PETITIONER:
UTTAM DAS CHELA SUNDER DAS

Vs.

RESPONDENT:
SHIROMANI GURDWARA PARBANDHAKCOMMITTEE, AMRITSAR

DATE OF JUDGMENT: 20/05/1996

BENCH:
PUNCHHI, M.M.
BENCH:
PUNCHHI, M.M.
PARIPOORNAN, K.S.(J)

CITATION:
1996 SCC (5) 71 JT 1996 (5) 285
1996 SCALE (4)608

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Punchhi J.

Rival applicant for substitution, Gurdev Dass, claiming to be Chela of Uttam Dass deceased appellant, is also permitted to be brought on record, supportive of the appeal, without deciding the rival claims of Gurdev Dass vis-a-vis Kesar Dass, who is already brought on record claiming himself to be Chela of Uttam Dass, deceased appellant, vide order dated 25.1.1993.

This appeal by special leave is directed against the judgment and order of a Division Bench of the Punjab & Haryana High Court at Chandigarh, dated January 11, 1984 passed in First Appeal from Order hearing No.189 of 1973.

An institution, as held to be charitable, is located within the revenue estate of village Kanganpur, Tahsil Malerkotla, District Sangrur, Punjab, which was within the erstwhile Malerkotla State, ruled by muslim Nawabs. The State got merged in the State of Patiala and East Punjab States Union (PEPSU) on the latter’s formation as a part B State under the Constitution. Later the State of PEPSU was merged with effect from 1.11.1956 in the State of Punjab whereat beforehand the Sikh Gurdwaras Act, 1925 thereinafter referred to as the Act, stood enforced. Later, by Punjab Act No. 1 of 1959, the said Act was extended to the territories, which immediately before the 1st November, 1956, were comprised in the State of Punjab and Patiala and East Punjab States Union. The institution in question stands located in the extended territories. Dispute arose whether the said institution is a Sikh Gurdwara or not.

The scheme of the Act is to give to the Sikhs their religious shrines or places of worship in accordance with the procedure devised in the Act. Those have been divided into two categories. Regarding those about which no substantial doubt existed they found their way out-right in Schedule I and their management vesting to be carried out as

provided in Part III. Regarding the second category of the doubtful ones, their nature as to whether they were Sikh Gurdwaras or not, was determinable substantively in accordance with the tests provided in Section 16, but by adoption of procedure under Sections 7 to 11 of the Act.

Under sub-section (1) of Section 7 of the Act, 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, a resident in the police station area in which the Gurdwara is situated, may forward to the State Government, through the appropriate Secretary to Govt., a petition praying to have the Gurdwara declared a Sikh Gurdwara within a period of 180 days from the commencement of the Amending Act. Under sub-section (3) of Section 7 of the Act, 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 tehsil and in the revenue estate in which the Gurdwara is situated, and at the headquarters of every district and of every tehsil 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.

Under sub-section (4) of this section, 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.

Sections 8 and 9 of the Act are reproduced hereafter:

> S. 8. When a notification has been published under the provisions of sub-section (3) of Section 7 in respect of any Gurdwara, any hereditary office-holder or any twenty or more worshippers of the Gurdwara 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 first 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.
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> Provided that the State Government may in respect of any such Gurdwara declare by notification that a petition of twenty or more worshippers of such Gurdwara shall be deemed to be duly forwarded whether the petitioners were or were not on the commencement of

this Act or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be, residents in the police station area in which such Gurdwara is situated, and shall thereafter deal with any petition that may be otherwise duly forwarded in respect of any such Gurdwara as if the petition had been duly forwarded by petitioners who were such residents.

S. 9(1) If no petition has been presented in accordance with the provisions of Section 8 in respect of a Gurdwara to which a notification published under the provisions of sub-section (3) of Section 7 relates, the State Government shall, after the expiration of ninety days from the date of such notification, publish a notification declaring the Gurdwara to be a Sikh Gurdwara. (2) The publication of a notification under the provisions of sub-section (1) shall be conclusive proof that the Gurdwara is a Sikh Gurdwara, and the provisions of Part III shall apply to the Gurdwara with effect from the date of the publication of the notification.

Section 10 deals with the petitions, of claims to property included in a list published under sub-section (3) of Section 7.

Section 11 deals with the claim for compensation by a hereditary office-holder of a Gurdwara notified under Section 7 or his presumptive successor.

Chapter III of the Act deals with the appointment and proceedings before a Tribunal, which Tribunal is constituted under Section 12. The Tribunal, known as the Sikh Gurdwara Tribunal 7 is to dispose of all petitions made under Sections 5, 6, 8, 10 and 11 of the Act. The other relevant section of the Act for our purposes is Section 16, which is as follows :

ISSUE AS TO WHETHER A GURDWARA IS A SIKH GURDWARA TO BE DECIDED FIRST AND HOW ISSUE IS TO BE DECIDED --

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

(2) If the tribunal finds that the gurdwara

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

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

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

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

sub-section (1) of section 7; or

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

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

(3) Where the tribunal finds that a gurdwara should not be declared to be a Sikh Gurdwara it shall record its finding in an order, send subject before the first day of November, 1956, the tribunal shall, notwithstanding such finding continue to have jurisdiction in all matters relating to such claim; and if the tribunal finds it proved that such office-holder ceased to be an office-holder on or after the first day of January, 1920 ors in the case of the extended territories, after the first day of November, 1956, it may by order direct that such office-holder or person who would have so succeeded be restored to office.

Having noticed the legal provisions on the subject, let us proceed further on the factual aspect. It transpires that fifty four worshippers of the institution in question moved a petition under Section 7 (1) of the Act to the State Government of Punjab praying that the institution described as "Gurdwara Sahib Dera Kanganpur" be declared as a Sikh Gurdwara. A list of property claimed to be belonging to the institution, as part thereof, was publicized as required under Section 7 (3) of the Act. Notice of this petition was given to Mahant Uttam Das (now dead). His interest as well as the interest of the institution is now being represented by two rival claimant parties herein, as substituted.

Mahant Uttam Das filed a petition under Section 8 to the State Government, which was forwarded to the Sikh Gurdwaras Tribunal for decision. Uttam Das stated in his petition that the institution in question was not a Sikh Gurdwara, but a Dera of Udasis. He claimed that the Dera was originally founded by Baba Bakhat Mal, who was succeeded by his Chela Mahant Tehal Dass, Mahant Tehal Dass was succeeded by his Chela Mahant Seva Dass, who in turn was succeeded by his Chela Mahant Gurmukh Dass, who in turn was succeeded by his Chela Mahant Mathura Dass, who in turn was succeeded by his Chela Mahant Kahan Dass, who in turn was succeeded by his chela Mahant Sunder Dass and to whom had the petitioner succeeded being Chela of Sunder Dass. Mahant Uttam Das in this manner claimed that he was the hereditary office holder of the Dera and was competent to file the petition. His further claim in the petition was that the institution was never used for the Sikh mode of worship and hence not a Gurdwara. Besides, it was claimed that the Dera was of the Udasis sect where the idol of Baba Sri Chand was the principal object of worship. In addition thereto, he claimed that there were Smadhs (sign-spots) of the previous mahants and where the Geeta and Ramayan were recited.

Now, who are Udasis? It has been judicially settled and understood at all times that the Udasis are a sect distinct from the Sikhs. They have a monastic order of origin. They are the followers of Baba Sir Chand. Unlike the Sikhs, they sometime worship idols and Smadhs of their monastic ancestors. They worship other objects too, such as the ball of ashes etc. They are considered to be Hindus and at times called Sikhs in the wider sense of the term. They bear reverence to the Guru Granth Sahib and read it without renouncing Hinduism. An institution of this kind where a Udasi recites Guru Granth Sahib in the presence of a Sikh congregation by itself is not enough to declare the

institution to be a Sikh Gurdwara, unless it stands proved that the institution was established for use by Sikhs for the purpose of public worship and was used for such worship by Since as per requirement of Section 16 (2) (III) of the Act.

Notice was issued to the Sikh Gurdwara Parbandhak Committee, the respondent herein by the Tribunal. The Committee in its written statement challenged the status of Mahant Uttam Das as the hereditary office holder, The locus standi of Uttam Das to file the petition was also challenged on the ground that no mode of succession to the office of the hereditary office holder was disclosed in the petition, It was countered that the Rule of Succession was not from Guru to Chela and that the institution was a Sikh Gurdwara.

The Tribunal framed the following two issues :

1. Whether the petitioner is a hereditary office holder?
2. Whether the institution notified as Gurdwara Sahib Dera Kanganpur is a Sikh Gurdwara?

The priority of deciding which issue first is given in the marginal note to Section 16 itself quoted and emphasized above, making it clear that the issue as to whether the Institution is a Sikh Gurdwara is to be decided first. The tribunal rather treated issue No.1 as preliminary, presumably on the basis that judicial dicta of that court required such issue as to the locus standi of the hereditary office holder approaching under Section 8, to be determined first.

In Hari Kishan Chela Daya Singh v. The Shiromani Gurdwara Parbandhak Committee, Amritsar a Ors. [AIR 1976 P&H 130], the High Court of Punjab & Haryana has ruled that the Tribunal is not to decide whether the Institution in question is a Sikh Gurdwara or not, before adjudicating upon the locus standi of the person who claims himself to be the "hereditary office-holder". For coming to that view, certain decisions of the Lahore High Court have been taken taken into consideration. In particular, backing has been taken from the decision of the Lahore High Court in Sunder Singh v. Narain Das [AIR 1934 Lah. 920], suggesting that when the locus standi of a petition under Section 8 is challenged, that question would have to be decided before the trial could proceed, which position is not affected by Section 16(1) of the Act, as the said provision could only apply to a petition properly brought before the Tribunal. The same was accepted to be the legal position in Mahant Budh Das etc. v. The S.G.P.C. [AIR 1978 P&H 130], as well as in Balbir Dass v. The S.G.P.C. [AIR 1980 43 (FB)]. The view of the High Court seems to have crystalized that the locus standi of the applicant under Section 8 of the Act is a preliminary issue and if the applicant fails on that score, the question whether the Institution claimed to be a Sikh Gurdwara or not, need not be decided by the Tribunal. In that event, the legal consequence, as envisaged in Section 9, must follow, mandating the State Government to declare the Institution in question as a Sikh Gurdwara, without its actually being one, on the assumption that the petition preferred under Section 8 when failing on the basis of the locus standi, would tantamount to filing no petition at all.

We have strong reservations to such unpurposive view of the High Court for more than one reason. The marginal note/caption to Section 16 is the foremost pointer that the issue whether the Institution in question is a Sikh Gurdwara or not, has to be decided first and other questions later. The marginal notes or captions are, undoubtedly, part and parcel of legislative exercise and the language employed

therein provides the key to the legislative intent. The words so employed are not mere surplusage. Secondly, for the purposes of Section 8, the averments made therein by the hereditary office-holder need be taken as sufficient on their face value, bestowing jurisdiction on the Tribunal relating to the Institution in question. The fact that a petition under Section 8 was received, per se ousts applicability of Section 9 because that can operate only when no claim under Section 8 is preferred at all. Thirdly, when the issue of locus standi, at the very threshold, is a triable issue, that per se obligates the tribunal to priorly decide the question of the Institution being a Sikh Gurdwara or not as the first issue, for occasion may arise for not deciding the issue of locus standi at all in the given eventuality. Since the tribunal has proceeded to decide issue No.1 as a preliminary one, we would not like to stretch this matter any further except to express our doubt, to be resolved later in an appropriate case, because of the consequences which have been made to follow. In none of the cases in which priority of locus standi has been established or followed has the High Court taken into account the marginal note/caption of Section 16 and its importance.

It is noteworthy that when the tribunal finds that the Institution/Gurdwara can not be declared as a Sikh Gurdwara, it ceases to have jurisdiction in all matters concerning such Gurdwara. Only a limited jurisdiction is kept conferred on the tribunal under sub-section (3) to be deciding restoration to office of a hereditary office holder or of a person, Who would have succeeded such office holder, under the system of management prevailing, before a certain date. The tribunal shall in that event notwithstanding such finding of the institution being not a Sikh Gurdwara, continue to have jurisdiction in all matters relating to such claim on grounds tenable under Section 8.

Instantly wide Orders dated February 8, 1973, The tribunal had all the same held that Uttam Das was a hereditary office holder of the institution in question. No appeal was filed by the respondent Committee against the aforementioned orders of the tribunal. In a sense the order dated February 8, 1973 was a final order deciding the contentions of the parties as to whether Uttam Das was a hereditary office holder or not. leading to consequences. An appeal against the final order of the tribunal undoubtedly lay under Section 34 of the Act before a Division Bench of the High Court. As said earlier, no such step was taken. The second battle began.

On the basis of the evidence led by the parties, the tribunal then got engaged to decide issue no.2. Vide Order dated May 5, 1972 it concluded against the Committee-respondent by holding as follows :

> "The fact that emerges from all this evidence is, that the Dera is meant for the looking after and maintenance of blind persons who are entrusted to its charges and for running the Langar to provide food for them and also to the Faqirs and other needy persons. There is an admission of Kahan Dass, one of the petitioner’s ancestor that he recited and displayed Guru Granth Sahib. The question that arises is, whether these facts are enough to prove that this institution was

established for use by Sikhs for the purpose of public worship, which is an essential ingredient of Section 16(2)(iii) of the Act, under which the respondent-committee claims it to be a Sikh Gurudwara. Though, we are clear in our mind that Guru Granth Sahib had been the only object of worship in this institution during the time of Mahant Kahan Dass and no other mode of worship was carried on in it at any time, we are constrained to hold that this fact by itself does not suffice to prove that it is a Sikh Gurdwara. It is, however, established beyond doubt that the petitioner's claim that it is an Udasi institution has no basis. All that we can say is that it is a charitable institution meant for the upkeep and maintenance of the blind and for running the Langar to provide food to the travellers and other needy persons who visit this Dera.

As a result of the above discussion, we allow the petition and find that the institution in dispute mentioned in Notification No.1415-GP., dated 25th September, 1964, is not a Sikh Gurdwara.

The First Appeal filed by the respondent-Committee before the High Court, was specifically against order dated 5.5.1973 of the tribunal, as is evident from the opening sheet of the appeal. A lone ground no.13 was inserted in the body thereof posing that the tribunal had gone wrong in holding that the incumbent of the institution i.e. Mahant Uttam Das was a hereditary office holder. Other grounds pertained to the question whether or not the institution answered the description given in Section 16(2)(iii) of the Sikh Gurdwara Act.

The Division Bench of the High Court surprisingly gave its total attention to the first issue decided under the earlier order of the tribunal dated February 8, 1973. The High Court held that since the petition of Mahant Uttam Das under Section 8 did not contain any abstract averment about any usage or custom Of succession or nomination, he had failed to bring himself within the definition of the expression 'hereditary office holder', as defined in Section 2 (4)(iv) of the Act, as interpreted by various Full Benches and Division Benches that Court and hence lacked locus standi. On that basis the judgment of the tribunal on issue no.1 was set aside. It ordered dismissal of Section 8 petition of Uttam Dass as incompetent, lacking in pleadings. On the second issue, the High Court treated itself disabled to proceed further in order to determine the nature of the institution because of judicial authority on the subject barring such exercise. It held that it would not interfere with the observations of the tribunal regarding the nature of institution. Thus reversing finding on issue no.1 alone, it held that petition under Section 8 of the Act was incompetent. The said order is the subject-matter of appeal before us.

Clause (iv) of sub-section (4) of Section 2 of the Act

defines "hereditary office" :

> "to mean an office to which before the first day of January 1920, or in the case of the extended territories, before the first day of November, 1956, as the case may be, devolved, according to hereditary right or by nomination by the office holder for the time being, and hereditary office-holder means the holder of a hereditary office.'

Thus, the hereditary office holder, who is competent to move a petition under Section 8 must plead and prove that he acquired the said status by devolution according to hereditary right or by nomination as per custom of the institution. Here, the controversy between the parties is as to the accuracy and sufficiency of pleadings in this regard, on which learned counsel for the parties were at variance loaded as they were with case law on that aspect as developed in the High Court.

The High Court primarily based its decision on a Full Bench decision of that Court in Hari Kishan Chela Daya Singh Vs. The Shiromani Gurdwara Parbandhak Committee, Amritsar & Ors. AIR 1976 Punjab & Haryana 130. The view taken therein was that the person claiming himself to be a hereditary office holder must allege and prove the complete and consistent Rule of Descent covering all eventualities by which he or his predecessor had and could have come to hold the office on the prescribed date. Any omission therein of whatever magnitude, big or small, was viewed as fatal to his locus standi. Strictness was ordered to rule the roost.

The rule of strictness in pleadings was not adhered to in a subsequent Full Bench decision in Mahant Budh Dass's case [supra] and gave way to the principle of 'substantial compliance'. The view taken was that if the appellant had made his claim in the petition in such a manner from which inference could be clearly and substantially drawn that the appellant had claimed to be a hereditary office-holder, there would be substantial compliance With the provision of Section 8. It was not necessary to use the expression in the petition that he is a hereditary office holder. Noticeably, the Hon. Judge who authored Hari Kishan's case was a party to Mahant Budh Dass's case [supra].

In Balbir Dass Vs. The Shiromani Gurdwara Parbandhak Committee, Amritsar - AIR 1980 Punjab & Haryana 43, another Full Bench of the High Court took a moderate view on the requirement of pleadings and the theory of strictness and technicality of pleadings were termed to be medieval. The Full Bench sacked up its views from the following observations of this Court in Kedar Lal Syal Vs. Hari Lal Syal - AIR 1952 SC Page 47 :

> "The Court would be slow to throw out a claim on a mere technicality of pleading when the substance of the thing is there and no prejudice is caused to the other side, however clumsily or inartistically the plaint may be worded."

On the same lines, another Full Bench of that court [to which one of us i.e. M.M. Punchhi,J. was a party when in that court], adopted the same moderate view in Mahant Dharam Das Chela Karam Parkash v. S.G.P.C. [AIR 1987 P&H 64]. The view expressed in Balbir Dass's case [supra} was accorded

agreement. The Bench viewed that the argument of the Shiromani Gurdwara Parbandhak Committee based on Hari Kishan's case was not correct that in all cases, custom regarding the succession, peculiar to a given Institution, dealing with all eventualities pertaining to the mode of succession, must be pleaded. The Bench observed that it would be misreading of the judgment. The factum that the same learned Judge who had authored Hari Kishan's case was a member of the Bench in Mahant Budh Dass's case, where the theory of 'strict compliance' was adopted, was employed as a part of reading down Hari Kishan's case.

Reverting to the judgment under appeals it is noticeable that the Bench fell into the trap of misreading of Hari Kishan's case by viewing that the custom or practice, whatever prevailing in the Institution, had to be pleaded and the petition must bear the specific custom of the Institution by which the appellant and his predecessors came to hold the office either by way of hereditary right or by nomination. The Bench heavily leaned on Hari Kishan's case, bypassed Mahant Budh Dass's case even though noticed, by trailing to a number of Division Bench cases based on Hari Kishan's case. On that basis, it went on to record satisfaction that the averments, as required by Hari Kishan's case, did not meet its standards. It observed as follows :

> Since the petition does not contain any averment about any usage or custom of inheritance or nomination for succession the petitioner has failed to bring himself within the definition of hereditary office-holder as defined in Section 2(4)(iv) of the Act as interpreted by various Full Benches and Division Benches of this Court.

The nature of the Institution, it being of a charitable nature, as determined by the Tribunal, was therefore left uninterfered with. There was no cross-appeal at the instance of the Present appellant before the High Court as to the competency of the Tribunal to give such finding after finding that the Institution was not a Sikh Gurdwara. The appellant, prima facie, submitted to the finding as to the nature of the Institution.

As is evident, the High Court fell into an error in construing the pleadings under Section 8 on the strict standards set out in Hari Kishan's case. When the appellant had placed the line of succession from Guru to Chela, he automatically meant that he was basing his claim on custom and usage, reflective from such long course of conduct and traditions. The Tribunal in its order dated 19.10.1972 on the basis of the pleadings in the petition under Section 8 and on the evidence recorded and tendered, inclusive of revenue records of the State, had come to the firm conclusion that the succession to the office of the Mahantship in the Institution in question had been by devolution from Guru to Chela according to hereditary right, even though the Bhekh had assembled and given Turban to the last Mahant Uttam Das but not as an appointing authority and rather in the affirmance, according to the wishes of the predecessor-in-office. The line of descent had been laid with sufficient clarity giving rise to the conclusion that substantially the custom and usage relating
to succession had been observed to carry on the rule of descent by conduct. We, thus, are of the view that the High Court fell into a grave- error in upsetting the well-

considered and well-reasoned orders of the Tribunal.

We, thus, allow this appeal, set aside the impugned order of the High Court dated 11.1.1984, restoring back the orders of the Tribunal dated 19.10.1973 and the orders of the Tribunal dated 5.5.1973 in affirmance, which has otherwise been left uninterfered with even by the High Court.

The appellant shall get his costs.

JUDIS