



the Act, one against the legal representatives and another against alienees of 'S'. Decreeing the suits and dismissing the appeals the Tribunal held the institution to be a Sikh Gurdwara; that presumption attached to the entries in Jamabandi under Section 44 of the Punjab Land Revenue Act, 1887 was rebutted by the presumption under Section 18(1)(g) of the Act; and that 'S' had no right, title or interest in the land which belonged to the Gurdwara and thus the transfer in favour of the alienees by the sale deed was of no consequence.

On appeal, High Court held that the application was not a composite one under Sections 8 and 10 of the Act but the same was under Section 10 and artificial bifurcation made by the Tribunal was not proper; that the entries in the documents on record showing 'S' and his Guru from 'kaum' of "Sadh Bairagi" do not warrant any presumption that mere passing from Guru to Chela was indicative of its religious character; and that the Judgment in suit of 1949 was relevant under Section 13 of the Evidence Act, 1872.

In appeal to this Court, appellants contended that with the Notification under Section 9 of the Act, petition in Section 10 was excluded; that entries showing 'S' acquiring the property by succession from his Guru established that the property was a religious property; that petition under Section 10 was misconceived; that conclusion of the Tribunal that the petition was composite one under Sections 8 and 10 of the Act and its observations that the petition was incompetent had attained finality; that presumption under Section 44 of the Revenue Act was rebutted in view of Section 18(1)(g) of the Act; that since Shiromani Gurdwara Prabandhak Committee was not a party in suit of 1949, the decision in suit did not operate as *res judicata*; and that there was no material to show that 'S' belonged to 'Udasi' order.

#### Dismissing the appeals, the Court

**HELD:** 1. Sections 8 and 10 of Sikh Gurdwaras Act, 1925 operate in different fields. While Section 8 deals with the nature and character of the institution, Section 10 deals with adjudication of right, title and interest of the applicant. Since they operate in different fields, it cannot be said that an application under Section 10 was excluded when notification under Section 9 was issued by the Government. [495-F, G]

2. High Court was not in error in holding that 'S' belonged to Udasi order. The same is clearly established in view of the evidence, more particularly, that of PW 10, who has stated that 'S' is the Chela of 'C'. The

**A** property which 'S' claimed devolved upon him from his guru both of them were Udasi Sadhus. In the Jamabandi records the kaum of 'C' and 'S' was recorded to be, "Sadh Bairagi". The descent of the property from a guru to his chela does not warrant the presumption that it is religious property.

[495-H; 496-A, B, F]

**B** *Pandit Parma Nand v. Nihal Chand and Anr.*, AIR (1938) PC 195, relied on.

**C** 3. The *sine qua non* for an institution, to be treated as Sikh Gurdwara is that there should be established Guru Granth Sahib, and the worship of the same by congregation, and a Nishan sahib. There may be other rooms of the institution made for other purposes but the crucial test is the existence of Guru Granth Sahib and the worshippers thereof by the congregation and Nishan Sahib. Unless the claim falls within one or the other of the categories enumerated in sub-section (2) of Section 16, the institution cannot be declared to be a Sikh Gurdwara. [497-H; 498-A, B]

**D** *Pritam Dass Mahant v. Shiromani Gurdwara Prabandhak Committee*, AIR (1984) SC 858, relied on.

**E** 4. Udasis form an independent sect. They do venerate Sikh scriptures. Therefore, in an institution of Udasis sect, one can visualize reading of Granth Sahib or veneration of Sikh scriptures. That itself is not decisive of the character of the institution. On the contrary, where the succession was from Guru to Chela and those gurus were followers of Udasis faith and the institution was known as Dera of Udasi Bhekh and they followed some of the practices of Hindu traditional religion, such things were completely destructive of the character of the institution as Sikh Gurdwara. [498-C, D]

**F** *Shiromani Gurudwara Prabandhak Committee, Amritsar v. Mahant Kirpa Ram and Ors.*, AIR (1984) SC 1059, relied on.

**G** *Kahan Dass v. Shiromani Gurdwara Prabandhak Committee, Lahore*, AIR [1934] Lahore 68 and *Sunder Singh and Ors. v. Mahant Narain Dass and Ors.*, AIR [1934] Lahore 920, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3350-54 of 1993.

**H** From the Judgment and Order dated 13.9.1991 of the Punjab and Haryana High Court in F.A.O. Nos. 434, 435/78, 34, 144 and 198 of 1980.

Har Dev Singh and Ms. Madhu Moolchandani, for the Appellants. A

O.P. Sharma, R.C. Gubrele, K.R. Gupta, Ms. Nanita Sharma, Vivek Sharma, Abhishek Atrey and Rajbalam Sharma, for the Respondents.

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** These five appeals by special leave arise from a common judgment of a Division Bench of the Punjab and Haryana High Court. The five appeals before it were directed against the order dated 1.8.1978 passed by the Sikh Gurdwaras Tribunal Punjab, Chandigarh (in short 'the Tribunal') in Petition nos. 663 and 654 of 1975. B

Synoptical resume of the factual position is as follows: C

One Bakhtawar Singh and fifty nine other worshippers of an institution alleged to be Gurdwara Sahib Ji situated in the revenue estate of Kot Fatta, Tehsil and District Bhatinda filed a petition under sub-section (1) of Section 7 of the Sikh Gurdwaras Act, 1925 (in short 'the Act') to the appropriate Secretary, Government of Punjab, praying, inter alia, that the said institution be declared as Sikh Gurdwara and properties mentioned in the petition be declared as belonging to the Gurdwara. The appropriate Secretary to the Government of Punjab, in terms of sub-section (3) of Section 7 of the Act published the petition along with rights, titles and interests showing rights, titles and interests belonging to the Gurdwara in question vide notification in the Punjab Government Gazette dated 4.11.1974. One Mahant Sarna Ram, an Udasi, filed a petition under Section 10 of the Act claiming that there was no Sikh Gurdwara in existence, the alleged institution was his residential house, and agricultural land alleged to be belonging to the Gurdwara was his property. One Ramji Dass and others also filed identical petition stating that the alleged Gurdwara building was residential house of Sarna Ram Chela Chet Ram and the agricultural land belonged to him and they have purchased about 60 Kanals of land from him. Both these petitions were forwarded by the appropriate Secretary to the Government of Punjab to the Tribunal under sub-section (1) of Section 14 of the Act. Tribunal treated the petition to be a composite one under Sections 8 and 10 of the Act. By its order dated 22.7.1975 Tribunal held that since Sarna Ram had not claimed that he was a hereditary office holder of the institution in dispute, he had no locus standi to file the petition under Section 8. Ramji Dass and others neither claimed any personal interest in the Gurdwara building nor did they claim to be worshippers or hereditary office-holders of the institution and their petition was similarly D E F G H

A not maintainable. However, the Tribunal proceeded to deal with the petition under Section 10. It is to be noted that the Tribunal registered the petitions as No. 663/1975 (*Bagga Singh and Anr. v. S.G.P.C. Amritsar*) filed by Sarna Ram and No.654/1975 (*Ramji Dass and Ors. v. S.G.P.C. Amritsar*) filed by Ramji Das and others. The petitions under Section 10 of the Act were registered giving identical numbers. Vide its order dated 31.7.1978 the Tribunal held that

B the building in question was a Gurdwara and the land attached to it belonged to the Gurdwara in question.

Challenging the correctness of said order, the successors-in-interest of late Mahant Sarna Ram filed First Appeal No. 434 of 1978 and the alienees from late Mahant Sarna Ram assailed the order in First Appeal no. 435 of 1978.

C As a consequence of the order dated 31.7.1978 passed by the Tribunal, Shiromani Gurdwara Parbandhak Committee, Amritsar (hereinafter referred to as 'the Committee') filed two suits under Section 25-A of the Act. One was against Bagga Singh and Darshan Singh, legal representatives of late Mahant Sarna Ram and the other against Ramji Dass and others who were alienees

D from aforesaid late Mahant Sarna Ram and these were registered as suit Nos. 89 and 90 of 1979 respectively. Both these suits were decreed by the Tribunal by order dated 18.12.1979 and decrees were passed in favour of the Committee. Aforesaid decrees were challenged in First Appeal nos. 34 of 1980, 198 of 1980 and 144 of 1980.

E Tribunal, inter alia, came to the conclusion on consideration of the oral and documentary evidence that the institution in question was a Sikh Gurdwara. It placed reliance on the two decisions of the Lahore High Court in *Kahan Dass v. Shiromani Gurdwara Parbandhak Committee, Lahore*, AIR (1934) Lahore 68 and *Sunder Singh and Ors. v. Mahant Narain Dass and Ors.*, AIR

F (1934) Lahore 920.

Tribunal also noticed that after a petition is dismissed by reason of its incompetence it must be taken not to have been presented in accordance with the provisions of Section 8 and the local Government could notify the institution under Section 9. Consequence of such notification is that the

G Gurdwara was to be declared as a Sikh Gurdwara. Further Section 18(1)(g) raised a presumption that where assignment of land is made by way of succession from Guru to Chela, the presumption under Section 18(1)(g) arises. It was further held that presumption attached to the entries in the Jamabandi under Section 44 of the Punjab Land Revenue Act, 1887 ( in short 'Revenue

H Act') is rebutted by the presumption under Section 18(1)(g) of the Act.

Dismissing Sarna Ram's petition it was held that he had no right, title or interest in the land which belonged to the Gurdwara. As a consequence, other applications filed by Ramji Dass and others were not entertainable and, therefore, the transfer in favour of the alienees by the sale-deed was of no consequence. A

Before the High Court, stand of the appellants in the appeals was that the Tribunal's approach was clearly erroneous. It committed first faux pas by treating applications to be composite one under Sections 8 and 10 of the Act. The parameters of Sections 8 and 10 are entirely different and the petitions filed by Sarna Ram and his alienees were in terms of Section 10. Further the evidence on record clearly established that the land in question was the personal land of Sarna Ram. In a suit filed in the year 1949, there was a declaration about the absolute ownership of Sarna Ram and that itself was sufficient to show that the property did not belong to the Sikh Gurdwara and it had no right, title or interest over the land in question. Stand of the respondents before the Tribunal, so far as this plea is concerned, was that the Committee was not a party in this suit, and principle of res judicata was not applicable. B  
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Appellants before High Court submitted that suit was filed in the year 1949 which was disposed of in the year 1951. At the point of time the suit was decided, the Committee was not in existence as for the first time the application under Section 7 of the Act was filed in the year 1960, publication was made in the official gazette in the year 1974, and the petition was registered before the Tribunal in the year 1975. Therefore, the binding effect of this judgment and decree passed long time before, cannot be diluted and specious plea of the respondents being not party should not have been accepted by the Tribunal. E  
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The High Court found that the Tribunal has proceeded on erroneous premises by holding that the application was a composite one under Sections 8 and 10 of the Act. The petition was reproduced in extenso, to conclude that the petition was one under Section 10, and the artificial bifurcation made by the Tribunal was not proper. It also noticed that the Tribunal lost sight of the fact that Sarna Ram was Udasi and the decisions referred to by the Tribunal were not applicable. In fact Exhibits R-1, R-2, R-3, R-4, R-5 and R-7 are clearly indicative of the fact that the (kaum of) Chet Ram and Sarna Ram was "Sadh Bairagi". It was held that the entries do not warrant any presumption that mere passing from Guru to Chela was indicative of its religious character. G  
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A There is no allegation much less proof which will prove that the land was given to the Mahant for religious and charitable purposes. Reference was made to decision of the Privy Council in *Pandit Parma Nand v. Nihal Chand and Anr.*, AIR (1938) PC 195, to conclude that there was no presumption about property being religious property. It further observed that the two

B Lahore decisions on which reliance was placed by the Tribunal were factually distinguishable. It was held that the observations made in those cases relate to different factual situations and the Court had no occasion to express any opinion that a person of the Udasi order cannot acquire private property.

C It noticed that the judgment of civil court which adjudicated the suit of 1949 and disposed it of by judgment dated 31st August, 1951 was relevant under Section 13 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'). With reference to the evidence tendered by the parties by examination of witnesses, it was concluded that the statements of witnesses examined as PWs were reliable and cogent and that of RWs was clearly unacceptable. The factual findings so far as evidence of RWs is concerned, were, *inter alia*, as

D follows:

x      x      x      x      x      x

E "The Committee examined two witnesses, namely, R.W.1 Bakshi Singh and R.W.2 Gurdit Singh. They deposed that they had seen the disputed premises which is used as a Gurdwara; that people go there for worship; that income from the land is used for langar (free kitchen) and providing food to the wayfarers and for repair of the Gurdwara building. They admitted in cross-examination that there was another Gurdwara in the center of the village and there is no land attached to

F that Gurdwara.

G The oral evidence led by the appellant appears to be credible and trustworthy. Perusal of the documentary evidence indicates that predecessor Mahants have been recorded as owner-in-possession of the agricultural land since 1883-84 A.D. In Ex.R-1, which is copy of Jamabandi for the year 1883-84, Chet Ram, Predecessor-in-interest of the appellant, is recorded as owner-in-possession of the land in dispute. The testimony of the appellant's witnesses finds corroboration from the documentary evidence referred supra and it lends credence to the witness' testimony that the disputed agricultural land had devolved on the appellant from his ancestors. On the other hand, the

H oral evidence led by the committee does not inspire confidence. Their

bold statements receive no corroboration from the documentary evidence. They could not tell which place in the disputed Dera was being used as Parkash Asthan. They admitted that for the last 6/7 months there was no Parkash of Guru Granth Sahib, but they did not state whether any Gurparb was celebrated in the institution or that Guru Granth Sahib was the only mode of worship and it was being recited religiously in the institution. Their parrot-like statements are not reliable.”

Resultantly it was observed that there is no escape from the conclusion that the property mentioned in the Punjab Government Notification dated 4.11.1974 published under sub-section (3) of Section 7 of the Act is the private property of Mahant Sarna Ram, and the appeals were allowed.

In support of the appeals, it was contended by the learned counsel for the appellants that on every count the High Court judgment is erroneous on application of law and appreciation of evidence. It was submitted that the effect of notification under Section 9 of the Act and the presumption under Section 18(1)(g) of the Act were lost sight of. The entries showing that Sarna Ram acquired the property by succession from his Guru as Chela clearly establish that the property was a religious property and no other conclusion is available. The notification under Section 9(1) was issued on 16.5.1978 and, therefore, Part III of the Act was applicable and the petition under Section 10 was misconceived. Though the maintainability of the petition was not specifically raised by the Committee before the Tribunal or the High Court that being a question of law was available to be urged in these appeals. High Court erroneously proceeded on the basis that the application was under Section 10 of the Act. Conclusion of the Tribunal that it was composite petition under Sections 8 and 10 of the Act, and its observations that the petition was incompetent, had attained finality. Presumption under Section 44 of the Revenue Act was rebutted in view of what has been stated in Section 18 (1)(g) of the Act. The High Court only referred to Section 13 of the Evidence Act, but lost sight of Section 11 of the Code of Civil Procedure, 1908 (in short ‘the CPC’) dealing with res judicata. Admittedly, the Committee was not a party in suit, and merely because it was decided in the year 1951, the decision in the suit does not operate as res judicata. There was no material to show that Mahant Sarna Ram belonged to the Udasi order and the High Court held so on mere presumptions. Two decisions of the Lahore High Court on which the Tribunal placed reliance are clearly applicable to the facts of the case, and the High Court was in error by holding the factual position in said

A cases to be distinguishable.

Respondents supported the judgment and submitted that the conclusions on law and facts are irreversible. In addition to re-iteration of points urged by them before the High Court it was submitted that requisite conditions for declaration as Sikh Gurudwara as mandated by Section 16(2) have not been established.

In order to appreciate the rival submissions birds eye view of the pivotal provisions is necessary. They are Sections 7, 8, 9, 10, 14, 16(2) and 18(1)(g), and read as follows:-

C *Section 7: Petitions to have a gurdwara declared a Sikh Gurdwara-*  
 (1) Any 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 this Act or, in the case of the extended territories from the commencement of the Amending Act, resident in the police station area in which the gurdwara is situated, may forward to the appropriate Secretary to Government so as to reach the Secretary within one year from the commencement of this Act or within such further period as the State Government may by notification fix for this purpose, a petition praying to have the gurdwara declared to be a Sikh Gurdwara:

E Provided that the State Government may in respect of any such gurdwara declare by notification that a petition 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:

G Provided further that no such petition shall be entertained in respect of any institution specified in schedule I or schedule II unless the institution is deemed to be excluded from specification in schedule I under the provisions of Section 4.

H (2) *List of property claimed for the gurdwara and of persons in possession thereof to accompany a petition under sub-section (1)* A petition forwarded under the provisions of sub-section (1) shall state the name of the gurdwara to which it relates and of the district, tahsil

and revenue estate in which it is situated, and shall be accompanied A  
 by a list, verified and signed by the petitioners, of all rights, titles or  
 interest in immovable properties situated in Punjab inclusive of the  
 gurdwara and in all monetary endowments yielding recurring income  
 or profit received in Punjab, which the petitioners claim to belong  
 within their knowledge to the gurdwara the name of the person in B  
 possession of any such right, title or interest, and if any such person  
 is insane or a minor, the name of his legal or natural guardian, or if  
 there is no such guardian, the name of the persons with whom the  
 insane person or minor resides or is residing, or if there is no such  
 person, the name of the person actually or constructively in possession  
 of such right, title or interest on behalf of the insane person or minor, C  
 and if any such right, title or interest is alleged to be in possession  
 of the gurdwara through any person the name of such person shall  
 be stated in the list; and the petition and the list shall be in such form  
 and shall contain such further particulars as may be prescribed.

(3) *Publication of petition and list received under sub-sections (1) D  
 and (2)*-On receiving a petition duly signed and forwarded under the  
 provisions of sub-section (1) the State Government shall as soon as  
 may be, publish it along with the accompanying list, by notification,  
 and shall cause it and the list to be published, in such manner as may  
 be prescribed, at the headquarters of the district and of the tahsil and E  
 in the revenue estate in which the gurdwara is situated, and at the  
 headquarters of every district and of every tahsil and in every revenue  
 estate in which any of the immovable properties mentioned in the list  
 is situated and shall also give such other notice thereof as may be  
 prescribed:

Provided that such petition may be withdrawn by notice to be F  
 forwarded by the Board so as to reach the appropriate Secretary to  
 Government at any time before publication, and on such withdrawal,  
 it shall be deemed as if no petition had been forwarded under the  
 provisions of sub-section (1).

(4) *Notice of claims to property to be sent to persons shown in the G  
 list as in possession*-The state Government shall also, as soon as may  
 be, send by registered post a notice of the claim to any right, title or  
 interest included in the list to each of the persons named therein as  
 being in possession of such right, title or interest either on his own  
 behalf or on behalf of an insane person or minor or on behalf of the H

A gurdwara:

Provided that no such notice need be sent if the person named as being in possession is a person who joined in forwarding the list.

B (5) *Effect of publication of petition and list under sub-section (3)*—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.

C *Section 8: Petition to have it declared that a place asserted to be a Sikh Gurdwara is not such a gurdwara*—When a notification has been published under the provisions of sub-section (3) of Section 7 in respect of any gurdwara, and hereditary office-holders or any twenty or more worshippers of the gurdwara, each of whom is more than twenty-one years of age and was on the commencement of this Act or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be, a resident of a police station area in which the gurdwara is situated may forward to the State Government, through the appropriate Secretary to Government so as to reach the Secretary within ninety days from the date of the publication of the notification, a petition signed and verified by the petitioner, or petitioners, as the case may be, claiming that the gurdwara is not a Sikh Gurdwara, 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 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:

G 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, resident 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

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petitioners who were such residents.

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*Section 9: Effect of omission to present a petition under section 8—*

(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.

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(2) Effect of publication of a notification under sub-section (1)—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.

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*Section 10: Petition of claim to property including in a list published under sub-section (3) of Section 7—*

(1) any person may forward to the State Government through the appropriate Secretary to Government, so as to reach the Secretary within ninety days from the date of the publication of a notification under the provisions of sub-section (3) of Section 7, a petition claiming a right, title or interest in any property included in the list so published.

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(2) *Signing and verification of petitions under sub-section—*(1) A petition forwarded under the provisions of sub-section (1) shall be signed and verified by the person forwarding it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of plaints, and shall specify the nature of the right, title or interest claimed and the grounds of the claim.

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(3) *Notification of property not claimed under sub-section (1) and effect of such notification—*The State Government shall, as soon as may be, after the expiry of the period for making a claim under the provisions of sub-section (1), publish notification, specifying the rights, titles or interest in any properties in respect of which no such claim has been made, and the notification shall be conclusive proof of the fact that no such claim was made in respect of any right, title or interest specified in the notification.

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*Section 14: Tribunal to dispose of petition under sections 5, 6, 8, 10 and 11 (1)—*The State Government shall forward to a tribunal all

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A petitions received by it under the provisions of sections 5, 6, 8, 10 and 11, and the tribunal shall dispose of such petitions by order in accordance with the provisions of this Act.

B (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 and 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.

C *Section 16(2):* If the Tribunal finds that the gurdwara—

D (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

E (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;

(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

F (iv) was established in memory of a Sikh martyr, saint or historical person 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

G (v) owing to some incident connected with the Sikh religion 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 to be a Sikh Gurdwara, and record an order accordingly.

H *Section 18(1)(g): Presumption in favour of a Notified Sikh Gurdwara on proof of certain facts when a claim to property is made by an*

*office-holder*—In any proceedings before a Tribunal, if any past or present office-holder denies that a right, title, or interest recorded in his name or in that of any person through whom claims, in a record of rights, or in an annual record, prepared in accordance with the provisions of the Punjab Land Revenue Act, 1887 ( 17 of 1887), and claimed to belong to a Notified Sikh Gurdwara, does so belong, and claims such right, title or interest to belong to himself shall, notwithstanding anything contained in section 44 of the said Act, be a presumption that such right, title or interest belongs to the gurdwara upon proof of any of the following facts namely

(a) x    x    x    x    x    x

(b) x    x    x    x    x    x

(c) x    x    x    x    x    x

(d) x    x    x    x    x    x

(e) x    x    x    x    x    x

(f) x    x    x    x    x    x

(g) the devolution of the succession to the right, title or interest in question from an office-holder to the successor-in-office as such on two or more consecutive occasions.

Basic issue according to us is whether the High Court had rightly decided the questions raised before it in the background of Section 10. Copy of the petition which was extracted by the High Court clearly shows that it was under Section 10. The petition was reproduced in extenso. Bare reading thereof shows that it was in terms of Section 10. Sections 8 and 10 operate in different fields. While Section 8 deals with the nature and character of the institution, Section 10 deals with adjudication of right, title and interest of the applicant. Section 9 only makes Part III of the Act applicable where a notification is issued. Said Part deals with management and administration of the property. Section 9 nowhere bars an application in terms of Section 10. Since they operate in different fields, it cannot be said that an application under Section 10 was excluded when notification under Section 9 was issued by the Government.

Though it was pleaded that there is no material to show that the Sant Sarna Ram belong to Udasi order, the same is clearly untenable in view of the

A evidence, more particularly, that of PW 10, who has stated that Sarna Ram is the Chela of Chet Ram. The property which Sarna Ram claimed devolved upon him from his Guru Chet Ram, and they were Udasi Sadhus. In the Jamabandi records the kaum of Chet Ram and Sant Ram was recorded to be, as noted above, "Sadh Bairagi". High Court was not in error in holding that the Sant Ram belonged to Udasi order.

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At this juncture it will be necessary to take note some of the observations made by the Privy Council in *Pandit Parma Nand's* case (supra). That was a case which related to Udasis. It was observed, inter alia, as follows :-

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"The principal ground, upon which the judgment of this High Court proceeds, is that the Baghichi and other properties have descended from guru (religious preceptor) to enable chela (religious disciple); but this circumstance does not necessarily lead to the conclusion that a property, when acquired by a mahant, loses its secular character. It is common ground that the mahants of this Institution belonged to an ascetic order called Udasi. The Udasis rarely marry; and, if they do so, generally lose all influence; for the dharamsala or Gurdwara soon becomes a private residence closed to strangers; Maclagants. Census Report for the Punjab, Part 1, Chap. 4, p.152. When a person enters the Udasi order, he severs his connection with the members of his natural family. It follows that neither he nor his natural relative can succeed to the property held by the other. There is however no reason for holding that an Udasi cannot acquire private property with his own money or by his own exertions. If he does acquire private property, it cannot be inherited by his natural relatives, but passes on his death to his spiritual heir including his chela who is recognized as his spiritual son. *The descent of the property from a guru to his chela does not warrant the presumption that it is religious property.*"

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(Underlined for emphasis)

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In view of the aforesaid, it is really not necessary to deal in detail with the plea relating to non-compliance of the stipulations in Section 16(2), except to take note of two decisions of this Court, rendered by three learned Judges in each, throwing beacon light on the issue.

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In *Pritam Dass Mahant v. Shiromani Gurdwara Prabandhak Committee*, AIR (1984) SC 858, it was held as under:-

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A

“Temples are found almost in every religion but there are some differences between the Sikh temples and those of other religions. The Sikh Gurdwaras have the following distinctive features:

(1) Sikh temples are not the place of idol worship as the Hindu temples are. There is no place for idol worship in a Gurdwara. The central object of worship in a Gurdwara is Sri Guru Granth Sahib, the holy book. The pattern of worship consists of two main items: reading of the holy hymns followed by their explanation by some learned man, not necessarily a particular Granthi and then singing of some passages from the Holy Granth. The former is called Katha and the second is called Kirtan. A Sikh thus worships the Holy Words that are written in the Granth Sahib, the Words or Shabada about the Eternal Truth of God. No idol or painting of any Guru can be worshipped.

B

C

(2) Sikh worship in the Gurdwara is a congregational worship, whereas Hindu temples are meant for individual worship. A Sikh does the individual worship at home when he recites Gurbani daily. Some scriptures meant for this purpose are Japji, Jaap, Rahras, Kirtan Sohila. Sangat is the collective body of Sikhs who meet every day in the Gurdwara.

D

E

(3) Gurdwara is a place where a copy of Guru Granth Sahib is installed. The unique and distinguishing feature would always be the Nishan Sahib, a flagstaff with a yellow flag of Sikhism flying from it. This serves as a symbol of the Sikh presence. It enables the travellers, whether they be Sikhs or not, to know where hospitality is available. There may be complexity of rooms in a Gurdwara for the building may also serve as a school, or where children are taught the rudiments of Sikhism as well as a rest center for travellers. Often there will be a kitchen where food can be prepared though langar itself might take place in the yawning. Sometimes the Gurdwara will also be used as a clinic. But its pivotal point is the place of worship and the main room will be that in which the Guru Granth Sahib is installed where the community gathers for diwan. The focal point in this room will be the book itself.”

F

G

The *sine qua non* for an institution, to be treated as Sikh Gurdwara as observed in the said case, is that there should be established Guru Granth

H

**A** Sahib, and the worship of the same by congregation, and a Nishan Sahib. There may be other rooms of the institution made for other purposes but the crucial test is the existence of Guru Granth Sahib and the worshippers thereof by the congregation and Nishan Sahib.

**B** Unless the claim falls within one or the other of the categories enumerated in sub-section (2) of Section 16, the institution cannot be declared to be a Sikh Gurdwara.

**C** In *Shiromani Gurudwara Prabandhak Committee Amritsar v. Mahant Kirpa Ram and Ors.*, AIR (1984) SC 1059, it was observed that Udasis form an independent sect. They do venerate Sikh scriptures. Therefore, in an institution of Udasis sect, one can visualize reading of Granth Sahib or veneration of Sikh scriptures. That itself is not decisive of the character of the institution. On the contrary, where the succession was from Guru to Chela and those Gurus were followers of Udasis faith and the institution was known as Dera of Udasi Bhekh and they followed some of the practices of Hindu traditional religion, such things were completely destructive of the character of the institution as Sikh Gurdwara.

Above being the factual position and the legal principles applicable thereto, the appeals deserve dismissal, which we direct.

**E** K.K.T.

Appeals dismissed.