

PETITIONER:
PRITAM DASS MAHANT

Vs.

RESPONDENT:
SHIROMANI GURUDWARA PRABANDHAK COMMITTEE

DATE OF JUDGMENT 16/01/1983

BENCH:
MISRA, R.B. (J)
BENCH:
MISRA, R.B. (J)
DESAI, D.A.
MISRA RANGNATH

CITATION:
1984 AIR 858 1984 SCR (2) 564
1984 SCC (2) 600 1984 SCALE (1) 327
CITATOR INFO :
R 1984 SC1059 (19)

ACT:

Sikh Gurudwara Act, 1925, as amended by the Amendment Act I of 1959-Section 16(2)-Whether the institution Dera Bhai Bhagtu was a Sikh Gurudwar? Whether mere recitation of Guru Granth Sahib without anything more ? Distinctive features of Sikhism and Sikh temples-Court's duty to record positive findings in terms of Section 16-Appreciation of the evidence of a witness. The fact that he belongs to a particular political party or the other does not change the veracity of his evidence.

HEADNOTE:

Sixty five persons claiming to be members of the Sikh community moved an application before the State Government under Section 7(1) of the Sikh Gurudwara Act, 1925 to have a religious institution in village Ramgarh (also known as Bhagtuana of Faridkot tehsil, declared to be a Sikh Gurudwara. The State Government notified the said application in the Punjab Government Gazette in terms of Section 7(3) of the Act on 18th October, 1963. Upon this the appellant made an application under Section 8 and 10 of the Act claiming that the institution was not a Sikh Gurudwara but an Udasi institution known as Dera Bhai Bhagtu. The application was referred to the Sikh Gurudwara Tribunal for adjudication. The petition was resisted by the respondent Shiromani Gurudwara Prabandhak Committee on three grounds: (i) that the appellant was not competent to move the petition under section 7 of the Act as he was not a hereditary office-holder, (ii) that the provisions of the Act are not ultravires the Constitution; and (iii) that the institution in dispute was a Sikh Gurudwara. The Tribunal held against the respondent and in favour of the appellant on contention(1). Since the second contention was not pressed and the third question was the only issue, the Tribunal held that the institution was a Sikh Gurudwara. In appeal, the Punjab and Haryana High Court confirmed the Tribunal's findings. Hence the appeal by Special Leave of the Court.

Allowing the appeal, the Court

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HELD: 1.1. The religious institution, Dera Bhai Bhagtu is not Sikh Gurudwara. On the materials on record, the findings recorded by the Tribunal as well as the High Court are wholly unsupportable to satisfy the tests indicated in law for determining the character of the institution. [581D]

1.2. The findings of the High Court clearly show that the four important and most relevant aspects of the case as disclosed in the evidence were completely overlooked or side-tracked by the High Court. They are: (i) there are Samadhs on the premises of the institution; (ii) there are idols and photos of Hindu deities; (iii) Bhai Bhagtu was a Udasi Saint; and (iv) succession was from Guru to Chela.

565

The petition filed by the appellant under s.8 of the Act contained a clear averment that the institution had been set up by Bhai Bhagtu who was a Udasi Saint and the presence of three Samadhs of (1) Bhai Bhagtu, (2) Baba Paras Ram Ji, and (3) Mahant Sahib Dass Ji, was also asserted. In the written statement the respondent, after a vague denial, had admitted the institution to have been founded by Bhai Bhagtu. Pritam Dass, the appellant did support his case. Ordinarily his evidence would have been treated as interested as he happens to be the party but his assertions have been well corroborated. The same is strengthened by the evidence of all respondent's witnesses. The evidence of witnesses clearly indicates: (i) that there are atleast two samadhs in the premises of the institution-one being of Bhai Bhagtu and the other of his mother; (ii) the existence of the idol of Baba Srichand, the founder of the Udasi Sect in the premises. Clearly the Sikhs would not permit the idol of Baba Srichand in a Gurudwara while Udasies would ordinarily install such an idol to perpetuate the memory of the founder of their sect; (iii) the succession was from Guru to Chela; and (iv) there are photos of Hindu deities in the institution. These facts without anything more would be sufficient to reject the case of the respondent that the institution is a Sikh Gurudwara. [579A-C; G; 580G-H]

1.4. From the very fact that Guru Granth Sahib was recited in the institution no support can be drawn for the claim that the institution was a Sikh Gurudwara. It is well established that Udasies are midway between Sikhs on the one hand and the Hindus on the other. Srichand son of Guru Nanak, the founder of Sikhism, had broken away and set up the Udasi sect. [581B-C]

2.1. Although for the purpose of historical research and analysis on the subject like Sikhs and Sikh temples, the forum of a court of law is not ideal, yet, if the statute enjoins the court to decide such questions, the court has got to discharge the responsibility. [569D]

2.2. The court has been called upon to decide whether the institution in question is a Sikh Gurudwara. While considering this question the Court has to take into consideration all the circumstances which favour or militate against the institution being a Sikh Gurudwara. In the very nature of things and in view of the requirements of sub-s.(2) of s. 16 it becomes necessary to consider whether the institution being in charge of a Udasi saint, the existence of samadhs of Udasi saints and worship thereof, or the existence of the idols and absence of a granthi and succession to the institution from guru to chela are all relevant considerations and the Court has to consider them if there is evidence on the record. In the instant case evidence has been adduced on behalf of the appellant about the existence of samadhs and the various idols, the absence

of a granthi and succession to the institution from guru to chela. The appellant cannot, therefore, be prevented from urging the aforesaid circumstances. [573F-H; 574A]

2.3. Courts cannot discard the evidence of witnesses of one side by simply saying that the oral testimony is interested and hardly any credible, when witnesses on either side have come to depose on oath. Here, the grounds on which the evidence adduced on behalf of the appellant has been discarded may equally apply to the evidence adduced on behalf of the respondent. The Court should have considered the worth of the evidence of each witness and should have given reasons for disbelieving the same on merit. A bald observation that the witnesses produced on behalf for the appellant are interested must be deprecated. The courts had to decide the

566

question in view of the provisions of sub-s.(2) of s.16 of the Act and they had to record a positive finding in the light of sub-s.(2) of s.16. Unless the claim falls within one or the other of the categories enumerated in sub-section(2) of s.16, the institution cannot be declared to be a Sikh Gurudwara [577B-D; 578C]

3.1. One of the most fascinating aspects of Sikhism is the process which began with human Gurus, continued during the period of duality in which there were human Gurus and a collection of sacred writings and ended with the present situation in which full authority is enjoined by the scripture. In every respect the scripture is what the Gurus were. [569G]

Both the Gurus and the Book deserve respect, which they are accorded because of the Bani which they express, the word of divine truth. Therefore, it was possible for Guru Arjan, the fifth in the human line, to bow before the collection which he had compiled and installed in the newly built Darbar Sahib in 1604 for he was acknowledged the higher authority of the Bani due to the personal importance and significance which he possessed as Guru. [569H; 570A]

The Sikh Gurus have much in common with other preceptors in Indian tradition but their history and contribution is distinctive. They were not Brahmins, they did not see their calling to be that of expounding Vedas, they taught in vernacular not Sanskrit and their message was for everyone. They were ten in number each remaining faithful to the teachings of Guru Nanak, the first Guru and when their line was ended by a conscious decision of Guru Gobind Singh, the last Guru, succession was invested in a collection of teachings which was given the title of Guru Granth Sahib. This is now the Guru of the Sikhs. [570B-C]

An important characteristic of the teachings of the Sikh Gurus is their emphasis upon the message, the Bani. It is this stress which made possible the transfer of Guruship to the scripture. The human Gurus were the instruments through whom the voice of the God became audible. [570D]

The holiest book of the Sikhs is Guru Granth Sahib compiled by the Fifth Master, Guru Arjun. It is the Bible of Sikhs After giving his followers a central place of worship, Hari-Mandir, he wanted to give them a holy book. So he collected the hymns of the first four Gurus and to these he added his own. Now this Sri Guru Granth Sahib is a living Guru of the Sikhs. Guru means the guide. Guru Granth Sahib gives light and shows the path to the suffering humanity. Wherever a believer in Sikhism is in trouble or is depressed he reads hymns from the Granth. Whenever the Sikhs needed guidance or counsel, they should assemble before the Granth in all sincerity and decide their further line of action in

the light of teachings of the Master, as embodied in the Granth. The noble ideas embodied in the Granth would live for ever and show people the path to bliss and happiness. [570E-F; 571B]

3.2. Temples are found almost in every religion but there are some differences between the Sikh temples and those of other religions. The Sikh Gurudwaras have the following distinctive features: [571C]

1. Sikh temples are not the place of idol worship as the Hindu temples are. There is no place for idol worship in a Gurudwara. The central object of worship

567
in a Gurudwara is Sri Guru Granth Sahib, the holy book. The pattern of worship consists of two main items: reading of the holy hymns followed by their explanation by some learned man, not necessarily a particular Granthi and then singing of some passages from the Holy Granth. The former is called Katha and the second is called Kirtan. A Sikh thus worships the Holy Words that are written in the Granth Sahib, the words or Shabada about the Eternal Truth or God. No idol or painting of any Guru can be worshipped. [571C-D]

2. Sikh worship in the Gurudwara is a congregational worship, whereas Hindu temples are meant for individual worship. A Sikh does the individual worship at home when he recites Gurbani daily. Some scriptures meant for this purpose are Japji, Jaap, Rehras, Kirtan Sohila. Sangat is the collective body of Sikhs who meet every day in the Gurudwara. [571E-F]

3. Gurudwara is a place where a copy of Guru Granth Sahib is installed. The unique and distinguishing feature would always be the Nishan Sahib, a flagstaff with a yellow flag of Sikhism flying from it. This serves as a symbol of the Sikh presence. It enables the travellers, whether they be Sikhs or not, to know where hospitality is available. There may be complexity of rooms in a Gurudwara for the building may also serve as a school, or where children are taught the rudiments of Sikhism as well as a rest centre for travellers. Often there will be a kitchen where food can be prepared though langar itself might take place in the yawning. Sometimes the Gurudwara will also be used as a clinic. But its pivotal point is the place of worship and the main room will be that in which the Guru Granth Sahib is installed where the community gathers for diwan. The focal point in this room will be the book itself. [571G-H; 572A]

3.3. The sine qua non for an institution being a Sikh Gurudwara is that there should be established Guru Granth Sahib and the worship of the same by the congregation, and a Nishan Sahib as indicated in the earlier part of the Judgment. There may be other rooms of the institution meant for other purposes but the crucial test is the existence of Guru Granth Sahib and the worship thereof by the congregation and Nishan Sahib. It is not necessary that there must be a granthi in a Gurudwara. Any learned person can read Guru Granth Sahib and explain to the congregation. [572B-C]

Hem Singh and Others v. Basant Das & Anr. (1935-36) L.R. 631 IA 180;

Bawa Ishar Dass & Others v. Dr. Mohan Singh and Others, AIR 1939 Lah. 239

Arjan Singh v. Inder Das 15 Lah. 247;

Harnam Singh v. Gurdial Singh [1967] 2 SCR 739.

Mahant Dharam Das etc. v. State of Punjab & Ors. [1975] 3 SCR 160.

Sohan Das v. Bela Singh & Ors. AIR 1934 Lah. 180

referred to,

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1983 of 1970

From Judgment and Decree dated 29-7-69 of the Punjab & Haryana High Court in F.A.O. No. 35/66.

568

Naunit Lal, K. Vasdev and Ms. V. Grover for the appellant.

V.M. Phadke and Harbans Singh for the respondent.

The Judgment of the court was delivered by

MISRA, J. The present appeal by special leave is directed against the judgment and order dated 29th July, 1969 of the High Court of Punjab and Haryana at Chandigarh.

The dispute in this appeal centres around a religious institution in village Ramgarh (also known as Bhagtuana), tehsil Faridkot, district Bhatinda. This village was previously in the erstwhile Nabha State which merged with Pepsu and after the reorganisation of the States, became a part of the Punjab State in 1956. Sixty-five persons claiming to be members of the Sikh community moved an application before the State Government under s. 7 (1) of the Sikh Gurdwara Act, 1925 (hereinafter referred to as the Act), as amended by the Amendment Act I of 1959, to have the institution declared to be a Sikh Gurdwara. The State Government notified the said application in the Punjab Gazette in terms of s. 7 (3) of the Act on 18th October, 1963. Upon this the appellant made an application under ss. 8 and 10 of the Act claiming that the institution was not a Sikh Gurdwara but an Udasi institution known as Dera Bhai hagtu. This application was referred by the State Government to the Sikh Gurdwara Tribunal for adjudication. It was contended by the appellant that throughout its long history the institution has been an Udasi institution. This institution was not established for use by Sikhs for public worship. nor was it founded in the memory of a Sikh Martyr, saint or a historical person. It has never been used for public worship by the Sikhs. The institution was the Dera of Udasi Bhekh and the objects of worship are idols of Gola Sahib and of Baba Srichand, and the various samadhs.

The petition was resisted by the respondent Shiromani Gurdwara Prabandhak Committee on three grounds: (1) that the appellant was not competent to move the petition under s.7 of the Act because he was not a hereditary office holder, (2) that the provisions of the Act are not ultra vires the Constitution, and (3) that the institution in dispute was a Sikh Gurdwara.

On the pleadings of the parties the Tribunal framed three issues: whether the provisions of the Act are ultra vires the Constitution,

569

(2) whether the appellant was a hereditary office holder, and (3) whether the institution in dispute was a Sikh Gurdwara. Issue No. 1 was not pressed and, therefore, the Tribunal in conformity with the previous decisions held the provisions of the Act to be intra vires the Constitution. On the second issue the Tribunal recorded a finding in favour of the appellant. On the third issue, the Tribunal held that the disputed institution was a Sikh Gurdwara.

The appellant feeling aggrieved by the judgment of the Tribunal took up the matter in appeal to the High Court and the High Court in its turn confirmed the findings of the

Tribunal and dismissed the appeal by the impugned judgment. The appellant has now come to his Court on obtaining special leave and the only issue that survives for consideration by this Court is issue No.3, that is, whether the institution in dispute is a Sikh Gurdwara.

Before dealing with the points urged by the counsel for the parties it would be appropriate at this stage to know the distinctive features of Sikhism and Sikh temples. Although for the purpose of historical research and analysis on such subject, the forum of a court of law is not ideal yet if the statute enjoins the Court to decide such questions, the Court has got to discharge the responsibility. Section 16 (1) of the Act provides:

"16 (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)."

One of the most fascinating aspects of Sikhism is the process which began with human Gurus, continued during the period of duality in which there were human Gurus and a collection of sacred writings and ended with the present situation in which full authority is enjoined by the scripture. In every respect the scripture is what the Gurus were.

Both the Gurus and the Book deserve respect, which they are accorded because of the Bani which they express, the word of divine truth. Therefore, it was possible for Guru Arjan, the fifth in the human line, to bow before the collection which he had compiled and installed

570
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An important characteristic of the teachings of the Sikh Gurus is their emphasis upon the message, the Bani. It is this stress which made possible the transfer of Guruship to the scripture. The human Gurus were the instruments through whom the voice of God became audible.

The holiest book of the Sikhs is Guru Granth Sahib compiled by the Fifth Master, Guru Arjan. It is the Bible of Sikhs. After giving his followers a central place of worship, Hari-mandir, he wanted to give them a holy book. So he collected the hymns of the first four Gurus and to these he added his own. Now this Sri Guru Granth Sahib is a living Guru of the Sikhs. Guru means the guide. Guru Granth Sahib gives light and shows the path to the suffering humanity. Wherever a believer in Sikhism is in trouble or is depressed he reads hymns from the Granth.

When Guru Gobind Singh felt that his worldly sojourn was near, he made the fact known to his disciples. The disciples asked him as to who would be their Guru in future. The Guru immediately placed five pies and a coconut before the holy Granth, bowed his head before it and said-

"The Eternal Father willed, and I raised the Panth.

All my Sikhs are ordained to believe the Granth as their preceptor.

Have faith in the holy Granth as your Master and consider it.

The visible manifestation of the Gurus.

He who hath a pure heart will seek guidance from its holy words".

571

The Guru repeated these words and told the disciples not to grieve at his departure. It was true that they would not see his body in its physical manifestation but he would be ever present among the Khalsas. Whenever the Sikhs needed guidance or counsel, they should assemble before the Granth in all sincerity and decide their future line of action in the light of teachings of the Master, as embodied in the Granth. The noble ideas embodied in the Granth would live for ever and show people the path to bills and happiness.

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

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

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

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

572

will be that in which the Guru Granth Sahib is installed where the community gathers for diwan. The focal point in this room will be the book itself.

From the foregoing discussion it is evident that the

sine qua non for an institution being a Sikh Gurdwara is that there should be established Guru Granth Sahib and the worship of the same by the congregation, and a Nishan Sahib as indicated in the earlier part of the judgment. There may be other rooms of the institution meant for other purposes but the crucial test is the existence of Guru Granth Sahib and the worship thereof by the congregation and Nishan Sahib. It is not necessary that there must be a granthi in a Gurdwara. Any learned person can read Guru Granth Sahib and explain to the congregation.

With this preliminary about the distinctive features of a Sikh temple we proceed to deal with the contentions of the counsel for the parties.

Shri Naunit Lal, counsel for the appellant contended that the High Court has misread the evidence and that has vitiated its finding. He referred to the material portions of the judgment and the evidence of the parties to support his contention. On perusal of the judgment and the relevant evidence we do not find any misreading of evidence by the High Court. This contention, therefore, has no force. We, however, find that the High Court proceeded on the assumption that admittedly Bhai Bhagtu was a Sikh saint and that the disputed institution was established in his memory. This would be evident from the following observation made by the High Court.

"On an overall consideration of this aspect we are inclined to accept the contention of Mr. Shant that admittedly Bhai Bagtu was a Sikh saint and this institution was established in his memory and as such the case of the respondent would also come within the ambit of s. 16(2) (iv) of the Sikh Gurudwara Act".

But this observation is not warranted from the pleadings or the evidence of the parties. Pritam Dass, the appellant, as P.W.S. in his deposition has categorically stated: "Bhai Bhagtu was an Udasi Fahir". In the pleadings also the appellant set up that Bhai Bhagtu was an Udasi saint and the institution was a Dera of the Udasi sect, 573

while the respondent, on the other hand, in its reply stated that Bhai Bhagtu was a Sikh saint and the institution was established in the memory of that Sikh saint. In this state of pleadings and the evidence adduced by the parties it will not be correct to say that admittedly Bhai Bhagtu was a Sikh saint and that this institution was established in his memory. Rather this was the only disputed question to be decided by the Court. Thus while holding that there is no misreading of evidence we find that there is misreading of the pleadings of the parties.

It was next contended for the appellant that the appellant of udasi set being incharge of the institution in question, the succession to the institution being from Guru to Chela, the institution being recorded as Dera of Udasi sect in some of the revenue records, the existence and worship of various idols and samadhs within the precincts of the institution and the absence of a granthi in the institution are all in-compatible with the institution being a Sikh Gurdwara.

Shri M. N. Phadke appearing for the respondent on the other hand has contended that (1) the points which were never urged in the courts below could not be allowed to be raised for the first time in this Court; (2) in any case the existence of samadhs and idols within the precincts of the institution and the worship thereof, and the absence of a granthi and the succession to the institution from guru to chela are not destructive of the institution being a Sikh

Gurdwara; (3) the finding of the High Court that the institution in question is a Sikh Gurdwara is fully warranted by the evidence on record, and (4) the nature of the institution has to be decided in the light of sub-s. (2) of s. 16 of the Sikh Gurdwara Act.

The Court has been called upon to decide whether the institution in question is a Sikh Gurdwara. While considering this question the Court has to take into consideration all the circumstances which favour or militate against the institution being a Sikh Gurdwara. In the very nature of things and in view of the requirements of sub-s. (2) of s. 16 it becomes necessary to consider whether the institution being in charge of an Udasī saint, the existence of samadhs of Udasī saints and worship thereof, or the existence of the idols and absence of a granthi and succession to the institution from guru to chela are all relevant considerations and the Court has to consider them if there is evidence on the record. In the instant case evidence has been adduced on behalf of the appellant about the existence of samadhs and the various idols, the absence of a granthi and succession to the institution

574

from guru to chela. We see no reason why the appellant be prevented from urging the aforesaid circumstances.

On the question whether the existence of samadhs and of the idols and the absence of a granthi or succession to the institution from guru to chela militates against the institution being a Sikh Gurdwara the counsel for the parties have adduced evidence in support of their respective contentions. The counsel for the parties have also cited cases in support of their respective contentions.

The counsel for the appellant relied on Hem Singh & Ors. v. Basant Das & Anr(1). In that case the question for consideration was whether Udasīs are Sikhs. The court held that Udasīs are not Sikhs for the purposes of Sikh Gurdwara Act. Although Guru Nanak founded Sikhism as a new religion by sweeping away idolatry and polytheism, Sri Chand, the son of Guru Nanak, the founder of the Udasīs, was himself not a Sikh but a Hindu. No reconciliation between the Sikhs and the Udasīs ever took place. The Udasīs are in consequence not Sikhs, but schismatics who separated in the earliest days of Sikhism and never merged with the followers of the Gurus.

Reliance was next placed upon Bawa Ishar Dass & ors. v. Dr. Mohan Singh & ors (2) The Court held:

"..it has been established that the Mahants have all along been Udasīs, that the institution was an Udasī monastery, that the Guru Granth Sahib was read there by the Udasī Mahant and that Sikhs may have attended these readings but that all other ceremonies, observed by Udasīs and Hindus, were performed at the institution. It cannot be held from the mere fact that the Udasīs also read the Guru Granth Sahib a book which they do venerate, that the Sikhs should be associated in the management of this genuine Udasī institution. It was held by a Division Bench of this Court in 15 Lah. 247(2) that the Udasī order constitutes a separate sect, distinct from the orthodox Sikhs and that though they have retained many Hindu beliefs and practices, yet in the wider sense of the term they may also be Sikhs. They occupy an intermediate position between strictly orthodox Sikhs and Hindus. The Udasīs are in fact a monastic

575

Order in their origin and are followers of Bawa Siri

Chand, son of the first Guru though they worship smadhs, etc. they do reverence the Granth Sahib without completely renouncing Hinduism. They are often in charge of the village Dharamsala or Gurdwara, which is a Sikh institution but in other cases the Sadh and his chelas constitute a monastery or college. Owing to their intermediate positions, it is possible for Udasis to be in charge of a Sikh Gurudwara properly so called, but it does not follow that that institution is a Sikh Gurudwara and not a true Udasi institution merely because the Granth Sahib is read".

In Harnam Singh v. Gurdial Singh on an analysis of various decisions this Court held:

"These decisions clearly indicate the principle that though the Sikh Guru Granth Sahib is read in the shrines managed by the members of the Udasi Sect, that was not enough to hold that those shrines were Sikh Gurdwaras. In the case before us, the more fact that at some stage there was a Guru Granth Sahib in this Dera cannot thus lead to any conclusion that this institutions was meant for, or belonged to, the followers of the Sikh religion. Clearly, the Dera was maintained for an entirely distinct sect known as the Nirmala Sadhs who cannot be regarded as Sikhs and consequently, in their mere capacity of followers of Sikhs religion residing in village Jhandawala, the plaintiffs/respondents could not be held to have such an interest as could entitle them to institute the suit under s. 92 of the Code of Civil Procedure."

Shri Phadke appearing, for the respondent on the other hand his cited Mahant Dharam Das etc. v. State of Punjab & Ors (2). Dealing with the tenets of the Sikhs this Court observed:

"The Sikhs believe in the ten Gurus-the last of whom was Guru Gobind Singh. They further believe that there is no other Guru after Guru Gobind Singh who enjoined on his followers that after him they should consider Guru Granth Sahib as the Guru. They do not subscribe to idol worship and polytheism, nor do they have any Samadhi in their shrines. The teaching of Sikhs was against asceticism. They believe in Guru Granth Sahib, which is a Rosary of sacred poems, exhortations, etc.

576

During the time of the Sikh Gurus the Gurdwaras were under their direct supervision and control or under their Masends or missionary agents. After the death of Guru Gobind Singh the Panth is recognised as the corporate representative of the Guru on earth and thereafter they were managed by the Panth through their Granthis and other sewadars who were under direct supervision of the local Sangat or congregation-The position of the Gurdwaras changed during British regime. The mahants who were in charge of the Sikh Gurdwaras could either be a Sikh Mahant or Udasi Mahant....Though there was no reconciliation between the Sikhs and Udasis, it did not matter if the Mahant of a Sikh Gurdwara was not a Sikh Mahant because the Panth or Sangat exercised control over the Gurdwaras".

Next reliance was placed on Sohan Das v. Bela Singh & Ors.(2) Dealing with s. 16(2) of the Sikh Gurudwara Act the Court observed:

"The documentary evidence therefore establishes that the dharamsala has been a place of public worship since 1853, and that such worship has been connected

with the Granth Sahib I am prepared to accept the evidence of the objectors that the existence of a samadh dates only from recent times, more than probably after the Sikh Gurdwara controversy had become acute and the importance of a samadh had been realized by the Udasi Mahants. I hold therefore that the evidence supports the conclusion of the majority of the Tribunal that this institution falls within s.16 (2) (iii) of the Act".

In view of the divergent cases cited by the counsel for the parties we have to take into consideration the distinctive features of a Sikh Gurdwara as discussed in the earlier part of the judgment. So viewed, the existence of worship of Guru Granth Sahib and the existence of Nishan Sahib are the determinative factor.

The Tribunal did not take into consideration the oral evidence adduced by the parties. Eight witnesses were produced on behalf of the appellant while six witnesses were produced on behalf of the respondent. The High Court also did not give a proper deal to the oral evidence adduced by the appellant. The only consideration given by the High Court to the oral testimony of the witnesses on behalf of the appellant was in the following terms:

577

"As regards the oral testimony on the point that the institution was a Dera of an Udasi Sadhu, the same is obviously interested, and hardly credible. The Tribunal has not attached any weight to the same and we are wholly in agreement with the finding of the Tribunal on that point."

The witnesses on either side have come to depose on oath. The grounds on which the evidence adduced on behalf of the appellant has been discarded may equally apply to the evidence adduced on behalf of the respondent. The Court should have considered the worth of the evidence of each witness and should have given reasons for disbelieving the same on merit. A bald observation that the witnesses produced on behalf of the appellants are interested must be deprecated.

Even otherwise the courts below have not approached the case from the correct angle. (The Courts had to decide the question in view of the provisions of sub-s. (2) of s. 16 of the Act and they had to record a positive finding in the light of sub-s.(2) of s. 16,) which reads:

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

of section 7; or

578

- (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 (I) of section 7;

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

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

The Court had, therefore, first to consider as pleaded by the parties, as to whether Bhai Bhagtu was a Udasi saint or a Sikh saint, and then to decide on the basis of evidence whether the institution in question is one or the other of the types indicated. This was the only question for consideration before the High Court but unfortunately it assumed what was to be proved.

On the foregoing discussion we are satisfied that the High Court has not given a proper deal to the matter and has not considered the oral evidence adduced on behalf of the parties. Nor has it approached case from the correct perspective of law.

Ordinarily, in a situation as here the matter should have gone back to the High Court for recordings findings on the basis of appreciation of evidence but we are not inclined to remand the matter as it is a very old dispute. We are, therefore, prepared to take that burden ourselves and finally decide the dispute. As would appear, parties were aware of the nature claim and the evidence to be led and, therefore, parties concentrated their attention on the aspects which would be, decisive of the points in dispute. It is unfortunate that the Tribunal and the High Court did not keep the proper perspective in view while dealing with the matter.

On behalf of the appellant Ram Saran Dass, P W-1, Charan Dass, PW 2, Bishan Dass, PW 3, Jagraj Singh, PW 4, Chajju Ram, PW 5, Zora Singh Patwari, PW 6, Surjit Singh, PW 7 and the appellant, PW 8, were examined. On behalf of the respondent, Hardev Singh, RW 1, Bachan Singh, RW 2, Balbir Singh, RW 3, Balwant Singh, RW 4, Hazura Singh, RW 5, and Gurdial Singh, RW 6, were examined as witness.

579

The finding of the High Court as extracted hereinbefore clearly show that the four important and most relevant aspects of the case as disclosed in the evidence were completely overlooked or side tracked by the High Court. They are: (i) there are Samadhs on the premises of the institution; (ii) there are idols and photos of Hindu deities; (iii) Bhai Bhagtu was a Udasi Saint; and (iv) succession was from Guru so Chela. The petition filed by the appellant under s.8 of the Act contained a clear averment that the institution had been set up by Bhai Bhagtu who was a Udasi Saint and the presence of three Samadhs of (1) Bhai Bhagtu, (2) Baba Paras Ram Ji and (3) Mahant Sahib Dass Ji, was also asserted. In the written statement the respondent, after a vague denial, had admitted the institution to have been founded by Bhai Bhagtu.

PW 1, Ram Saran Dass stated that there was an idol of Baba Srichand in the institution and there were pictures of Lord Krishna and other Hindu deities. This statement was elicited in cross-examination made by the respondent. PW 2 has stated that there is an idol of Baba Srichand and Gola Sahib in the institution and they are objects of worship. PW

3, Bishan Dass, referred to the idol of Baba Shrichand. PW 4, Jagral stated that there were three or four samadhs on the premises of the institution and those are objects of worship. There was no challenge to this statement in examination-in-chief by cross-examination. PW 5 was asked in cross examination whether there were Samadhs on the premises of the institution and his answer is revealing. He stated that there are three Samadhs on the premises of the institution and there is a dome over the Samadhs of Bhai Bhagtu. He added that there are other pictures of Hindu deities and Hindu Festivals are celebrated in the institution. PW 7, Surjit Singh, the local Sarpanch stated that the institution was of Udasi Fakirs. He also stated that there is a Samadh of Bhai Bhagtu on the premises of the institution and it is an object of worship. He indicated that the Samadh of Bhai Bhagtu was worshipped in a grand scale while the other two Samadhs were not treated on equal basis. There was no cross-examination of this witness on this aspect. Pritam Dass, the appellant did support his case. Ordinarily his evidence would have been treated as interested as he happens to be the party but his assertions have well corroborated.

Coming to the respondent's side, the first witness Hardev Singh in his examination-in-chief stated that there is a Samadh of Bhai Bhagtu in the institution and another Samadh of his mother. On the basis of this admission of the principal witness of the respondent there can be

580
on doubt that Samadhs exist within the institution. At the hearing counsel had pointed out that this witness was a member of the Communist Party. We do not think that would at all be a proper way of appreciating the evidence of the witnesses. He was a witness called by the respondent and was not declared hostile, if he made admissions in his examination-in-chief. On the other hand, the fact that he does not belong to the groups of either party and is a Communist would lend credence to his evidence as coming from an impartial source. The next witness, RW 2, Bachan Singh admitted the existence of the Samadhs but denied that the Samadh of Bhai Bhagtu was an object of worship. RW 3, Balbir Singh, admitted the presence of Samadh of Bhai Bhagtu as also of his mother. It is in the evidence of this witness that he also belongs to the Communist Party. What we have said about RW 1 equally applies to this witness. RW 4, Balwat Singh admitted the presence of Bhai Bhagtu's Samadh; while RW 5, Hazura Singh stated that there were two Samadhs on the premises one of Bhai Bhagtu and the other of his mother. The last witness, RW 6, Gurdial Singh in his evidence admitted the existence of the two, Samadhs of Bhai Bhagtu and his mother.

This analysis of the evidence clearly indicates that it has been unquestionably established without the slightest shadow of a doubt that there are at least two Samadhs on the premises of the institution-one being of Bhai Bhagtu and the other of his mother.

The existence of the idol of Baba Srichand, the founder of the Udasi sect in the premises also seems to have been fully established. As already stated, Sikhs would not permit the idol of Baba Srichand in a Gurdwara, while Udasis would ordinarily install such an idol to perpetuate the memory of the founder of their sect.

What emerges from this discussion is that as found by the Tribunal, the succession was from Guru to Chela; that Bhai Bhagtu was a 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 character of the institution as a Sikh Gurdwara because they are inconsistent with the tenets of the Sikh

581

religion. The issue before the High Court as also the Tribunal was whether the institution Dera Bhai Bhagtu was a Sikh Gurdwara.

Reference to another aspect would be relevant here. Counsel for the respondent emphasized 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 mid-way 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.

On the materials on record, we are of the view that the findings recorded by the Tribunal as also the High Court are wholly unsupportable to satisfy the tests indicated in law for determining the character of the institution. We allow the appeal, reverse the decision of the Tribunal as upheld by the High Court and declare that Dera Bhai Bhagtu is not Sikh Gurdwara. In the circumstances of the case there would be no order as to costs.

S.R.

Appeal allowed.

582