SHIROMANI GURUDWARA PRABANDHAK COMMITTEE, AMRITSAR

v.

MIHAN SINGH (DEAD) REP. BY BABA BANTA SINGH

JULY 14, 1993

[MADAN MOHAN PUNCHHI AND K. RAMASWAMY, JJ.]

Sikh Gurudwara Act, 1925:

Section 16(2) (iii)—Interpretation of—Religious institution—Declaration as a Sikh Gurudwara—Conditions requisite for such declaration—Whether the institution in question a Sikh Gurudwara.

On a petition Section 7(1) of the Sikh Gurudwara Act, 1925, received from more than 50 Sikh worshippers of a Gurudwara, praying for the Gurudwara to be declared a Sikh Gurudwara, the petition and the list of properties said to be belonging to the Gurudwara were notified by the State Government and notices were sent to the persons in possession of the properties.

The respondent, who had succeeded to the institution as the disciple of the builder of the institution, moved a petition before the State Government under Section 8 of the Act, claiming that the said Gurudwara was not a Sikh Gurudwara, and that he was a hereditary office holder of the institution. The Sikh Gurudwara Tribunal to which the objection was referred declared, after conducting a civil trial, that the institution was a Sikh Gurudwara and dismissed the objection-petition. On reappreciation of evidence, in appeal, the High Court allowed the objection and rejected the claim set up for declaring the institution to be a Sikh Gurudwara.

In the appeal before this Court, on behalf of the appellant-SGPC it was contended that Section 16(2)(iii) had neither been properly construed nor the evidence appreciated within the parameters of Section 16(2)(iii) of the Act.

Dismissing the appeal, this Court

HELD: 1.1. Before a Gurudwara or an institution could be declared a Sikh Gurudwara, it must be established that it was founded at its

A inception by the Sikhs for public worship. The mere fact that it was actually being used for public worship before and at the presentation of the petition under Section 7(1) is of no help singularly. Evidence as to the founding or establishing of the institution for public worship by the Sikhs is the *sine quo non* before the Tribunal or the Court, as the case may be, can sustain the claim of the SGPC for declaring an institution to be a Sikh Gurudwara. [147-BC]

Gurmukh Singh v. *Risaldar Deva Singh & Ors.*, AIR (1937) Lahore 577; *Atma Das* v. *Takhat Singh & Ors.*, AIR (1935) Lahore 809; *Lachhman Das & Ors.* v. *Atma Singh & Ors.*, AIR (1935) Lahore 666; *Harnam Dass* v. *Rur Singh & Ors.*, (1935) 157 Indian Cases 142; *Ram Piare* v. *Sardar Singh & Ors.*, AIR (1937) Lahore 786; *Sundar Singh and Ors.* v. *Mahant Narain Das and Ors.*, AIR (1934) Lahore 920 and *Mahant Budh Das and Ors.*, v. *SGPC*, AIR (1978) Punjab & Haryana 39, referred to.

New Collins Concise Dictionary, (1983) Edn.; Webster's *Comprehensive Dictionary*, International Edn., referred to.

1.2. The High Court had a correct perception of the requirement of Section 16(2)(iii) of the Act and was alive to the interpretation of the provision in the era before and after independence. Even otherwise, a peep into the statement of the respondent in defence reveals that his immediate predecessor had founded the institution in question by purchasing land from his own pocket and had constructed the building some 55 years ago with some contribution of material made by two Sardars of a different village. This does not speak of the founding of the institution at its inception for use by Sikhs for public worship. Its subsequent use may have some relevance to unearth the past but the past cannot be obviated to be unearthed when staking a claim. [147-F-H; 148-A]

1.3. In the face of the admission made before the Tribunal on behalf of the appellant Committee that direct evidence to prove that the institution established for public worship by the Sikhs was wanting and nothing further being available on this aspect in the statements of two witnesses exemined by it before the Tribunal, one being 30 years and the second being 32 years of age, and the institution having been established almost 25 to 30 years before their birth, the claim of the appellant Committee is not credible. It succeeded before the Tribunal only on drawing inferences from the statements of the objector and his witness, overlooking that the onus

of proof of the sole issue lay on it. That onus could not be discharged merely on inferences drawn from the evidence of the objector. Rather the burden was on the appellant-SGPC itself to prove by cogent, reliable and independent evidence that the institution, right from its inception was meant for public worhip by the Sikhs. Its establishment as propounded by the objector could have been rebutted, at least insofar as the purchase of the land over which the institution stood built was concerned, by suitable evidence. The SGPC failed in that regard. [148-B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 652 of 1979.

From the Judgment and Order dated 10.8.1978 of the Punjab and Haryana High Court in Regular First Appeal No.252/63.

Ujagar Singh and Din Dayal Sharma for the Appellant.

The Judgment of the Court was delivered by

PUNCHHI, J. This appeal has arisen from the judgment order dated August 10, 1978 passed by a Division Bench of Punjab and Haryana High Court at Chandigarh in Regular First Appeal No.252 of 1963.

The appellant, Shiromani Gurdwara Prabandhak Committee, Amritsar, (hereinafter referred to as 'SGPC') is a product of the Sikh Gurdwara Act, 1925, (hereinafter referred to as 'the Act'). The State Government of Punjab received a petition under Section 7(1) of the Act from Sikh worshippers of a Gurdwara, numbering more than 50, qualified residence-wise to so apply, praying for the Gurdwara to be declared a Sikh Gurdwara. As per requirement of sub-section (2) of Section 7 of the Act, the name of the Gurdwara given was Gurdwara Sahib Bara situated in the revenue estate of village Balian, Tehsil and District Sangrur. A list of properties said to be belonging to the Gurdwara was also given, besides the names of the persons who were in possession of those properties. As required, under sub-section (3) of Section 7, publication of the petition under Section 7(1) and the list of the properties provided under Section 7(2) were notified on 1.11.1960 and notices under Section 7(4) were sent to the persons in possession of the properties, said to belong to the Gurdwara.

The respondent Mihan Sinh (now dead and represented) moved a

A petition under Section 8 of the Act before the State Government claiming that the said Gurdwara was not a Sikh Gurdwara, and that he was a hereditary office holder of the institution. The objection under Section 8 of the Act was forwarded to the Sikh Gurdwara Tribunal constituted under Section 12 of the Act for decision. The Tribunal, thereafter, conducted a
B civil trial declaring on 7.4.63 that the institution was a Sikh Gurdwara, dismissing the objection-petition preferred by Mihan Singh. On reappreciation of evidence in appeal, the High Court allowed the objection of Mihan Singh rejecting the claim set up for declaring the institution to be a Sikh Gurdwara. The effort in this appeal is to have the order of the Tribunal restored.

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D.S. Tewatia, J., who spoke for the High Court Bench, in the judgment under appeal, painstakingly took into account each and every piece of evidence: the evidence predominatly being oral, and drawing proper inferences therefrom and went on to reverse the judgment and
D order of the Sikh Gurdwara Tribunal. On going through the High Court judgment we were inclined to dismiss the appeal, disinclined as we were to disturb finding of fact. Sarder Ujjagar Singh, learned senior advocate, appearing for the appellant SGPC, however, goaded us to proceed with the appeal as, according to him, Section 16(2)(iii) had neither been properly construed nor had the evidence been appreciated within the parameters
E of Section 16(2)(iii) of the Act. Having understood the submission by his arguments and having pondered over the matter, we proceed to express our views.

The scheme of the Act was so designed, firstly to put certain places
F of Sikh worship, about which no substantial doubt existed, straightaway in Schedule I. The procedure to achieve that objective was available in Section 3 of the Act and by a public declaration, as conceived therein, the scheduled Gurdwara stood proved conclusively to be a Sikh Gurdwara whereafter the management and control of it was to vest in the bodies referred to under Part III of the Act. Whether any institution not included
G in Schedule I should or should not be placed for management under the provisions of Part III was left to be determined upon a petition duly made by 50 or more worshippers within a prescribed period attracting objections and those being determined by the Sikh Gurdwara Tribunal. It is on the finding on essential facts that the Tribunal could make a positive declara-
H tion whereafter the objective of applying provisions of Part III of the Act

could be achieved. The case in hand is of the latter category and that is why 50 or more worshippers laid such claim, which claim when objected to was adoptedly fought by the SGPC before the Tribunal. A

The Tribunal, it appers, struck only one issue, namely, whether the Gurdwara in dispute is a Sikh Gurdwara, placing the onus of proof thereof on the SGPC. Mihan Singh's *locus standi* to move the objection petition under Section 8 of the Act was not questioned, as the intitution had been put up and built by one Gulab Singh and on whose death Mihan Singh had succeeded to the institution as his 'Chela' or disciple. B

Section 16(1) says that notwithstanding anything contained in any other law in force if in any proceeding before the tribunal it is disputed that a Gurdwara, should or should not be declared 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). Further sub-section(2) clause (iii) says that if the tribunal finds that the Gurdwara was established for use by Sikh 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, the tribunal shall decide that it should be declared a Sikh Gurdwara and record an order accordingly. Thus the fact determinable is whether the Gurdwara, as claimed by its 50 or more worshippers is a Sikh Gurdwara and that essentially would depend on the nature of evidence, oral as well as documentary, lad by the parties. No two decisions in such cases can be alike, no set pattern can be evolved towards appreciation of evidence. Essentially the matter has to rest on the views of the final court of fact, subject of course to exceptions well known in law. C D E F

The Lahore High Court in undivided India had numerous occasions to settle controversies under Section 16(2)(iii) of the Act and had the opportunity to express in terms the requirements of the said provision. The views synchronized by that court are expressed hereafter but without the case titles. In order to bring an institution within the definition of clause (iii) of sub-section (2) of Section 16 of the Act, it is necessary to prove not only that the institution has been used for public Sikh worship but also independently that it was founded for such worship. (See AIR (1937) Lahore 577). The existence for a long period of the worship of the Guru G H

A Granth Sahib does not raise the presumption that the same mode of worship prevailed at the origin of the shrine. (See AIR (1935) Lahore 809). Proof of two separate matters in necessary in order that Section 16(2)(iii) should be applied, the first being that the institution was established for use by Sikhs for the purpose of public worship, and this is not a necessary
B inference, when the second proposition concerning user of the institution only has been established (See AIR (1935) Lahore 666). The question whether the institution was established for use by Sikhs for the purpose of public worship and whether it was used for such worship by Sikhs are two distinct questions. In order to establish that an institution is a Sikh Gurdwara, it is not sufficient to produce satisfactory evidence on the
C second question only and ask the Court to infer that the institution was established for the purpose of public worship. ((1935) 157 Indian Cases 142.) The circumstance that an institution is an old one does not absolve the claimant from giving suitable and sufficient proof, though it is a fact which has to be taken into account in estimating the evidence. (See AIR
D (1937) Lahore 577). The point of distinction between a public and a private worship is that the public can resort to the former as a matter of right while this cannot be done in the case of a private place of worship. (See AIR (1937) Lahore 786). It is open to a petitioner under Section 8 to dispute the existence of a Gurdwara. The term Gurdwara may be interpreted as meeting place of worship. It can only be claimed that it is not a Sikh
E Gurdwara. A petition under Section 7 can only be presented by 50 or more worshippers and that petition along with a list of all rights, title or interests, etc., is published by the Government by notification under Section 7(3). When such a notification is published, a hereditary office holder can petition under Section 8 within 90 days that it should be declared not to
F be a Sikh Gurdwara. (See AIR (1934) Lahore 920).

In post independent era, a Full Bench of the Punjab and Haryana in *Mahant Budh Das and Others* v. *SGPC,* AIR (1978) Punjab & Haryana 39, apparently reiterated the Lahore view and has ruled that before an institution could be declared a Sikh Gurdwara, it must be established that the
G Gurdwara was established for use by Sikhs for public worship; that it was being actually used for worship by Sikhs; and it was used by Sikhs for public worship both before and at the time of the presentation of the petition under Section 7.

H Even English diction does not advance the case of the SGPC. The

meaning of the word 'establish' as given in the *New Collins Concise Dictionary,* 1983 Edition, is : 1. to make secure or permanent in a cerain place, condition, job etc. 2. to create or set up (up organisation etc.) as on a permanent basis. According to Webster's *Comprehensive Dictionary* (International Edition), the word 'establish' means : 1. to settle or fix firmly: make stable or permanent. 2. to set up; found, as an institution or business. 3. to set up install (oneself or someone else) in business, a position, etc.

Thus in our view, on precept and otherwise, the law is firmly ingrained and placed on a firm footing that before a Gurdwara or an institution could be declared a Sikh Gurdwara, it must be established that it was founded at its inception by the Sikhs for public worship. The mere fact that it was actually being used for public worship before and at the presentation of the petition under Section 7(1) is of no help singularly. Evidence as to the founding or establishing of the institution for public worship by the Sikhs is the *sine quo non* before the Tribunal or the court, as the case may be, can sustain the claim of the SGPC for declaring an institution to be a Sikh Gurdwara. The High Court on this aspect expressed its opinion as follows:

> "In our opinion even the best interpretation on the testimony of Mihan Singh would not show that he admitted that the institution, when it was established, was dedicated by Gulab Singh for public worship by Sikhs. His admission that Gulab Singh was a strict Sikh; that Guru Granth Sahib was kept therein and worshipped as the only object of worship or that Gulab Singh performed all 'Rahats' of a Sikh would not go to show that Gulab Singh had dedicated at the inception the said institution for public worship by Sikhs."

We are not persuaded to upset or to go behind the above finding of the High Court. The High Court, as it seems to us, had a correct perception of the requirement of Section 16(2)(iii) of the Act and was alive to the interpetation of the provision in the era before and after independence. Even otherwise a peep into the statement of Mihan Singh in defence reveals that his immediate predecessor Gulab Singh, who had retired from the Army, had founded the institution in question by purchasing land from his own pocket and had constructed the building some 55 years ago with some contribution of material made by two Sardars of a different village, Channa. This does not speak of the founding of the institution at its

A inception for use by Sikhs for public worship. Its subsequent use may have some relevance to unearth the past but the past cannot be obviated to be unearthed when staking a claim. The Tribunal, it seems, was also alive to the question for it observed as follows:

> B "Shri Harcharan Singh, the learned counsel for the respondent, frankly concedes that direct evidence to prove that the institution was established for public worship by the Sikhs is wanting in the case."

In face of the above admission of the counsel for the SGPC and nothing further being available on this aspect in the statements of two C witnesses examined by it before the Tribunal, one being 30 years and the second being 32 years' of age, and the institution having been established almost 25 to 30 years before their birth, the claim of the SGPC is not credible. It succeeded before the Tribunal only on drawing inferences from the statements of the objector and his witness, overlooking that the onus D of proof of the sole issue lay on it. That onus could not be discharged merely on inferences drawn from the evidence of the objector. Rather the burden was on the SGPC itself to prove by cogent, reliable and independent evidence that the institution, right from its inception was meant for public worship by the Sikhs. Its establishment as propounded by the E objector could have been rebutted, at least in so far as the purchase of the land over which the institution stood built was concerned, by suitable evidence. The SGPC failed in that regard.

For the afore view of the matter, it is clear to us that the SGPC, the appellant, had no case to have the judgment and order of the High Court F reversed. We have thus no hesitation in affirming that judgment and order. Accordingly, we dismiss the appeal, but do not make any order as to costs.

N.P.V. Appeal dismissed.