

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6386 OF 1983

Mahant Jawala Singh Chela of
Mahant Bishan Singh (Dead)
Through Legal Representative

.....Appellant

Versus

The Shiromani Gurdwara Prabhandhak
Committee, Amritsar

.....Respondent

J U D G M E N T

G.S. Singhvi, J.

1. This appeal is directed against judgment dated 13.9.1982 of the Division Bench of the Punjab and Haryana High Court whereby the appeal preferred by Mahant Jawala Singh (the appellant herein), who died during the pendency of the appeal before the High Court and is now represented by his legal representative against the order passed by Sikh Gurdwara Tribunal, Chandigarh (for short, 'the Tribunal') declaring Gurdwara Sri Guru Granth Sahib situated within the revenue estate of

village Jalal, Tehsil and District Bhatinda as a Sikh Gurdwara was dismissed.

2. Fifty-three persons claiming to be Sikh worshippers submitted a petition to the State Government under Section 7(1) of the Sikh Gurdwaras Act, 1925 (for short, 'the Act') for declaring the institution in question as a Sikh Gurdwara was published in the Punjab Government Gazette vide notification No.385-G.P. dated 25.1.1963 issued under Section 7(3) of the Act. In response to the aforesaid notification, four separate petitions were filed under Section 8 of the Act. One of the petitions was filed by the appellant. In paragraphs 2, 3 and 5 of his petition, the appellant averred as under:

“(2) That the petitioner is a hereditary office-holder of the said Dera and is above 21 years of age and is thus entitled to forward this petition under Section 8 of the Act.

(3) That the said Dera now described as Gurdwara Sri Guru Granth Sahib in the above-said Notification is not at all a Sikh Gurdwara. It was not 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 or in memory of any Sikh Martyr, Saint or Historical person and has never been used for public worship by Sikhs owing to any tradition connected with any of the ten Sikh Gurus or the Sikh religion nor was established for use by Sikhs for purposes of public worship at any time before or at the time of the presentation of the petition under sub-section (1) of Section 7 of the Act. In short none of the ingredients mentioned in Section 16 of the Act applied to the said Dera.

On the other hand, the institution in question is only a Dera known as 'Wada Dera Jalal'. It was founded and

established by Baba Kharak Singh, a Nirmala Sadhu long long ago. Baba Kharak Singh was a religious and pious person and was very much revered in the Ilaqa. He established the said Dera to serve as a resting place for Nirmala Sadhus and to impart religious teachings to the disciples. It was neither established for use by Sikhs for the purpose of public worship nor was it used for such worship by the Sikhs at any time. The said Dera is partly a religious and partly a charitable institution of a private nature. Guru Granth Sahib Ji is held in great reverence by the Nirmalas. Therefore, the same is opened in one room of the Dera for recitation to the Nirmala Sadhus – The Samadhies of the previous Mahants also exist which are also the objects of worship by the disciples of the previous Mahants. The said Dera is not a Sikh Gurdwara, but is only a Nirmala institution. Nirmalas are not Sikhs as defined in the said Act.

(5) That the signatures of the persons on the petition under Section 7(1) of the Act were obtained by the employees of the Shiromani Gurdwara Parbandhak Committee, Amritsar fraudulently representing that the Shiromani Gurdwara Parbandhak Committee, Amritsar was going to request the Punjab State Government to grant annual Jagirs to all the religious institutions situate in erstwhile Pepsu, hence they should subscribe their signatures on the paper. Most of the signatures are only bogus. As a matter of fact, the said persons, never applied for declaring the said Dera to be a Sikh Gurdwara.”

3. Of the remaining three petitions, two were filed by different sets of the worshippers of the institution. The fourth petition was filed by some of the persons whose names appeared in notification dated 25.1.1963. They claimed that their signatures were obtained by fraud and prayed that the Dera in question may not be declared as Sikh Gurdwara.

4. All the petitions were forwarded by the State Government to the Tribunal constituted under Section 14(1) of the Act. The Tribunal issued notices to all the persons who originally moved the State Government under Section 7(1) but none of them appeared to contest the petitions filed under Section 8. Respondent – Shiromani Gurdwara Prabandhak Committee got itself impleaded as party to the proceedings pending before the Tribunal and filed written statement questioning the very maintainability of the petition filed by the appellant on the ground that he was not a hereditary office-holder and the petition does not disclose the custom relating to devolution of Mahantship in this Gurdwara. In paragraph 3 of the reply, the following averments were made:

“Para No.3 is right, in this respect that Baba Kharak Singh is a Sikh saint and the Gurdwara in dispute was established in his memory or in the alternative it was established by him for worship of Sikhs and has been so used i.e. for worship by Sikhs. The case falls either U/S. 16(2) (3) or 16(2) (4). This is a Gurdwara which is a public religious and charitable institution. Existence of Samadhi does not alter the nature of the institution.”

5. On the pleadings of the parties, the Tribunal framed the following preliminary issue:

“Whether the petitioner is a hereditary office-holder of the institution in dispute? OPP”

6. On 2.3.1965, Shri Charan Singh, Advocate appearing on behalf of the respondent stated that he does not want to contest the status of the

appellant to file petition under Section 8 of the Act as a hereditary office-holder because there are two other petitions to be decided on merits. Accordingly, the preliminary issue was decided in favour of the appellant.

7. On the same day i.e., 2.3.1965, an application was filed on behalf of the respondent for amendment of the written statement by substituting the original paragraph 3 with the following:

“The institution in dispute is a Sikh Gurdwara built in memory of a visit of the 10th Guru who came to this place from Dina and Lohgarh and stayed here for some time. This Gurdwara was built in memory of that visit and is being used as a place of worship by Sikhs on account of the traditional visit of the 10th Guru and is therefore, being worshipped by the Sikhs or in the alternative under Section 16(2) (3).”

The amended written statement was also filed along with the application for amendment.

8. By an order dated 31.3.1965, the Tribunal granted leave to the respondent to amend the written statement and framed the following issue:

“Whether the institution in dispute is a Sikh Gurdwara?”

9. The appellant examined himself and seven other witnesses. He also produced documentary evidence in the form of Exhibits P-1 to P-31.

On behalf of the respondent, six witnesses were examined and eighteen documents marked Exhibits R-1 to R-18 were produced.

10. The Tribunal first considered the question whether the institution could be declared as a Sikh Gurdwara because the same was established to commemorate the visit of 10th Guru, Shri Guru Gobind Singh Ji to village Jalal and answered the same in negative by recording the following observations:

“..... In this connection, he placed reliance on the statements of RW-1, Mal Singh, RW-2 Santa Singh, RW-3 Gurnam Singh, RW-4 Balbinder Singh, RW-5 Jagir Singh, RW-6 Baga Singh, who have all deposed that according to the tradition, the 10th Guru visited village Jalal on his way from Village Dina to village Lambra of Lamb-wali. The Ld. Counsel also referred us the same books of History for substantiating his said contention. But when confronted with narration to the contrary in quite a large number of historical works, relied upon and referred to us by the Ld. Counsel for the Petitioner, S. Charan Singh did not press this plea any further. There is evidently not enough evidence on the record either factual or historical from which it may be concluded that this institution has any connection with the visit of 10th Guru to this place. Under the circumstances, we feel constrained to hold that the provisions of Section 16(2) (iv) are not attracted to the facts of the present case. The plea taken by the Respondent Committee regarding the establishment of this institution in memory of the visit of Tenth Guru to this place is, therefore, rejected.”

11. The Tribunal then considered the question whether the institution could be treated as a Sikh Gurdwara under Section 16(2) (iii) of the Act, analysed the oral and documentary evidence produced by the parties and

held that the institution is a Sikh Gurdwara. For recording this conclusion, the Tribunal mainly relied on the entries contained in the revenue records i.e. Exhibit R-1 (Khatauni of village Jalal), Exhibit R-2 (copy of Jamabandi pertaining to years 1981-85 BK), Exhibits R-3 and R-4 (certified copies of Jamabandies for the year 2000-2001), Exhibit R-5 (certified copy of an extract from the register of Muafi and Pensions pertaining to village Jalal), Exhibit R-7 (copy of the revised entries from the register of Muafi of village Jalal), Exhibit R-6 (certified copy of the pedigree table of village Jalal), Exhibits R-8 and R-9 (certified copies of the statements of Bhaktawar Singh Lambardar and Mahant Bishan Singh recorded on 9.11.1985 BK in Muafi File No.9), Exhibit R-14 (attested copy of an application made by Dial Singh Lambardar and some other proprietors of village Jalal dated 12, Bhadon, Sammat 1941 from file No.192 decided on 11 Asuj, 1941 (1884 A.D.), Exhibit R-18 (copy of the Jamabandi for the year 1969-70 A.D.) and observed:

“Thus from the documents placed and proved on the file on behalf of the Respondent Committee, it comes abundantly evidence that from its very inception, Guru Granth Sahib has been ceremoniously opened and recited in the said institution which has throughout been described as a Gurdwara in the oldest as well up to date revenue record pertaining to its lands and Muafi..... The presence and Parkash of Shri Guru Granth Sahib in Dera in question is clearly mentioned in this document which also incorporates the request and recommendation of the village proprietors to the effect that the land should be entered in the name of the Dera Granth Sahib. The counsel also argued that none of the documents marked Exhibit P-1 to P-31 in any way supported the claim of the

Petitioner regarding Nirmala Character of the institution. On the other hand most of the Petitioner's documents themselves show that the Muafi of this institution was granted for the purposes of Dharam Arth and that the incumbents of this institution were all "Bhais" and not Nirmala Sadhs as now alleged by the Petitioner. Among Sikhs the title "Bhai" is generally meant and used for the most learned and venerable one's who are supposed to be well versed in Sikh Scriptures, literature and history. It is also worth mentioning here that none of the documents exhibited on behalf of the Petitioner suggest any other mode or object of worship in the said institution, at any stage of its existence. The plea of Samadh worship seems to be clearly an after thought and appears to have been introduced solely for the sake of casting doubt on the claim of the persons who have claims this institution to be Sikh Gurdwara."

12. The Tribunal noted the argument made by the counsel for the respondent that there is a statutory presumption regarding correctness of the entries in the record of rights and observed:

".....As the Petitioner has not been able to rebut the presumption the entries in the Jamabandi Exhibits R-1, R-2, R-3, R-4 and R-18 showing Guru Granth Sahib Wakia Deh Hazah and Gurdwara Sahib Wakia Deh Hazab as the executive owner of the landed property attached to the institution, must be presumed to be correct. There seems to be much force in this argument of the counsel. It is now for the Petitioner to satisfy us how far he has succeeded in rebutting the said presumption."

13. The Tribunal also referred to the statements of the witnesses examined by the appellant and held that the same were not sufficient to discard the evidence produced by the respondent to show that the institution was in fact established as a Sikh Gurdwara for use by Sikhs

for the purpose of public worship. The Tribunal was also of the view that the affidavits (Exhibits P7 to P10) of Ginder Singh, Gurjant Singh, Nand Singh, Jiwan and Harnam Singh, who stated that their signatures on the petition filed under Section 7(1) of the Act were obtained by fraud cannot be relied upon because they were not examined as witnesses. The Tribunal then considered the argument that the Dera was established by Baba Kharak Singh, who was a Nirmala saint and rejected the same by observing that no documentary evidence was produced to prove this fact. The argument of the appellant that the use of the word 'Dera' in various documents is indicative of the fact that it was not a Gurdwara was rejected by the Tribunal by relying upon the judgments of this Court in Banta Singh v. Gurdwara Sahib Dasvi Patshai and another (Civil Appeal No.446 of 1962 decided on 9.11.1964) and three unreported judgments of the Division Bench of the High Court wherein it was held that 'Dera' and 'Gurdwara' are interchangeable terms. The Tribunal distinguished the judgments of the Lahore High Court in Ram Parshad and others v. Shiromani Gurdwara Parbandhak Committee, Amritsar and others AIR 1931 Lahore 161; Arjan Singh and another v. Inder Dass and another AIR 1934 Lahore 13; Lachhman Dass and others v. Atma Singh and others AIR 1935 Lahore 666; Maghar Singh and others v. Hardit Dass AIR 1935 Lahore 879; Santa Singh and others v. Puran Dass and others AIR 1936 Lahore 216; Hardit Dass v. Gurdit Singh and another AIR

1936 Lahore 819; Dial Singh v. Bhagat Ram and others AIR 1936 Lahore 822; Harnam Dass v. Kartar Singh and another AIR 1936 Lahore 825; Ishar Dass v. Bhagwan Singh and another AIR 1936 Lahore 841; Mukand Singh v. Puran Dass AIR 1936 Lahore 924; Arjan Singh and another v. Harbhajan Dass and another AIR 1937 Lahore 280 and of the Privy Council in Hem Singh and others v. Basant Dass and others AIR 1936 PC 93 and distinguished the same by observing that the factual matrix of those cases was substantially different. The Tribunal rejected the plea of the appellant that the institution was established by Nirmala Sadh and distinguished the judgment of this Court in **Mahant Harnam Singh v. Gurdial Singh and another** AIR 1967 SC 1415 by making the following observations:

“But we do not see what benefit can be derived therefrom by Petitioners, in view of the overwhelming documentary evidence which repeatedly describe this institution to be a Sikh Gurdwara, where Guru Granth Sahib has been the object of worship throughout its existence. There is no iota of evidence to show that the building mentioned as para 4 of the Notification No.385 G.P. dated 25th January 1963 was ever established as a Nirmala institution. The gift of the land was never made to Bhai Bir Singh individually or for his personal use. It is also not mentioned in any of the documents that the institution was established for being used as Nirmala monastery or college or for the purposes of Smadh-worship or anything of that type. If anything, the statement of the previous manager Bhai Bishan Singh in the year 1928 A.D. copy marked Exhibit R-9 closed the matter in regard to his religion as well as in regard to the nature of the institution. He declared in unequivocal terms that he was a Sikh Jat and further that he was merely a manager or mahant of Gurdwara Sahib. In our opinion, the Petitioner

has not been able to make out any case regarding the Nirmala character of the institution. On the other hand, on the basis of the documentary evidence discussed above, we feel inclined to hold that this institution was established by Baba Kharak Singh. A Sikh gentleman of piety and prestige in the Illaqa for use by Sikhs for the purposes of public worship of Sri Guru Granth Sahib, the holy Sikh Scripture.”

14. In the end, the Tribunal considered whether the requirement of user of the institution by Sikhs for the purpose of public worship was satisfied and held:

“Next coming to the second requirement as to the user before and at the time of the presentation of the Petition, we have mainly to draw material from the oral evidence adduced on behalf of the parties. It is conceded by all the PWs that the village is a Sikh Proprietary village and the major part of the population of the said Village belongs to the Sikh faith. PW-7, Sampuran Singh and PW-8 Jawala Singh Petitioner have further recorded that there is no other Sikh Gurdwara in the revenue estate of village Jalal. The consistent evidence of the Respondents witnesses is, that the object of worship in the said Gurdwara is Shri Guru Granth Sahib and nothing else. RW-1 Mal Singh has deposed that Guru Granth Sahib is the only object of worship in the institution and Sikhs comes to pay reverence in this Gurdwara on account of tradition associated with it. In cross-examination he says that the Chhota Dera of Isher Singh has nothing to do with the institution in dispute. RW-2, Santa Singh says that the Sikhs of the village come to pay reverences to the Gurdwara due to the tradition. In cross-examination, he says that he has not noticed any Smadhi in the Gurdwara but on the back side in the cremation ground there are some Samadhis. RW-3 Gurnam Singh states that Shri Guru Granth Sahib is the object of worship in this institution and that the Petitioner who is a follower of the Sikh faith is a Granthi and Mahant of this Gurudwara now. He has further mentioned that the Petitioner has started wearing saffron colour clothes for the last five or six months. RW-4, Balbinder Singh says that the Sikhs come to worship

this institution where Holy Granths is the object of worship. He also states that the birth day of 10th Guru is celebrated as a Gurburab in the institution in dispute. In cross-examination, he asserts that there are no Smadhis on the premises of the institution, but there may be Smadhis of some persons in the cremation ground of the village, which is at the back of the village institution. Towards the end of the cross-examination, he says that he visits the institution in dispute fortnightly or monthly and he last visited it about 15 days prior to his coming to the witness box. RW-5 Jagir Singh has stated that the institution in dispute is a Sikh Gurdwara where Sikhs go to worship and pay reverence. According to this RW, Mahant Bishan Singh was a Sikh and the Mahants, who preceded him were also Sikhs like him. RW-6, Baga Singh has deposed that the Sikhs who predominate the village go to the institution for worship where the object of worship is Guru Granth Sahib. According to RW Baga Singh, Mahant Bishan Singh was a Sikh. In cross-examination, he was confronted with the writing marked Exhibit RW-6/1 but he explained that the statement which he made in the Court of Subordinate Judge, Phool, related to another institution which was described as Dera Jawala Singh.

In fairness to Mr. Sajjan Singh, we must also notice his last submission regarding the Nirmala nature of the institution in the light of certain passages occurring at pages 172 to 181 of the Gurmukhi book 'Nirmal Panth Darshan' Volume III, written and published by Mahant Dial Singh of Mahabir Nagar, New Delhi. On the basis of the version given therein the learned counsel for the petitioner strongly stressed that the institution be declared to be dera of the Nirmala Sadhus.

The learned counsel for the Respondent Committee took a strong objection a reference being made to this book on the ground that the same was purposely published by the Nirmalas sometime in 1963 after the publication of the notification under Section 7(3) in this case. The date of the publication of the Book is not mentioned anywhere on the title page or anywhere else in the book. S. Charan Singh however, pointed out to us that the printed matter appearing to page 553 clearly indicated that this volume was published after July 1962. The two dates 1st July 1962 and 10th July

1962 mentioned at the said page regarding the execution of some gift deed by the donor whose life is depicted thereafter, as well as the mention of some incidents of Sammat 2018 both at page 553 and page 4 also afforded a clue that this book was published only recently. Another objection raised was that no attempt having been made by the petitioner to prove that the author had any special knowledge about the subject about which he had dealt with in the book or that he had done any research in the Sikh history as a research scholar or as a historian, not much reliance can be placed on the narrations given in the said book. It was further urged that the petitioner has neither shown that the book in question was based on the material obtained from old books on religion or history, nor has he brought its author in the witness box to depose about the source of correctness of the material collected in the said compilation. Taken together, the above factors do create an impression that the present Volume of “Nirmala Panth Darshan” may have been brought out with a purpose by and at the instance of the persons who were likely to be adversely affected by the various notifications issued by the State Government under the relevant provisions of the Sikh Gurdwaras Act as amended by Act 1 of 1959. In dealing with it, we have thus to exercise much caution, more so, when the learned counsel for the petitioner has failed to support the statements made in this volume by and from any other authoritative or standard work on the subject.

Not only that, the disclosure made in the said book about the spiritual heritage of Baba Kharak Singh, the founder of the institution in dispute, damages the case of the petitioner beyond repairs. According to the pleadings and evidence of the petitioner, the said Baba Kharak Singh was a Nirmala Sadh. In the book under discussion Baba Kharak Singh is shown as disciple of Baba Gurbux Singh, the first mohatmim of historic Sikh Shrine known as Gurdwara Padshi Naumi at Dhamdhan, now a notified Sikh Gurdwara entered at Serial No. 314 of Schedule I of the S.G. Act. It is next mentioned in it that the above said Baba Gurbux Singh was administered Amrit by Bhai Daya Singh Jee who had received Nectar (Amrit) directly from the 10th Guru. It may be noted here that the said Baba Daya Singh was the first among the Five Pyaras or Beloved One's who had offered

their heads to Shri Guru Gobind Singh Jee upon his command at Keshgarh on the Baisakhy festival of 1699 A.D. “Nirmal Panth Darshan” however reveals that the aforementioned Baba Khara Singh received Amrit as well as his entire spiritual and religious training at the hands of said Baba Gurbax Singh, who after bidding farewell to Anandpur Sahib, had taken his abode at Gurdwara Dhamdhan Sahib. There is no denying the fact that Baba Daya Singh Jee and Baba Gurbax Singh Jee above mentioned were both famous Sikh heroes and historical persons, about whom references have been repeatedly made in all the important works of Sikh history. The fact that Baba Khara Singh was initiated into Sikh-fold by administration of Amrit that is Sikh Baptism by Baba Gurbax Singh, in itself is enough to enable us to conclude that the former also came to be known as a Sikh saint of great repute during his life time. The institution established by such a devoted and dedicated Sikh as Baba Khara Singh, for the purpose of public worship of Shri Guru Granth Sahib, cannot by any stretch of imagination or argument be held to a non-Sikh or Nirmala institution. Since, we find no substance whatsoever, even in the above submission of the learned counsel for the petitioner, which he urged as an argument of last resort, we accordingly repel the same.”

15. The appellant challenged the order of the Tribunal by filing an appeal, which was dismissed by the impugned judgment. The Division Bench of the High Court discarded the documentary evidence produced by the appellant by making the following observations:

“At the outset, we may point out that the documentary evidence led by the petitioner in the form of Exhibits P-1 to P-31 is not of much use to him for proving his case to rebut the evidence led by the Respondent-Committee. The Tribunal in para 38 of its judgment observed:-

“The learned counsel for the petitioner has not been able to convince us as to how the documents Exhibits

P-1 to P-31 in any manner substantiate the allegations of the petitioners.”

We also repeatedly asked the learned counsel for the appellant to explain how he derived any help from these documents to counter the case of the respondent. He was unable to derive any support from these documents. We, therefore, will not refer to those as they do not contain any substantial matter to dispute that the institution in dispute is not a Sikh Gurdwara.”

16. The Division Bench of the High Court then referred to Exhibits R1 and R7 in which Guru Granth Sahib is shown as the owner of land in Patti Suleman and Patti Shamer and held that as per these entries, Bhai Bishan Singh Chela of Bhai Gulab Singh, Nirmala sadh, resident of village Jalal was only a non-occupancy tenant. The Bench did take note of the appellant’s plea that Baba Kharak Singh had founded the institution but did not accept the same and observed:

“In the case of the Appellant that Baba Kharak Singh had founded the institution, but there is no direct evidence of any type, oral or documentary of the time of the establishment of the institution pointing to the purpose of its establishment. We have to fall back upon the available records of the earliest times. The revenue records referred to above are the only authentic and reliable evidence available to assess the situation. These documents show that the land of both the Pattis Suleman and Shamir in Village Jalal stood in the name of Gurdwara Sahib or Guru Granth Sahib right from the earlier times, the records came into existence. In Exhibits R-2 and R-7, the entries in red ink show that the Muafi was granted for Dhoop Deep of Guru Granth Sahib, serving the Sadhus and also serving feed to the wayfarers till the continuance of the Dera. These records, which are unimpeachable and no effect was made to doubt their veracity on behalf of the Appellant, go to establish the

presence of Guru Granth Sahib in the institution since the earliest times. Muafi for Dhoop Deep of Guru Granth Sahib also indicates that it was being worshipped there and such worship was done publicly. Unless it was worshipped openly, the Rulers could not have sanctioned the Muafi and continued it in the terms which are recorded in red ink in the revenue documents.”

(emphasis supplied)

The Division Bench then referred to the statement of Dogar Singh Lamberdar of Patti Suleman, which was recorded on 23rd Asuj Samvat 1956, statement of another Lamberdar of village Jalal, namely, Bakhtawar Singh, which was recorded on 8th November, 1985 Bk. and statement of Bishan Singh, an office-holder of the institution recorded on 8th November, 1985 Bk. and proceeded to observe:

“In this statement, he made an unequivocal declaration that it is a Gurdwara and that the income is being spent on Dhoop Deep and also for serving travellers. He wanted the Muafi to be continued as before, that is, in the name of the Gurdwara or Guru Granth Sahib, as is indicated from the entries in red ink incorporated in the revenue record referred to above. Serving the travellers or running a Langer etc. is a charitable purpose of a Sikh Gurdwara.

When the other places of evidence referred to above are considered with the admission of Bishan Singh, in Exhibit R-9, then it makes the matter very clear that the institution was established as a Sikh Gurdwara for the use of Sikh for public worship. It has to be held so; especially when no direct evidence has been led that Baba Kharak Singh had founded it or that he was a Nirmala.

It becomes clear from the above discussed evidence that it was a Gurdwara and not a Dera of the Nirmalas.

All the documents leave no room for doubt that Guru Granth Sahib was the only object of worship in this institution. In the Petition itself, the presence of Guru Granth Sahib is mentioned though the purpose was sought to be restricted only for the benefit of the Nirmalas. In the light of the discussion in the previous paragraphs, we are inclined to accept this assertion about the restricted use only by the Nirmalas. If it was for a limited purpose, then the Lamberdars and Biswadars, who made statements during the enquiries about the Muafi could not make those statements, which have been referred to in the previous paragraphs in the revenue records, it could not be referred to as a Gurdwara. Even Bhai Bishan Singh admitted it to be a Gurdwara in his statement Exhibit R-9. The Muafi could not be granted and continued in the terms given. The Bws were emphatical in their assertion that Guru Granth Sahib was the only object of worship. They get very strong support from the circumstances discussed above.”

17. In support of its conclusion that the institution in question is a Sikh Gurdwara, the Division Bench of the High Court, in addition to the documentary evidence produced by the respondent, strongly relied upon the following factors:

1. The majority of the population of village Jalal was Sikh;
2. There is no other Gurdwara in the village where the Sikhs could go for worship; and
3. Maharaja of Nabha who gave Muafi and other grants was himself a Sikh ruler.

18. Shri Sarvesh Bisaria, learned counsel for the appellant referred to Section 16(2)(iii) of the Act to show that an institution can be declared to

be a Sikh Gurdwara only if it is proved that the same was established for use by Sikhs for the purpose of public worship and was so used before and at the time of presentation of petition under Section 7(1). Learned counsel emphasized that the burden to prove both the ingredients of Section 16(2)(iii) was on the respondent, which it miserably failed to discharge and argued that the Tribunal committed a jurisdictional error by declaring the institution in question to be a Sikh Gurdwara only on the ground that in the revenue records produced by the respondent, Guru Granth Sahib was shown as the owner of various parcels of land and Baba Bishan Singh Chela of Baba Gulab Singh was shown as a non-occupancy tenant. Learned counsel pointed out that in the amended written statement, the respondent had specifically pleaded that the Gurdwara in question was established to commemorate the visit of 10th Guru and is being used as a place of worship on account of the said visit, but failed to substantiate the same. Learned counsel then submitted that even though in paragraph 3 of the amended written statement a reference was also made to Section 16(2)(iii), there was not a whisper that the institution was established for use by Sikhs for the purpose of public worship and was used as such before and at the time of presentation of the petition under Section 7(1) and argued that in the absence of a foundation having been laid, the Tribunal was not justified in granting a declaration that the institution is a Sikh Gurdwara. Shri Bisaria criticized

the impugned judgment and argued that the High Court committed serious error by deciding the appeal without even advertent to the documentary evidence produced by the appellant on the specious ground that the counsel appearing on his behalf could not explain as to how the same were helpful to the cause of his client. Shri Bisaria extensively referred to documents produced before this Court which, according to the learned counsel formed part of the record of the Tribunal and the High Court to show that Maharaja Bharpur Singh of Nabha State (village Jalal was part of the princely State of Nabha) had granted land measuring 50 Ghumaon (approximately 200 bighas) to Bhai Bir Singh as early as in Samvat 1908 and that in Samvat 1914 the land was given to Bhai Bir Singh on periodical lease when Maharaja Bharpur Singh visited Phul and argued that the documentary evidence showing grant of Muafi in respect of a portion of the land granted to Bhai Bir Singh and recording of the name of Dera Granth Sahib as per the desire of the owners was clearly indicative of the fact that the institution in question was a Dera and not a Gurdwara much less a Sikh Gurdwara established for use by Sikhs for the purpose of public worship. In the end, Shri Bisaria relied upon Section 4 of the Places of Worship (Special Provisions) Act, 1991 (for short, 'the 1991 Act') and argued that religious character of the Dera cannot be changed on the basis of the order passed by the Tribunal.

19. Shri Jaspal Singh, learned senior counsel appearing for the respondent supported the impugned judgment and the order of the Tribunal and argued that even though the respondent had not specifically pleaded that the institution in question was established for use by Sikhs for the purpose of public worship and was used as such by Sikhs before and at the time of presentation of the petition by 53 persons under Section 7(1) of the Act, the Tribunal did not commit any error by declaring it to be a Sikh Gurdwara because the parties had gone to the trial knowing fully well that the Tribunal was required to decide whether the institution is a Sikh Gurdwara and led evidence in support of their respective cases. Learned senior counsel referred to the entries made in the Khatauni and Jamabandis of village Jalal to show that the Guru Granth Sahib has throughout been recorded as the owner of land and Baba Bishan Singh Chela of Baba Gulab Singh was merely a non-occupancy tenant. Learned senior counsel submitted that Muafi granted by Maharaja of Nabha did not alter the character of the institution, which was established for use by Sikhs for the purpose of public worship. Shri Jaspal Singh emphasized that the appellant did not lead any substantive evidence to prove that the institution was established by Nirmala Sadhs and worship of Guru Granth Sahib was only incidental to their activities. Shri Jaspal Singh argued that the provisions of Section 4 of the 1991 Act cannot be relied upon for the purpose of nullifying the declaration granted by the Tribunal because

no evidence was produced by the appellant to show that the Dera was a religious place established by Nirmala Sadhs.

20. We have considered the respective submissions. For deciding the questions raised in this appeal, it will be useful to notice the relevant provisions of the Act. The same are as under:

“7. Petition 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 the 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:

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 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:

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.

(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 name of the gurdwara to which it relates and of the district, tehsil and revenue estate in which it is situated, and shall be accompanied by a list, verified and signed by the petitioners, of all rights, titles or interests 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, 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 person 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, 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) 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 alongwith 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 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:

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).

(4) & (5) xxx xxx xxx

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, 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 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.

16. 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 Gurdwara in accordance with the provisions of sub-section (2).

(2) If the tribunal finds that the gurdwara—

(i) xxx xxx xxx

(ii) xxx xxx xxx

(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.

(v) xxx xxx xxx

(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, and, subject to the finding of the High Court on appeal, it shall cease to have jurisdiction in all matters concerning such gurdwara, provided that, if a claim has been made in accordance with the provisions of section 8 praying for the restoration to office of a hereditary office-holder or person who would have succeeded 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 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 or, 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.

21. A reading of the above reproduced provisions shows that 50 or more Sikh worshippers of a gurdwara each of whom is more than 21 years of age and is resident of the area of police station within which the gurdwara is situated can file a petition under Section 7(1) with the prayer that the gurdwara may be declared to be Sikh Gurdwara. By virtue of proviso to that section, such a petition cannot be entertained in respect of any institution specified in Schedule-I or Schedule-II unless the same is deemed to be excluded from specification in Schedule I under Section 4 of the Act. Section 7(2) specifies the particulars which are required to be incorporated in a petition filed under sub-section (1). These include the name of gurdwara to which it relates and the district, tehsil and revenue estate in which the gurdwara is situated. The petition shall also contain details of all rights, titles or interests in immovable properties situated in Punjab inclusive of the gurdwara. The names of the persons who are actually or constructively in possession of title and interest on behalf of an insane or a minor are also required to be disclosed. On receiving a petition under Section 7(1), the State Government is required to ensure that the same is published in the prescribed manner at the headquarters of

the district and of the tehsil and in the revenue estate in which the gurdwara is situated. Notice is also required to be published at the headquarters of every district/tehsil/revenue estate in which any of the immovable properties mentioned in the list is situated. The movers of the petition under Section 7(1) can withdraw by giving notice, which must reach the appropriate Secretary to the Government before publication of notification. Section 8 provides for filing of petition to contest the prayer made in a petition made under Section 7(1). A petition under Section 8 can be filed by any hereditary office holder or any 20 or more worshippers of the gurdwara each of whom is more than 21 years of age and is a resident of a police station area in which the gurdwara is situated. In terms of Section 14(1), the State Government is required to forward to a Tribunal all petitions received by it under Sections 5, 6, 8, 10 and 11 and the Tribunal is required to dispose of such petitions in accordance with the provisions of the Act. Section 16(1) contains a *non obstante* clause. It lays down that notwithstanding anything contained in any other law in force, the Tribunal shall decide the dispute whether a gurdwara should or should not be declared as a Sikh Gurdwara before inquiring into any other matter in dispute relating to the said gurdwara. Section 16(2) enumerates the types of cases in which a gurdwara can be declared to be a Sikh Gurdwara. In terms of Section 16(2)(iii), the Tribunal can declare a gurdwara to be a Sikh Gurdwara if it finds that the same 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 presentation of the petition under Section 7(1). Section 16(2)(iv) empowers the Tribunal to declare a gurdwara to be a Sikh Gurdwara if it finds that the gurdwara was established in the memory of a Sikh martyr, saint or historical person and was used for such worship by Sikhs before and at the time of presentation of the petition under Section 7(1). Section 16(3) deals with cases in which the Tribunal finds the Gurdwara should not be declared as a Sikh Gurdwara. In the event of recording such finding, the Tribunal ceases to have jurisdiction in all matters concerning such Gurdwara except to the extent of restoration of office of a hereditary office holder or person who would have succeeded such office holder under the system of management prevailing before 1.1.1920 or in the case of an extended territories before 1.11.1956.

22. Section 16 of the Act has received fair amount of judicial consideration and it has been repeatedly held by the Courts that before the Tribunal can declare an institution to be a Sikh Gurdwara under Section 16(2)(iii), it must be satisfied that (a) the institution was established for use by Sikhs for the purpose of public worship, and (b) was used for such worship by Sikhs before and at the time of presentation of the petition under Section 7(1). These two conditions are required to

be fulfilled separately and conjointly and unless that is done, the Tribunal cannot declare an institution to be a Sikh Gurdwara. In other words, a person seeking a declaration that the particular institution is a Sikh Gurdwara, he must satisfy the Tribunal that the institution was established for use by Sikhs for the purpose of public worship and that the same was used as such before and at the time of presentation of the petition under Section 7(1) of the Act. If he fails to prove either of the conditions, the Tribunal cannot declare the institution as a Sikh Gurdwara. In this connection, reference may be made to the judgments of the Lahore High Court in **Lachhman Dass and others v. Atma Singh and others** (supra) and of this Court in **S.G.P.C. v. M.P. Dass Chella** (supra), **Shiromani Gurdwara Parbandhak Committee, Amritsar v. Bagga Singh** (2003) 1 SCC 619, **Shiromani Gurdwara Parbandhak Committee v. Mahant Harnam Singh** (2003) 11 SCC 377 and **Shiromani Gurdwara Parbandhak Committee v. Mahant Prem Dass** (2009) 15 SCC 381.

23. It is also a settled law that the onus to prove that an institution is a Sikh Gurdwara lies on the person who asserts the same. If Shiromani Gurdwara Parbandhak Committee comes forward to support the plea or espouse the cause of the one who files petition under Section 7(1) that the particular institution is a Sikh Gurdwara and is liable to be declared as

such under Section 16(2)(iii) of the Act, then the burden to prove the two conditions is on the Committee. If it fails to fulfill either of the conditions, the Tribunal does not get the jurisdiction to declare the institution as a Sikh Gurdwara – **S.G.P.C. v. M.P. Dass Chella** (supra) and **Shiromani Gurdwara Parbandhak Committee v. Mahant Prem Dass** (supra).

24. Before proceeding further, we may notice the judgment of the Lahore High Court in **Kirpa Singh v. Ajaypal Singh** AIR 1930 Lahore 1 on which reliance was placed by the learned counsel for the appellant to support of his argument that the institution was established by Nirmala Sadhus and, therefore, the same cannot be declared as a Sikh Gurdwara merely because Guru Granth Sahib is worshipped by the appellant and other Nirmala Sadhus. The facts of that case show that the plaintiffs-respondents had filed a suit under Section 92 of the Code of Civil Procedure for removal of the appellant from the management of the institution named “Guru Sar Satlani” situated at a distance of about 13 miles from Amritsar. According to the plaintiffs-respondents, the institution was a Sikh Gurdwara, that is, a place of public worship for the Sikhs and constitutes a trust for public purposes of charitable and religious nature. They alleged that the defendant-appellant was a man of loose character and he had committed breach of trust by mismanaging the

Gurdwara, mal-administering its properties, misapplying the income, misappropriating its funds and by otherwise misbehaving and misconducting himself in a manner which injured and scandalized the Sikh community and worshippers of the Gurdwara. The plaintiffs-respondents also prayed for framing of a scheme for future management of the Gurdwara. The defendant-appellant denied all the allegations and also pleaded that the institution was meant for Nirmala Sadhus only and that the plaintiffs-respondents who were not Nirmalas had no interest therein. One of the issues framed by the trial Court was whether Guru Sar Satlani is a general Sikh Gaddi as distinguished from a Nirmala Sikh Gaddi and whether the plaintiffs-respondents have any interest in it and they are entitled to maintain the suit. The trial Court decreed the suit and directed removal of the defendant-appellant from the management of the institution. During the pendency of the appeal, the Sikh Gurdwaras Act, 1925 was enacted and brought into force. Bhide, J. extensively referred to the evidence produced by the parties, various books and reports on Nirmalas and observed:

“The origin of the Nirmalas seems to be somewhat obscure and there are different traditions in connection with it. But it seems to be generally accepted that they came into existence in Guru Govind Singh’s time. Defendant Kirpa Singh has himself admitted in his statement: vide p.85, part 1 of the Printed Paper Book, that “Nirmalas” are chelas of Guru Gobind Singh, and hence it is unnecessary to dilate on this point. But although the Nirmalas appear to have been originally followers of Guru Gobind Singh the important

point for consideration is whether they are now distinct from the general body of the Sikhs and in particular from the plaintiffs who are "Akalis." On this point, the authorities seem to be agreed that the Nirmalas have drifted to a great extent towards the practices of the Hindu religion. The following extract from Sir Edward Maclagan's Census report for this Province for the year 1891 is very instructive in this connection.

The Nirmalas represent a different aspect of the history of Gobind's followers; for this order has by degrees rid itself of the main distinguishing marks of the Khalsa faith and is gradually returning to a pure form of orthodox Hinduism. The Nirmalas originated, like the Akalis, in the time of Gobind Singh, but there are two stories regarding the manner of their origin. According to the one, a water carrier was seized by Gobind's soldiers for supplying water to the enemy during a battle, but the Guru recognized the virtue of his act and embracing him exclaimed, Thou art without stain (Nirmala).

This story, however, has too much resemblance to that regarding Kanhaiya Lal quoted in para. 103 above; and the following appears the more probable account. It is said that Guru Gobind Singh sent three followers named Karm Singh, Harchand and Mihr Rai to Benares to acquire a knowledge of Sanskrit, when the Pandits of that city refused to come themselves to Gobind Singh; and that, on their return, the Guru blessed them as being the only Earned men among the Sikhs and called them "Nirmala." They were allowed to take the pahul and founded the order of Nirmala Sadhus. This order was at first devoted to the regulations of Gobind Singh, wore white garments, and had considerable influence with his followers. But their taste for Sanskrit literature (which is to this day cultivated by them with considerable care) led them to imbibe the principles of the Vedanta and to re-adopt many of the customs of the Shastras. They gave up the use of meat and spirits. They also began to adopt the ordinary ochre-coloured dress of the Indian faqir, which is strictly prohibited to the true followers of Gobind, and some of them are now only distinguishable from the Udasi followers of Nanak by the wearing of the kes or uncut hair. They are almost always celibate and almost always in

monasteries. They have generally some pretensions to learning, and, unlike most of the religious orders in the Punjab, have a high reputation for morality. They are said to live on offerings voluntarily presented, and to abstain from begging but there are some who say that the ochre-coloured dress has been adopted mainly for its convenience in begging. Their principal Akhara is at Hardwar, and it is said that their societies throughout the province are periodically visited by a controlling council. They have three considerable monasteries; in the Hoshiarpur District at Munak, Adamwal and Alampur Kotla; and by our returns they appear to be strong in Gurdaspur, where they are mainly returned as Hindus, and in Ambala, Ferozepor and Amritsar, where they are mainly returned as Sikhs. It is supposed that, they are to be found in some numbers in Patiala, but our tables would intimate that they are as strong in Faridkot. They are looked on as unorthodox by most true Sikhs, and it will be observed that more of them are returned in the Census as Hindu than as Sikhs. The Akalis are specially bitter against them and there have been great contentions between the two sects with regard to the right of worship at the great Sikh shrine at Apchalanagar on the Godaverī.”

25. The aforementioned judgment was approved by this Court in **Mahant Harnam Singh v. Gurdiyal Singh** AIR 1967 SC 1415. In that case, the appellant had challenged the decree passed by the High Court which had reversed dismissal of the suit filed by the respondent for removal of the appellant from the office of Mahant of an institution described as Gurdwara Jhandawala. In the plaint, the respondent pleaded that is one Guru Granth Sahib at Village Jhandawala in the name of Gurdwara Jhandawala which is managed by Mahant Harnam Singh appellant as a Mahatmim, and that he is in possession of the “Dera” and

agricultural land belonging to Guru Granth Sahib, Gurdwara Jhandawala. The Gurdwara was said to be a public religious place which was established by the residents of the village. It was pleaded that this religious institution was a public trust created by the residents of the village for the service of the public to provide food to the visitors from the Lungar (free kitchen) to allow the people to fulfil religious beliefs and for worship, etc. The plaintiff-respondents stated that, in the capacity of representatives of owners of lands situated at village Jhandawala and of the residents of village Jhandawala, they submitted an application for permission to institute this suit on the ground that the appellant was indulging in various undesirable activities and was misusing the funds of the trust which justified his removal from the office of the Mahant. The respondents claimed that, in their capacity of representatives of the owners of the land situated at village Jhandawala and of residents of the said village, they were entitled to institute this suit under Section 92 CPC. The trial Court held that Nirmalas are not Sikhs and the institution was not a Sikh institution and further that the plaintiffs do not have the right to file suit. The High Court did not agree with the trial Court and held that Nirmalas are a section of Sikhs and as such the Sikhs had interest in the institution because it was a Sikh Gurdwara. This Court noted that although the Punjab High Court had referred to the judgment of Lahore High Court, but overlooked the ratio thereof and held:

“We are unable to agree that these passages relied upon by the High Court are enough to lead to an inference that Nirmala Sadhus are Sikhs and that they still retain the essential characteristics of the Sikh faith. It is true that, in their origin, Nirmala Sadhus started as a section of Sikhs who were followers of Guru Gobind Singh, but, subsequently, in the period of about 300 years that has since elapsed, they have veered away from the Sikh religion. That is why, after giving their historical origin, Macauliffe expressed the opinion that Nirmalas were only nominally Sikhs. In Maclagan’s Census Report also it was mentioned that Nirmala Sadhus are treated as Sikhs in some places, while in other place they are returned as Hindus. He has mentioned the Districts in Punjab where they are returned mainly as Hindus, and others where they were considered as Sikhs. Faridkot, the District within which the institution with which we are concerned is situated, is mentioned as a place where they are regarded as Hindus and in the Census they have been returned as such. In these circumstances, we do not think that this material by itself, which the High Court called out of the judgment of Bhide, J., could properly lead to the inference that Nirmalas are Sikhs.

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Further, in this case, there was material showing that this institution at Jhandawala was registered as one of the branches of the principal institution of Nirmala Sadhus known as the Panchayati Akhara situated at Kankhal near Hardwar. There was further evidence showing that in this institution the worship is primarily of a Samadh which is against all tenets of the Sikh religion. Nirmala Sadhus, it appears, as a class worship at Samadhs which goes to show that they can no longer be regarded as people following the Sikh religion. In their beliefs and practices, the Nirmala Sadhus are now quite akin to Udasis, and there is a series of cases which has laid down that members of the Udasi sect are not Sikhs.”

26. In **Pritam Dass v. Shiromani Gurdwara Parbandhak Committee** (1984) 2 SCC 600, a three-Judge Bench of this Court was called upon to consider whether the religious institution in dispute, which was situated in village Ramgarh (also known as Bhagtuana), Tehsil Faridkot, District Bhatinda was a Sikh Gurdwara. Sixty-five persons claiming to be members of the Sikh community filed a petition under Section 7(1) of the Act for declaring the institution to be a Sikh Gurdwara. The State Government notified the application under Section 7(3) of the Act. Thereupon, the appellant filed an application under Sections 8 and 10 claiming that the institution was not a Sikh Gurdwara but an Udasi institution known as Dera Bhai Bhagtu. The respondent contested the application. The Tribunal held that the institution was a Sikh Gurdwara. The High Court confirmed the findings of the Tribunal and dismissed the appeal. This Court referred to the distinctive features of Sikh Gurdwaras, the judgments in **Mahant Harnam Singh v. Gurdiyal Singh** (supra), **Mahant Dharam Dass v. State of Punjab** (1975) 1 SCC 343 and held that the Tribunal and the High Court had not examined the issues raised by the parties in a correct perspective and ignored Section 16(2). The Court then proceeded to analyze the evidence and observed:

“What emerges from this discussion is that as found by the Tribunal, the succession was from Guru to Chela; that Bhai

Bhagtu was an Udasi saint and there are Samadhs on the premises — one of Bhai Bhagtu and the other of his mother. Evidence shows that there are photos of Hindu deities in the institution. These three facts, without anything more, would be sufficient to reject the case of the respondent that the institution is a Sikh gurdwara. We would like to reiterate that existence of Samadhs and succession from Guru to Chela would clearly be destructive of the character of the institution as a Sikh gurdwara because they are inconsistent with the tenets of the Sikh religion. Counsel for the respondent emphasised the feature that there was evidence to show that Guru Granth Sahib was recited and read in this institution. It is well established that Udasis are midway between Sikhs on the one hand and Hindus on the other. Srichand, son of Guru Nanak, the founder of the Sikhism, had, as already indicated, broken away and set up the Udasi sect. Udasis while venerating Guru Granth Sahib, retained Hindu practices and also showed their veneration to the Samadhs. From the very fact that Guru Granth Sahib was recited in this institution, no support can be drawn for the claim that the institution was a Sikh gurdwara.”

(emphasis supplied)

27. In **Shiromani Gurdwara Prabhandhak Committee v. Mahant Kirpa Ram** (1984) 2 SCC 614, another three-Judge Bench relied upon the judgment in **Mahant Dharam Dass v. State of Punjab** (supra) and **Pritam Dass v. Shiromani Gurdwara Parbandhak Committee** (supra) and held:

“It must be conceded that nearly a century after the setting up of the institution, Granth Sahib was venerated and read in this institution. Does it provide conclusive evidence that the institution was set up and used for public worship by Sikhs? In order to bring the case under Section 16(2)(iii) it must not only be established that the institution was established for use by Sikhs for the purpose of public worship but was used for such worship by Sikhs before and at the time of the

presentation of the petition. The use of the conjunctive “and” clearly imports that in order to attract Section 16(2) (iii), both the conditions must be cumulatively satisfied. Not only that it must be satisfactorily established that the institution was established for use by Sikhs for the purpose of public worship but was used for such worship by the Sikhs before and at the time of the presentation of the petition. It was so held in *Gurmukh Singh v. Risaldar Deva Singh* and in our opinion that represents the correct interpretation of Section 16(2)(iii). In this case there is no evidence to show that the institution was established for use by Sikhs for the purpose of public worship. It must be conceded that the institution may be established by anyone, may be a Sikh or follower of any other faith, but it must be established for use by Sikhs for the purpose of public worship. One can therefore, ignore the fact that the original grantor was a Muslim ruler Rai Kalha but there is nothing to show that when Gulabdas Faquir of Udasi Sect established the institution, he did it for use by Sikhs for the purpose of public worship. Later on as the majority of the population of the village was follower of Sikh religion and as Udasis also venerate Granth Sahib, reading of Granth Sahib may have commenced and therefore, generally speaking people may describe and revenue record may show it to be Gurdwara but that would neither be decisive of the character of the institution nor sufficient to bring the institution within Section 16(2)(iii) of the Act.”

2 (AIR 1937 Lah.577)

(emphasis supplied)

28. In **Uttam Das v. Shiromani Gurdwara Parbandhak Committee** (1996) 5 SCC 71, this Court reiterated that the Udasis are a sect distinct from the Sikhs and the mere fact that they recite Guru Granth Sahib in the presence of Sikh congregation is not by itself sufficient to declare the institution to be a Sikh Gurdwara unless it is proved that the same was established for use by Sikhs for the purpose of public worship and was

used for such worship by Sikhs as per the requirement of Section 16(2)(iii) of the Act.

29. In **S.G.P.C. v. M.P. Dass Chela** (supra), this Court considered the question whether the entries in jamabandi register and mutation register to the effect that Dera Guru Granth Sahib is the owner proves that the institution was established for use by Sikhs for the public purpose and the same was used for such worship by Sikhs and answered the same in negative. In that case, an application was made by sixty persons claiming to be worshippers of Gurdwara Dera Lang Shri Guru Granth Sahib situated within the revenue estate of village Sardargarh, Tehsil and District Bhatinda under Section 7(1) of the Act. On publication of the notification under Section 7(3), Mahant Puran Dass filed a petition under Section 8 of the Act claiming that the institution was not a Sikh Gurdwara but was a Dera of Udasi sadhus. The Tribunal impleaded the appellant as a party in that petition. After considering the evidence adduced by both the parties, the Tribunal held that the respondent was not a hereditary office-holder and had no right to file petition under Section 8. The Tribunal also held that the institution in question is a Sikh Gurdwara within the meaning of Section 16(2)(iii) of the Act. On appeal, two Judges of the High Court constituting the Division Bench expressed divergent opinions. When the matter was referred to the third Judge, he

agreed with one of the Judges that the respondent was a hereditary office-holder and that the institution in question was not a Sikh Gurdwara. This Court approved the view expressed by the majority and observed:

“It is quite evident from the language of Section 16(2) that the burden of proving an institution to be a Sikh gurdwara is on the person who asserts the same. Significantly in this case, none of the sixty persons who presented the petition under Section 7(1) has chosen to enter the witness box and give evidence in support thereof. There is no explanation for the same. The oral evidence adduced on behalf of the appellant has not inspired even the Tribunal. All that is relied on by the appellant is the entry in Jamabandi Register and Mutation Register. The entries in those registers are to the effect that Dera Guru Granth Sahib is the owner. Those entries can hardly prove either the purpose of establishment of the institution or the use thereof before and at the time of the petition under Section 7(1) of the Act. Tiwana, J. has himself pointed out that the appellant herein who was the respondent before him was not in a position to furnish any direct evidence that it is a Sikh gurudwara.

On the other hand, the entries in Ex. R-14, containing the proceedings of the Settlement Commissioner held in 1903 prove beyond doubt that the institution is not a Sikh gurdwara. Column 2 thereof shows that the original donor was Sardar Jodh Singh Saboke and the donee was Khem Dass Faqir Udasi. Column 9 refers to Guru Granth Sahib (Dera Lang) under the management of Jawahar Dass, chela Gian Dass Udasi of the village. Column 20 contains the report of the Superintendent. That shows that the muafi was granted by Sardar Jodh Singh of Sobo for expenses of the building of Sawara Guru Granth Sahib. The opinion of the Assistant Settlement Officer is set out in Column 21. The order of the Settlement Commissioner dated 1-5-1903 in Column 22 reads thus: “*Muafi as detailed continued to the Lang Dera in the name of the custodian for the time being.*” Thus it is clear that the institution was not established for use by Sikhs.”

(emphasis supplied)

30. In **Shiromani Gurdwara Parbandhak Committee, Amritsar v. Bagga Singh** (supra), this Court held that reading of Granth Sahib or veneration of Sikh scriptures in an institution of Udasi sect cannot lead to an inference that it is a Sikh Gurdwara.

31. In the light of the propositions laid down in the aforementioned judgments, we shall now consider whether the declaration made by the Tribunal that the institution in question is a Sikh Gurdwara was legally correct and the High Court did not commit any error by confirming the order of the Tribunal.

32. At the outset, it needs to be mentioned that none of the fifty-three persons who submitted petition under Section 7(1) of the Act for declaring the institution in question as a Sikh Gurdwara responded to the notice issued by the Tribunal or appeared before it to support their plea. Rather, some of them filed petition under Section 8 asserting that their signatures were obtained by fraud and at least four of them filed affidavits in support of that assertion. It is a different thing that they did not pursue the petition filed under Section 8, which was dismissed in default and the Tribunal erroneously discarded the affidavits by observing that they were not examined by the appellant. As a matter of fact, it was for the

respondent to examine those fifty-three persons or at least some of them. Unfortunately, the Tribunal and the High Court did not direct their attention towards this important omission and decided the matter by relying upon the oral evidence of those who were not party to the petition filed under Section 7(1) and the revenue records produced by the respondent.

33. Another important aspect which has been ignored both by the Tribunal and the High Court is that the written statement filed by the respondent was conspicuously silent on the twin requirements of Section 16(2)(iii) of the Act. In the written statement filed on behalf of the respondent, it was pleaded that Gurdwara in dispute was established in the memory of Baba Kharak Singh, who was a Sikh saint or in the alternative it was established by him for worship by Sikhs and has been so used by Sikhs, that the case falls either under Section 16(2)(iii) or 16(2)(iv) [erroneously written as 16(2)(3) or 16(2)(4)] and that existence of Samadhi does not alter the nature of the institution. In the amended written statement, the case originally pleaded was given up and an altogether new case was set up by asserting that the Gurdwara in dispute was built in the memory of the visit of Tenth Guru who came to this place from Dina and Lohagarh and stayed there for some time and that the Gurdwara is being used as a place of worship by Sikhs on account of the

traditional visit of Tenth Guru. Although, in the amended written statement reference was not made to Section 16(2)(iv), the averments contained in paragraph 3 clearly suggests that the respondent wanted the institution to be declared as a Sikh Gurdwara with reference to that section. Of course, a casual reference was also made to Section 16(2)(iii) by incorporating the following words:

“or in the alternative under Section 16(2)(iii)”

34. The Tribunal did not accept the plea of the respondent that the Gurdwara was built in the memory of the visit of Tenth Guru and held that Section 16(2)(iv) is not attracted in the case. The Tribunal then adverted to the two conditions required to be fulfilled before an institution can be declared to be a Sikh Gurdwara. As a sequel to this, the Tribunal made detailed analysis of the evidence produced by the respondent and held that the institution was established by Baba Kharak Singh, a Sikh gentleman of piety and prestige in the illaqa for the Sikhs for the purpose of public worship of Shri Guru Granth Sahib. While recording this finding, the Tribunal overlooked the fact that in the amended written statement the respondent had altogether given up the plea that Baba Kharak Singh was a Sikh saint and Gurdwara in dispute was established in his memory or in the alternative it was established by him for worship by Sikhs. Interestingly, in paragraph 9 of the impugned

judgment, the High Court altogether discarded the plea that Baba Kharak Singh had founded the institution by observing that there was no evidence of any type, oral or documentary of the time of establishment of the institution pointing to the purpose of its establishment. These contradictions in the findings of the Tribunal and the High Court are too prominent to be overlooked.

35. The Tribunal and the High Court also became oblivious of the fact that even though in paragraph 3 of the amended written statement filed on behalf of the respondent, an alternative plea was taken for treating the institution in dispute as a Sikh Gurdwara under Section 16(2)(iii), but no foundation was laid for raising that plea inasmuch as there was no averment that the Gurdwara was established in the particular year by the particular individual or a group of persons for use by Sikhs for the purpose of public worship and was used for such worship by Sikhs before and at the time of presentation of petition under Section 7(1). The manner in which the Tribunal analyzed the evidence produced by the parties gives an impression that it had assumed that a specific case had been set up by the respondent in the context of Section 16(2)(iii) of the Act. In our view, in the absence of basic pleadings, the Tribunal was not, at all, justified in examining the issue whether the Gurdwara is a Sikh Gurdwara within the meaning of Section 16(2)(iii) and the findings

recorded by it with reference to twin requirements embodied in that section are liable to be treated as *non est*. Unfortunately, the Division Bench of the High Court also overlooked this fatal flaw in the case put forward by the respondent and thereby compounded the grave error committed by the Tribunal.

36. At this stage, it is appropriate to mention that the findings recorded by the Tribunal and the High Court have been extracted in detail only to demonstrate how mis-directed consideration of the issues raised by the parties has resulted in recording of patently erroneous conclusions and miscarriage of justice. A reading of the Tribunal's order shows that it recorded satisfaction with reference to first part of Section 16(2)(iii) primarily by relying upon the entries made in khataunis and jamabandis in which Guru Granth Sahib is described as the owner of land and Baba Bishan Singh Chela of Baba Gulab Singh is shown as non-occupancy/gair maurisi tenant. The Tribunal also attached considerable importance to use of the words "Deh Hazah" after the words Guru Granth Sahib and Gurdwara Sahib and the fact that muafi was granted in perpetuity on 14th Phagan, Samvat 1912 for the purpose of meeting the expenses of Dhup Deep and also for serving food etc. to Sadhus and wayfarers on their visit to the institution. Another factor relied upon by the Tribunal was that the institution was established by Baba Kharak

Singh, who was a dedicated Sikh and this was done by him for the purpose of public worship of Guru Granth Sahib. In this process, the Tribunal completely lost sight of the fact that all the witnesses examined on behalf of the respondent spoke about establishment of the institution in dispute in the memory of the visit of Tenth Guru and his stay in the village for a few days on his way from Dina to Lambwali and none of them said a word about establishment of Gurdwara by Baba Kharak Singh. Of course, as mentioned above, the High Court altogether discarded the theory that the Gurdwara was established by or in the memory of Baba Kharak Singh. The revenue records produced by the respondent did show that Guru Granth Sahib was recorded as owner, but neither the khataunis nor jamabandis could be made basis for recording a finding that the institution was established for use by Sikhs for the purpose of public worship. The entries in the revenue records may be relevant for determining title and possessory rights over lands mentioned therein but the same could not be relied upon for recording a finding that the institution to which land belongs was established by the particular individual for a particular purpose. The emphasis placed by the Tribunal and the High Court on the entries made in the different revenue records and the fact that Muafi was given for meeting the expenses of Dhoop Deep was clearly misplaced. Both the Tribunal and the High Court appear to be obsessed with the idea that when Guru Granth Sahib is

recorded as the owner of land in the khatauni and the jamabandis and Prakash is being done in front of Guru Granth Sahib, the institution must have been established for use by Sikhs for the purpose of public worship and was used for such worship by Sikhs. This approach was clearly erroneous and the findings recorded by the Tribunal and the High Court, though concurrent are liable to be set aside being contrary to the law laid down by this Court.

37. We also find that the Tribunal and the High Court have not given due weightage to the evidence, oral and documentary produced by the appellant. Appellant, Jawala Singh, who appeared as PW-8 and seven witnesses examined by him consistently stated that the institution, that is, the Dera was established by Nirmala faquir and Baba Bishan Singh was its first Mahant. The report of Tehsildar, Phul dated 16 Sawan Samvat 1941, report of the Revenue Superintendent dated 18 Har Samvat 1956, report of Nazar in Mahkama Aliya Ijlas dated 18 Bhadon, Samvat 1956, order dated 28th Bhado Samvat 1956 passed by Mahkama Aliya Ijlas and the order passed by the then Maharaja Sahib on 24 Kartik Samvat 1956 show that Maharaja Bharpur Singh had given 56 Ghumaons of land to Bhai Bir Singh in Sammat 1913. It is also borne out that in Samvat 1914, the land in both the patties was given by Maharaja Bharpur Singh to Bhai Bir Singh on periodical lease. In the report of Tehsildar, Phul it was

noted that there is no mention regarding the ownership but inquiry from Lambardar revealed that the ownership was of Bhai Bir Singh who was shown as Nirmal Sadhu. In the report of Revenue Superintendent, there is a mention of dera on the land and as per the instructions given by the government on 29th Poh Samvat 1954, the entry in the column of ownership was to be made in the name of Dera Granth Sahib as per the desire of real owners. It was also indicated that the Sadhus residing in the dera shall have no right to sell and mortgage the land. The muafi was granted by Maharaja Bharpur Singh for dharamarth i.e., to meet expenses of Sadhus and poor. The last order passed by the Maharaja shows that entry regarding ownership of the Dera was to be made as proposed at the time of settlement. Unfortunately, the High Court brushed aside the documentary evidence produced by the appellant by recording one line observation that his counsel could not establish its relevance. In our view, while hearing the appeal, it was duty of the High Court to have adverted to the various documents and then determined their relevance.

38. The findings recorded by the Tribunal and the High Court on the question of use of the institution for worship by Sikhs are too sketchy. The only statement made by the witnesses examined by the respondent was that sometimes the residents go for worship of Guru Granth Sahib. In our view, in the absence of any evidence to show that the institution

was established for use by Sikhs for the purpose of public worship, the Tribunal did not have the jurisdiction to declare it to be a Sikh Gurdwara by simply relying upon the entries in the revenue records or the fact that Prakash of Guru Granth Sahib is done and on some occasion people come to worship Guru Granth Sahib and the High Court committed serious error by dismissing the appeal.

39. Since we have held that the orders passed by the Tribunal and the High Court are legally unsustainable, it is not necessary to deal with argument advanced by the learned counsel with reference to Section 4 of the 1991 Act.

40. In the result, the appeal is allowed. The impugned judgment as also the order passed by the Tribunal are set aside. As a sequel to this, the declaration made by the Tribunal that the institution in question is a Sikh Gurdwara is also set aside. The parties are left to bear their own costs.

.....J.
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi

January 12, 2011.