

SHIROMANI GURDWARA PRABANDHAK COMMITTEE
v.
MAHANT HARNAM SINGH C. (DEAD), M.N. SINGH AND ORS.

SEPTEMBER 16, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Sikh Gurdwaras Act, 1925—Section 16(2)—Sikh Gurdwara—Meaning of—Facts to be proved—Held, an established Guru Granth Sahib, worship by congregation and a Nishan Sahib must be proved.

Sikh Gurdwaras Act, 1925—Section 7—Sikh Gurdwara—Declaration of an institution as—Onus of proof—Held, lies on the person who asserts that the institution is a Sikh Gurdwara.

Code of Civil Procedure, 1908—Section 92—Public Charities—Representative suits—Judgment in—Effect of—Held, all those who share common interest in the trust are bound by the judgment—Estoppel.

Some persons, claiming to be worshippers, filed a petition under Section 7(1) of the Sikh Gurdwaras Act, 1925 for declaring an institution as a Sikh Gurdwara. On notification of the application, the respondents and certain other persons filed a counter petition under Section 8 of the said Act claiming that the institution was not a Sikh Gurdwara. The respondents claimed that the Dera was established by a Nirmala Sadhu and had been in possession of the Nirmala Sadhus for generations; all the mahants of the Dera were Nirmalas; and none of the conditions laid down in Section 16(2) of the Sikh Gurdwaras Act, 1925 were fulfilled. The respondents also claimed that in a civil suit filed under Section 92 of Code of Civil Procedure earlier by few of the signatories of the present petition along with others, this Court in *Mahant Harnam Singh v. Gurdial Singh and Anr.*, AIR (1967) SC 1415 held that the Nirmala Sadhus are not Sikhs and that the institution did not belong to the followers of the Sikh religion. The findings arrived at by this Court were binding on the parties.

The petitions filed under Section 7(1) and 8 were forwarded to

A the Tribunal for disposal. The Tribunal held that the institution was a Sikh Gurdwara without returning a finding as to under which clause of Section 16(2) of the Sikh Gurdwaras Act, 1925 the present case fell.

B The respondents filed an appeal before the High Court. The High Court held that the onus to prove that the institution was a Sikh Gurdwara was on the appellant. The appellant had to demonstrate under which clause of Section 16(2) of the Sikh Gurdwaras Act, 1925 the case fell. The appellant failed to do so. Therefore, setting aside the order of the Tribunal, the High Court held that the institution was not a Sikh Gurdwara. Hence this appeal.

C Dismissing the appeals, the Court

D HELD : 1. Unless the claim falls within one or the other of the categories enumerated in sub-section (2) of Section 16 of the Sikh Gurdwaras Act, 1925, the institution cannot be declared to be a Sikh Gurdwara. 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.

[819-H, 820-A, 819-G]

E *Pritam Dass Mahant v. Shiromani Gurdwara Prabandhak Committee*, AIR (1984) SC 858 and *Shiromani Gurdwara Prabandhak Committee, Amritsar v. Bagga Singh and Ors.*, [2003] 1 SCC 619, relied on.

F 2. The onus to prove that the institution is a Sikh Gurdwara lies on the person who asserts the same. That being the position, the appellant which asserted that the institution was a Sikh Gurdwara has to prove the same. The High Court has therefore rightly held that the Tribunal wrongly placed the burden of proof on the respondents. [820-B-C]

G *S.G.P. Committee v. M.P. Dass Chela (dead) by Lrs.*, [1998] 5 SCC 157, relied on.

H 3. A suit under Section 92 Code of Civil Procedure is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who were interested in the trust. It is for the vindication of

public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 of Code of Civil Procedure and the suit title in that event would show only their names as plaintiffs. The named plaintiffs being the representative of the public at large which is interested in the trust, all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under Section 92 Code of Civil Procedure is thus a representatives suit and as such binds not only the parties named in the suit title but all those who share common interest and are interested in the trust. [821-C-E]

S. Vemigopala Naidu and Ors. v. Vankatarayulu Naidu Charities and Ors., AIR (1990) SC 444, relied on.

Hem Singh and Ors. v. Basant Das and Anr., AIR (1936) PC 93; *Ram Kishan v. Bur Singh and Ors.*, AIR (1934) Lahore 39; *Sohan Das v. Bela Singh and Ors.*, AIR (1934) Lahore 180; *Sajjan Singh v. Isha Singh and Ors.*, AIR (1934) Lahore 215; *Bisakha Singh v. Pt. Socha Singh*, AIR (1937) Lahore 7; *Gurmukh Singh v. Risaldar Deva Singh and Ors.*, AIR (1937) Lahore 577 and *Gulab Das v. Foja Singh and Ors.*, AIR (1937) Lahore 826; cited.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3348-3349 of 1993.

From the Judgment and Order dated 13.9.91 of the Punjab and Haryana High Court in F.A.O. Nos. 532/81 and 6 of 1982.

Har Dev Singh and Ms. Madhu Moolchandani for the Appellant.

K.R. Nagaraja, H.S. Kathuria and Ms. E.R. Sumathy for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : These appeals by Special Leave arise from a common judgment of a Division Bench of the Punjab and Haryana High Court. Before the High Court appeals were filed challenging the order dated 9.11.1981 passed by the Sikh Gurdwara Tribunal, Punjab, Chandigarh (in short the 'Tribunal') in Petition Nos.119 and 121 of 1962.

Synoptical resume of the factual position is as follows:

A Acting on a petition under Section 7(1) of the Sikh Gurdwaras Act, 1925 (in short the 'Act') made by 60 persons, who claimed to be worshippers, for declaring that the institution in question (known as Gurdwara Guru Granth Sahib) situated in the revenue estate of Jhandawala district Bhatinda to be a Sikh Gurdwara, the Government of Punjab

B published a notification No. 1216-G.P., dated 23rd June, 1961 under Section 7(3) of the Act describing the said institution as a Sikh Gurdwara. When the petition under Section 7(1) was notified, Mahant Harnam Singh, Chela Narain Singh, Nirmala Sadhu the original respondent (who has died in the meantime and is represented by legal representatives) filed a counter

C petition under Section 8 of the Act claiming that the institution in dispute was not a Sikh Gurdwara but it was a Dera Bhai Saida Ram. Similar petition under Section 8 of the Act was also moved by 58 persons of the Dera alleging that the institution in dispute was not a Sikh Gurdwara. Both these petitions were forwarded by the State Government to the Tribunal for disposal. In the two petitions Shiromani Gurdwara Prabandhak Com-

D mittee (hereinafter referred to as the 'Committee') was arrayed as the respondent.

Stand of Harnam Singh was that the Dera was not established in the memory of any Sikh Guru or in commemoration of any incident in the life of any of the Ten Sikh Gurus or in memory of any Sikh Martyr, saint or historical persons and never been used for public worship by Sikhs. On the other hand, the institution was established by Bhai Saida Ram who was a Nirmala and it came to be known as Dera Bhai Saida Ram. The Dera had been in possession of Nirmala Sadhus for generations and all the Mahants had been Nirmalas and by succession devolved from Guru to

F Chela subject to confirmation by Nirmala. Gurdial Singh and Ishar Singh, Lambardars of village Jhandawala who were also signatories to a petition under Section 7(1) had earlier filed a civil suit under Section 92 of the Code of Civil Procedure, 1908 (in short the 'CPC') in the Court of District Judge, Bhatinda for his removal from Mahantship and the same was dismissed on

G 31.3.1956. It was held that the institution was not a Sikh Gurdwara and the Sikhs had no interest in it. It was a Dera of Nirmala Sadhus. In appeal, High Court reversed the conclusions. In further appeal the conclusions of the trial Court were restored by this Court; by judgment dated 24.2.1967. Said judgment is *Mahant Harnam Singh v. Gurdial Singh and Anr.* AIR

H (1967) SC 1415.

In the present proceeding Mahant Harnam Singh referred to the said judgment and opposed maintainability of the petition under Section 7(1). The judgment was one in rem and operates as *res judicata* was his stand. These pleas were countered by the Committee. The Tribunal framed the following issues on 18.1.1971:

(1) What is the effect of the judgment of this Court, copy marked Exhibit P-1, on the merits of the case?

(2) Whether the institution in dispute is a Sikh Gurdwara?

(3) Relief.

Issue No.1 was treated as a preliminary issue. The Tribunal vide its order dated 8th March, 1977, held that the judgment of this Court in *Mahant Harnam Singh's* (supra) does not bar the jurisdiction of the Tribunal to decide the Claim Petition under Section 7 of the Act. The order of the Tribunal was challenged before the High Court and this Court without any success.

Issue No.2 was taken up for adjudication and the same was answered in favour of the Committee. It was held that the institution was a Sikh Gurdwara. Tribunal came to hold that the institution in dispute was originally established by Sikhs and the object of worship was Guru Granth Sahib because majority of the villagers were Sikhs and Nirmalas are Sikhs. With reference to Section 16 of the Act, the Tribunal took note of the conditions which were required to be fulfilled before any institution could be declared as a Sikh Gurdwara. But it did not opine as to under which clause of Sub-section (2) of Section 16 the institution in question falls.

Aggrieved by the judgment of the Tribunal, the High Court was moved in First Appeal. The High Court felt that the Tribunal had lost sight of the decision in *Harnam Singh's* case (supra). In fact in that case the two plaintiffs who were signatories to the petition under Section 7(1) of the Act had obtained permission from the Advocate General for instituting a suit under Section 92 of CPC against Harnam Singh. It was claimed in the plaint that there was one Guru Granth Sahib at village Jhandawala, Tahsil and District Bhatinda which was managed by Mahant Harnam Singh as a Mahatmim and he was in possession of the Dera and agricultural land

A belonging to Guru Granth Sahib which was a public religious place and was established by the residents of the village and it was a public trust created by the residents of the village for the service of the public to provide food from the hunger, to allow the people to fulfil religious beliefs and for worship etc. The plaintiffs in their capacity as representatives of

B owners of land situated in the village and the residents thereof claimed that they were entitled to file a suit under Section 92 of CPC. Mahant was the defendant and he took the stand that there was no such interest in the public as to entitle them to institute the suit. This Court noticed that the trial Court and the High Court gave a concurrent finding that all the Mahants of the

C Institution from Bhai Saida Ram to Mahant Harnam Singh have been Nirmalas. The trial Judge held that such Nirmala Sadhus are not Sikhs and that the institution was not a Sikh institution. The High Court disagreed with such conclusions and held that Sadhus Nirmalas are a sect of the Sikhs and consequently the Sikhs had interest in the institution as it was a Sikh

D Gurdwara. High Court thus found that the plaintiffs had interest as required under Section 92 of CPC. They were Sikhs and the institution was a religious institution of Nirmalas Sadhus who were a section of the Sikhs. The nucleus according to the High Court was by way of donation of land by the residents of the village. This Court on appeal held (i) Nirmala Sadhus are not Sikhs; (ii) the mere fact that at some stage there was a Guru

E Granth Sahib in the Dera in dispute cannot lead to any conclusion that the institution was meant for or belonged to the followers of the Sikh religion. The Dera was maintained for entirely a distinct sect known as Nirmala Sadhus who cannot be regarded as Sikhs. Consequently in their mere capacity of followers of Sikh religion in the village the plaintiffs could not

F be held to have such interest as to entitle them to institute a suit under Section 92 of the CPC. The institution was held to be not belonging to the followers of the Sikh religion.

High Court noted that Section 16 of the Act provides the manner in which a Gurdwara can be held to be a Sikh Gurdwara. The onus to prove

G whether the institution in dispute was a Sikh Gurdwara is on the Committee. The Committee was required to prove the essential ingredients of either of the Clauses (i) to (v) of Sub-section (2) of Section 16 of the Act. The Committee did not plead or prove as to which of the clause cover the case at hand. The Tribunal was not justified in its conclusions. Merely because

H in some of the revenue records it was indicated that there was exemption

from payment of land revenue they did not even remotely suggest that the institution in dispute was established for use of Sikhs for the purpose of public worship. Accordingly, it was held that the institution in dispute was not a Sikh Gurdwara. A

In support of the appeals, learned counsel for the Committee submitted that in the earlier case the basic issue whether the institution was a Sikh Gurdwara was not considered. Nirmalas are Sikhs as was held in several decisions and the essential ingredients necessary for coming to a conclusion that the institution is a Sikh Gurdwara have been established beyond a shadow of doubt by ample oral and documentary evidence adduced by the Committee. The onus has been wrongly placed on the Committee. On the contrary, since the respondent was taking the stand that the institution was not a Sikh Gurdwara, the onus was on him to establish so. According to him, by a long series of decisions rendered nearly seven decades back it was observed that Nirmalas are Sikhs. When Guru Granth Sahib was worshipped in any institution makes it Sikh Gurdwara, the onus having been wrongly placed, the judgment of the High Court gets vitiated. Merely because the Manager of the institution was a Nirmala that does not affect the institution from being a Sikh Gurdwara. The entries in the revenue records have been erroneously over-looked. The decision in *Hem Singh and Ors. v. Basant Das and Anr.*, AIR (1936) PC 93 on which reference was placed to ignore the entries was rendered in a different factual context and has no application. Reference was made to the following decisions: *Ram Kishan v. Bur Singh and Ors.*, AIR (1934) Lahore 39; *Sohan Das v. Bela Singh and Ors.*, AIR (1934) Lahore 180; *Sajjan Singh v. Ishar Singh and Ors.*, AIR (1934) Labore 215; *Bisakha Singh v. Pt. Socha Singh*, AIR (1937) Lahore 7; *Gurmukh Singh v. Risaldar Deva Singh and Ors.*, AIR (1937) Lahore 577 and *Gulab Das v. Foja Singh and Ors.*, AIR (1937) Lahore 826. B C D E F

It was submitted the question of onus in any event lose significance, when on consideration of the materials on record the Tribunal came to hold that the institution was a Sikh Gurdwara. G

Responding to the aforesaid pleas, it was submitted by learned counsel for the respondents that there was no occasion for the matter being adjudicated by the Tribunal in the earlier round, because the Tribunal was not in existence and for the area in question it was constituted in 1963. It H

A was dissolved in October 1966 when the matter was pending before the High Court, and was re-constituted in February 1970. The Tribunal had no jurisdiction to deal with the matter once there was an adjudication under Section 92 of CPC. The implications of a representative suit have to be taken note of. The High Court has rightly placed the onus on the Committee

B to establish that the institution was a Sikh Gurdwara. It was categorically recorded by this Court that Nirmalas are not Sikhs and the Institution is not a Sikh Gurdwara. That being the position, the High Court's judgment has no infirmity. Additionally, the decisions referred to by learned counsel for the appellants as regards the nature of the institution were rendered in

C different factual set up and on the facts involved in the case it was held that the institution was a Sikh Gurdwara. Factual difference in the present case makes those decisions inapplicable. Even if it has been held in some of the decisions that Nirmalas are Sikhs or the onus was on the plaintiffs under Section 7 of the Act, they are no longer good law in view of what has been stated by this Court.

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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:-

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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

F 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:

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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

H 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: A

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. B

(2) List of property claimed for the gurdwara and of persons in possession thereof to accompany a petition under sub-section (1) C
 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 by a list, verified and signed by the petitioners, D
 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 possession of any such right, E
 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 F
 such right, title or interest on behalf of the insane person or minor, 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 G
 prescribed. H

(3) Publication of petition and list received under sub-sections (1) 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 H

A 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 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:

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C Provided that such petition may be withdrawn by notice to be 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).

D (4) *Notice of claims to property to be sent to persons shown in the 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 gurdwara:

E 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.

F (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.

G *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

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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:

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 petitioners who were such residents.

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.

(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

A Gurdwara, and the provisions of Part III shall apply to the gurdwara with effect from the date of the publication of the notification.

B *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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D (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.

E (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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G *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 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.

H (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 A
proof that the provisions of Section 8 with respect to such
worshippers were duly complied with.

Section 16(2): If the Tribunal finds that the gurdwara –

(i) was established by, or in memory of any of the Ten Sikh B
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 C
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 D
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 E
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

(v) owing to some incident connected with the Sikh religion was F
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.

Section 18(1)(g): Presumption in favour of a Notified Sikh G
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 H

A 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 –

B (a) x x x x x x

C (b) x x x x x x

(c) x x x x x x

(d) x x x x x x

D (e) x x x x x x

(f) x x x x x x

E (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.

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

F x x x x x x

“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:

G (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

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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.

(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.

(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 centre 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."

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 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

A declared to be a Sikh Gurdwara.

These aspects have been highlighted in *Shiromani Gurdwara Parbandhak Committee, Amritsar v. Bagga Singh and Ors.*, [2003] 1 SCC 619.

B In *S.G.P. Committee v. M.P. Dass Chela (dead) by Lrs.*, [1998] 5 SCC 157 it was held that in terms of the requirement of Section 16(2), the onus to prove that the institution is a Sikh Gurdwara lies on the person who asserts the same. That being the position, the Committee which asserted that the Institution was a Sikh Gurdwara has to prove the same. The High
 C Court has therefore rightly held that the Tribunal wrongly placed the burden of proof on the respondents herein. Judgments to the contrary rendered and relied upon by the appellants are no longer good law in view of the last noted decision. Similarly, this Court in *Harnam Singh's* case (supra) came to the conclusions that Nirmalas are Sadhus who cannot be
 D regarded as Sikhs and consequently in the mere capacity of followers of Sikh religion residing in the concerned village cannot be held to have an interest as to entitle them to institute a suit under Section 92 of CPC. In other words, there was a categorical finding that Nirmalas are not Sikhs. It was held that the Dera was maintained for an entirely distinct sect known as Nirmalas Sadhus who cannot be regarded as Sikhs. It was also held that
 E mere fact that at some stage there was a Guru Granth Sahib in the Dera cannot lead to any conclusion that the institution was meant for or belonged to the followers of Sikh religion. These findings were rendered in a suit filed under Section 92 of CPC. Decisions taking the contrary view that Nirmalas are Sikhs per se lose significance. The factual findings relating
 F to the nature and character of the institutions, specifically found on an elaborate review of the governing legal principles as well, and which have reached finality cannot be re-agitated and the same is precluded on the principle of 'Issue estoppel' also. As has been rightly contended by learned counsel for the respondents decisions rendered on the peculiar fact situation
 G specifically found to exist therein cannot have any irreversible application.

A Full Bench of the Lahore High Court in (Bhai) *Kirpa Singh v. Rasalldar Ajaipal Singh and Ors.*, AIR (1928) Lahore 627 observed that the enactment of the Act and the issue of a Notification made under the provisions of the Act declaring the Gurdwara to be a Sikh Gurdwara do
 H not bar the jurisdiction of the High Court to deal with an appeal against

the decree of the subordinate courts passed in a suit under Section 92 of CPC. in respect of Gurdwara whose appeal was pending when the Act came into force or the Notification was issued. As the factual scenario indicated above amplifies, in the original round, when a representative suit was filed, the Act was not in operation to the area when the Institution is established. Therefore, the declaration made by the Civil Court is of considerable relevance.

As observed by this Court in *R. Venugopala Naidu and Ors. v. Venkatarayulu Naidu Charities and Ors.*, AIR (1990) SC 444 a suit under Section 92 CPC is a suit of special nature for the protection of public rights in the public trust and charities. The suit is fundamentally on behalf of the entire body of persons who are interested in the trust. It is for the vindication of public rights. The beneficiaries of the trust, which may consist of public at large, may choose two or more persons amongst themselves for the purpose of filing a suit under Section 92 CPC and the suit-title in that event would show only their names as plaintiffs. Can we say that the persons whose names are in the suit-title are the only parties to the suit? The answer would be in the negative. The named plaintiffs being the representatives of the public at large which is interested in the trust, all such interested persons would be considered in the eyes of law to be parties to the suit. A suit under Section 92 CPC is thus a representative suit and as such binds not only the parties named in the suit-title but all those who share common interest and are interested in the trust. It is for that reason that Explanation VI to Section 11 of CPC constructively bars by *res judicata* the entire body of interested persons from re-agitating the matters directly and substantially in issue in an earlier suit under Section 92 CPC.

Judged in the background of the legal parameters and the factual matrix highlighted above, the appeals are without merit and deserve dismissal which we direct. Costs made easy.

B.K.M.

Appeals dismissed.