issued any notification exempting the same from the provisions of the Act, therefore, this Exhibit R. 1 did not help the appellant. This finding is totally against the contents of Exhibit R. 1. The Government held that this appellant-Akhara is a religious and charitable institution, and exempted it from the operation of the provisions of the Act. Consequently, the finding of the learned Single Judge that the land in dispute was not exempt from the operation of the Act cannot be sustained. We may point out that this letter Exhibit R. 1 was also considered by the competent authority under the Act and he upheld the contention of the appellant and held that the appellant-Akhara in dispute is exempt from the operation of the Act.

(7) The question for determination in this appeal is whether the appellant-Akhara is a religious institution within the meaning of clause (c) of section 51(1). In *Mahant Harnam Singh vs. Gurdial Singh and another* (5), it was held by the Supreme Court as under:—

“That Nirmala Sadhus are not Sikhs. The mere fact that at some stage there was Guru Granth Sahib in the Dera cannot lead to any conclusion that the institution was meant for, or belonged to, the followers of the Sikh religion.”

The facts of this case were that in village Jhandawala, there was a Gurdwara known as ‘Gurdwara Jhandawala’, which was managed by Mahant Harnam Singh as a Mohtimim and he was in possession of the Dera and the agricultural land belonging to Guru Granth Sahib Gurdwara, Jhandawala. This Gurdwara was alleged to be a religious place, which was established by the residents of the village and this religious institution was a public trust created by the residents of the village for the service of the public to provide food to the visitors from the Lungar (free kitchen), to allow the people to fulfil religious beliefs and for worship, etc. Some of the residents of the village instituted a suit under section 92 of the Code of Civil Procedure for the removal of the Mahant of the Dera. In the body of the judgment, it was remarked by the Supreme Court that it was true

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that in their origin, Nirmala Sadhus started as a section of Sikhs, who were followers of Guru Gobind Singh, but subsequently, in the period of about 300 years that has since elapsed, they have veered away from the Sikh religion and that is why after giving their historical origin, Macauliffe in his book, 'The Sikh Religion' expressed the opinion that the Nirmalas were only nominally Sikhs. In Maclagan's Census Report also it was mentioned that Nirmala Sadhus are treated as Sikhs in some places, while in other places they are regarded as Hindus. It was further observed that the mere fact that at some stage there was a Guru Granth Sahib in this Dera cannot lead to the conclusion that this institution was meant for, or belonged to, the followers of the Sikh religion. Clearly the Dera was maintained for an entirely distinct sect known as the 'Nirmala Sadhus', who could not be regarded as Sikhs. The Supreme Court by this judgment overruled *Gurdial Singh and another v. Mahant Harnam Singh* (6).

(8) Annexure 'A' is the translation of the extract from the pedigree table of the proprietors of this village Nirmal Kot prepared in the settlement of the year 1899 A.D. and it reads as follows:—

"Previously the village was made *abad* by Rukun-Ui-Din Khan alias Mitral resident of Samana and this village was known as Mitral Majra. He could not make it *abad* and thus abandoned it. In Sambat 1918, His Excellency the late Maharaja Swarup Singh granted *muafi* in favour of Sadhan Nirmla Akhara Dharam Dhaja for religious purposes. Then on 13th April, 1870 about 24 years back, as per application of Nirmla Sadhan Biswedari of this village was also granted to Nirmala Sadhan on payment of Rs. 1,200 as Nazrana."

This lends support to the contention of the appellant that the land was granted as *muafi* in favour of the appellant-Akhara for religious purposes.

(9) Exhibit R. 18 is the memorandum of Association of Panchaiti Akhara Nirmala. The headquarters of this Association Panchaiti Akhara Nirmala is at Kankhal (Hardwar) and its branches are in Patiala, Sangrur, Banaras, Allahabad and other places. It is a registered association under the Societies Registration Act, 1866. The aims and objects of this Panchaiti Akhara Nirmala was for the management of charitable purposes connected with this

Akhara and to make arrangements for the physical, intellectual and moral improvement of Nirmala Sadhus and to supervise and make arrangements for the protection of the Gurdwaras, Dharamshalas. This Exhibit R. 18 has got nothing to do with the appellant-Akhara. It deals with the charitable purposes connected with the Akharas of the Nirmala Sadhus in different parts of India. The aims and objects given in this document pertain to Panchaiti Akhara Nirmala only.

(10) Before the Assistant Collector 1st Grade, the prescribed authority under the Act. Kehar Singh respondent did not question the religious nature of the appellant Akhara and the only contention raised before the prescribed authority was that the Akhara was not a religious place of a Public nature. The counsel for the appellant relied on the recitals in Mahan Kosh by Kahan Singh of Nabha wherein the history of Nirmala Sadhus is given. The relevant portion of this Book when translated in English reads as follows:—

“Like Viasis, when the Saints of Nirmal sect noticed disrespect to the Saints of their sect at the places of pilgrimage by the Saints of other sects, they thought of creating their separate Akhara (seat of religious preaching). At the instance of saints like Bhai Tota Singh Ji, Ram Singh Ji and Mehtab Singh Ji and others, Maharaja Narinder Singh Ji, ruler of Patiala, Maharaja Bharpur Singh Ji, ruler of Nabha and Maharaja Sarup Singh Ji, ruler of Jind established an Akhara of saints of the Nirmal sect known as Dharam Dhaja in Sammat 1918. Bhai Mehtab Singh was appointed its first Chief Mahant. The rulers of Patiala, Nabha and Jind awarded grant of Rs. 80,000 in cash and annual Jagir worth Rs. 4,000, Rs. 16,000 in cash and annual Jagir worth Rs. 575 and Rs. 20,000 in cash and annual Jagir worth Rs. 1,300 respectively. A joint Dastur-ul-amal (constitution by all the three States) for the Akhara for Nirmal, Panth Guru Gobind Singh Ji was framed as follows :—

- (i) One chief Mahant with the concurrence of all the three States and four more Mahants, who would maintain all the five Kakas (symbols of Sikhs) i.e., Kachha (underwear), sword, Keshas (long hair), comb and iron bangle shall be appointed Mahants in consultation with the Chief Mahant.
- (ii) Persons appointed as Langris (cooks) for preparation of meals shall also observe all these five Kakas.

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- (iii) Two Managers and two Store-keepers, who shall be entrusted with the entire provisions of the Langar, one Granthi and a Giani shall be appointed. All these six persons shall be observers of the Rehat (tenets). Moreover, one or two Chobdars (attendants) shall be appointed.
- (iv) Whenever the Chief Mahant visits the capital of any State or the Rais gets an opportunity to visit the Akhara, the offering shall be made before Shri Guru Granth Sahib and to the Chief Mahant and not to any other Mahant individually.
- (v) The income of this nature whatever its source may be, shall be accounted for in the Akhara. In case any Mahant brings any cash from outside, it shall also be deposited in the Akhara and not to be kept by him with himself.
- (vi) In case Dharam Dhaja Akhara Guru Gobind Singh Ji wants to do Bhandara (free distribution of meals) at any place, it shall do so in consultation and with the approval of the Chief Mahant.
- (vii) In case appointment of any new Mahant is involved, he shall first of all take an oath before Shri Guru Granth Sahib Ji that he shall strictly observe the Sikh tenets and that what ever income would accrue would be deposited with the Akhara.
- (viii) It shall be incumbent upon the Chief Mahant and the other Mahants in case any Sikh Jagirdar or Sardar desires to do Bhandara (free distribution of meals) for the Akhara, he shall be allowed to do so according to his wishes and the Mahant shall not interfere in his affairs in any way.
- (ix) Similarly, in case any Sikh Incharge of a Dera of this sect makes a Bhandara, the same practice will be followed.
- (x) The seating arrangement should be *deserved* as under :—
 In the Akhara, Guru Granth Sahib in the Centre; the Chief Mahant and the other Mahants besides him towards the right, Sikh Giani and other saints behind him towards the left. Besides them, any other

saint, scholar or Mahatma, who happened to be there, should sit at the place assigned to him at the time of the Darbar (congregation) and not ahead of the Mahants. While doing so, his status and not his academic qualification shall be taken into consideration. In case the Mahant of any other sect happens to be there, he should be offered a seat towards the left of the Giani.

(xi) No other saint excepting the Chief Mahant shall stay in the particular house meant for his residence. Of course, a few saints can stand there as his attendants. Similarly, the property which is meant for keeping Guru Granth Sahib should not be occupied by anybody for sleeping purposes since it amounts to disrespect. No person, who visits the Akhara for paying homage should be prevented from doing so.

(xii) If any Sikh saint wants to live in the Dera as Behangam i.e., who renounces the world, he should be asked to take an oath by placing his hands at the Guru Granth Sahib for this purpose that he has not retained anything with him and has offered his entire belongings to the Gurdwara and he shall then continue to live in the Dera."

(11) The following extract from Sir Edward Maclagan's Census Report as given in *Mahant Harnam Singh's case supra* (5) may also be read with advantage :—

"It is said that Guru Gobind Singh sent three followers named Karam Singh, Har Chand and Mihr Rai to Benares to acquire a knowledge of Sanskrit, when the Pandits of that city refused to come themselves to Gobind Singh; and that, on their return the Guru blessed them as being the only learned men among the Sikhs and called them Nirmala. They were allowed to take the *pahul* and founded the order of Nirmala Sadhus. They are almost always celibate, and almost always in monasteries. Their principal Akhara is at Hardwar and it is said that their societies throughout the province are periodically visited by a controlling council. They have three considerable monasteries in the Hoshiarpur District and Munak, Adanwal and Alampur Kotla and by our returns they appear

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to be strong in Gurdaspur, where they are mainly returned as Hindus and in Ambala, Ferozepore and Amritsar where they are mainly returned as Sikhs. It is supposed that they are to be found in some numbers in Patiala, but our tables would intimate that they are as strong in Faridkot. They are looked on as unorthodox by most true Sikhs, and it will be observed that more of them are returned in the census as Hindus than as Sikhs."

(12) From the above discussion, it is clear that the land was donated to the appellant-Akhara by the rulers of Patiala, Jind and Nabha States for religious purposes, that Guru Granth Sahib is kept and worshipped there and all persons are permitted to pay respect and worship in the Akhara. The Nirmala Sadhus started as a section of Sikhs, who were followers of Guru Gobind Singh and their principal Akhara is at Hardwar, but subsequently in the period of about 300 years that has since elapsed, they veered away from the Sikh religion and in some part of the country the Nirmala Sadhus are treated as Sikhs while at other places, they are treated as Hindus. In the appellant Akhara Guru Granth Sahib is maintained and worship is allowed there to Nirmala Sadhus and other members of the public. Thus, Nirmala Sadhus is a religious sect and the appellant-Akhara is a religious place of public nature within the meaning of clause (iii) of the explanation to Section 51(1) (c) of the Act and its land is exempt from the operation of the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955. Therefore, the decision of the learned Single Judge cannot be sustained.

(13) As a result, we accept the Latters Patent Appeal and the judgment dated 24th May, 1971 of the learned Single Judge is set aside and the writ petition filed by Kehar Singh, Respondent No. 1 is dismissed. There will be no order as to costs.

MAHAJAN, J.—I agree.

B.S.G.

APPELLATE CIVIL

Before D. K. Mahajan and P. S. Pattar, JJ.

CHANAN SINGH, ETC.,—Appellants.

versus

LAL SINGH,— Respondent.

E.S.A. 1639 of 1970.

November 1, 1973.

Punjab Security of Land Tenures Act (X of 1953)—Section 17-A(1)—Pre-emption suit—Defendant-vendee not raising the plea