
(1996) 11 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9794 of 1988

Jalaur Singh

APPELLANT

Vs

Shromani Gurdawara Prabandhak Committee and Another

RESPONDENT

Date of Decision : 27-11-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Sikh Gurdwaras Act, 1925 — Section 3, 4, 5, 5(1)

Citation : (1997) 116 PLR 72 : (1997) 2 RCR(Civil) 554

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Sarjit Singh and Vikas Singh, for the Appellant; N.B.S. Gujral, Sabina for Respondent No. 1 and P.S. Chhina, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—Petitioner in this case is Jalaur Singh who filed this writ petition under Articles 226/227 of the Constitution of India with a

prayer for the issuance of a writ of mandamus or any other direction against Shiromani Gurdwara Prabandhak Committee, Amritsar, respondent

No. 1 and State of Punjab, respondent No. 2 for declaring Sections 3, 5, 7, 14 to 16 and 38 of the Sikh Gurdwara Act, 1925 as ultravires of the

Constitution of India and in particular for quashment of the notification dated 23.2.1960 and 23.1.1961.

2. The case set up by the petitioner is that he is the Mohatmin of the Udassi Institution, situated in village Bhadaur, Tehsil Barnala, District Sangrur

and as per jamabandi for the year 1982-83, he is Mohatmin of the Udassi Institution known as Shri Gurdwara Sahib Andruni. Respondent No. 1

i.e. Shiromani Gurdwara Prabandhak Committee (hereinafter referred to SGPC) got a notification issued u/s 3(2) dated 23.2.1960 bearing No.

302 publishing a list of property claimed on behalf of said Gurdwara and called all persons having right, title to interest in the said property to file

petition u/s 5(1) of the Sikh Gurdwaras Act. No body filed any objection and thereby Punjab Government issued notification u/s 5(3) of the Sikh

Gurdwaras Act declaring that it was a Gurdwara. By a resolution passed on 12.12.1963, respondent No. 1 got declared the Gurdvvaras known

as Padshahi Chhemi and Dasmi Andruni Qila, Bhadaur vide notification No. 1191 dated 10.7.1959. The petitioner had no notice nor he was

afforded any opportunity of being heard before the issuance of the notification to prove that the institution of which he was Mohatimin declared as

Sikh Gurdwara and that the said institution rather belongs to Udasi sadhus. It has also been averred in the petition that respondent No. 1 filed a suit

u/s 28 of the Sikh Gurdwara Act, 1925 claiming possession of the property. The suit was contested by the petitioner on the plea that the institution

was not a Gurdwara and as such it could not be declared as Sikh Gurdwara... It was also pleaded in the suit that the petitioner had no knowledge

of the notification issued by the Government declaring the institution as Sikh Gurdwara. However, inspite of the defence taken by the petitioner in

the said suit, the District Judge, Barnala decreed the suit vide his judgment and decree dated 29.7.1965. The first appeal was filed in the High

Court which dismissed the appeal. Thereafter, respondent No. 1 filed execution proceedings in order to take possession of the land pertaining to

Gurdwara. Objections were filed. A reference was made to the High Court u/s 113 of the CPC by the Executing Court and reference was

answered holding that District Judge was competent to proceed with the execution application for the delivery of possession. The petitioner, then

filed a Civil Revision before this Court which was also dismissed.

3. The petitioner further alleged that in the year 1948 the erstwhile State of Patiala merged in the erstwhile State of Pepsu and in 1956 the erstwhile

State of Pepsu merged in the State of Punjab. Meanwhile the Sikh Gurdwara Act was amended by Punjab Act No. 1 of 1959 and the same was

extended to the territory comprised in the State of Pepsu and the institution in question was declared as Sikh Gurdwara vide Sr. No. 318

mentioned in the Schedule 21 which was added to the Act. The grouse of the petitioner in the present writ petition is that, the notification dated

23.2.1960 and 23.1.1961 are unconstitutional as well as sections 3, 5, 7, 14 to 16 and 38 of the Sikh Gurdwara Act are ultra vires of the

Constitution of India and these provisions hit the provisions of Articles 13, 14, 19-F, 25 and 26 of the Constitution of India. It is also alleged by

the petitioner that section 3 of the Act is arbitrary as there are no guide-lines provided for the application of the said section. There is no provision

for giving any notice to any person who is the manager of the institution. Such manager or the worshipper of the institution has not been afforded

any opportunity to prove that the institution was not a Sikh Gurdwara and as such could not be added in the Schedule. This notification, according

to the petitioner infringes the fundamental rights of the manager to manage and maintain their institution in the manner they like. By declaring the

institution as Sikh Gurdwara and by incorporating in the Schedule the petitioner has been deprived of his property and of his fundamental right. The

Sikh Gurdwara Act is silent for the proper determination as to whether any institution is a Sikh Gurdwara or not. It has also been averred that the

impugned notifications and the action on the part of the Government is violative of the Rules of law. The law only admits of a reasonable

classification which must have a nexus with the objects sought to be achieved by the law has been based on an unreasonable classification. In short

the attack of the writ petitioner in the present writ petition is that the provisions of Articles 14 and 16 of the Constitution of India have been

violated in declaring the Sikh Gurdwara and that there is no provision of the principle of natural justice contained in the Act. Therefore, the above

quoted sections be declared as ultra vires of the Constitution.

4. Before I incorporate the pleadings of the opposite party, it may be useful for me to incorporate the order dated 2.11.1988 of the Motion Bench

which admitted the writ petition and ordered for the status quo regarding possession during the pendency of the writ petition :-

On our asking the learned counsel for the petitioner has shown us a judgment of the Civil Court in Sikh Gurdwara Prabandhak Committee,

Amritsar v. Jalaur Singh and Anr. decided on July 29, 1965. A bare reading thereof shows that in that suit for possession Issue No. 3 was struck

to focus"" Is there no Gurdwara known as Padshahi Chhemi and Dashmi (Andruni Quilla) as specified in the plaint in question."" The trial Court held

that all the evidence led by the defendant was not admissible in view of section 3(4) of the Sikh Gurdwara Act because the publication of a

declaration of consolidated list under the provisions of Sub-section 2 thereof shall be the conclusive proof that the provisions of Sub-sections 1,2

and 3 with respect to such publication have duly been complied with and the Gurdwara is a Sikh Gurdwara. So the factual position could not be

established in view of the bar created u/s 3(4) of the Sikh Gurdwara Act.

In the instant petition strength is drawn from Mahant Dharam Das and Others Vs. The State of Punjab and Others, to contend that before issuance

of the notification the principles of audi alteram partem as the spirit of the Constitution of India had to be adhered to and since that was not done, a

writ petition is maintainable.

Admitted.

Status quo regarding possession be maintained till further orders"".

5. Respondent No. 1 filed written statement and it has been pleaded that the writ petition is belated having been filed after a lapse of 30 years. The

first notification u/s 3 of the Sikh Gurdwara Act bearing No. 1196 was published on 10.7.1959 whereby the institution was declared as Sikh

Gurdwara. Another notification u/s 3(2) of the Act was published on 23.2.1960 containing a list of properties having been claimed on behalf of the

institution. The petitioner was at liberty to file u/s 5(1) of the Act, but he chose not to file the same. Thereafter, the Punjab Government issued a

final notification u/s 5(3) and it was declared that the property mentioned in the notification belongs to the institution. After having been finally

decided that the property belonged to the institution, respondent No. 1 filed a suit for possession u/s 28 of the Sikh Gurdwara Act before the

District judge, Barnala and the petitioner was impleaded as a defendant because the property was in his possession, the suit of the S.G.P.C. was

decreed on 29-7-1965. The petitioner had full knowledge of the notification issued by the State Government while defending the suit still the suit

was decreed. The petitioner filed first appeal in the High Court which was dismissed on 28-10-1975. Thereafter, respondent No. 1 filed execution

proceedings on the basis of the judgment of the District Judge, Barnala. In the execution proceedings, the petitioner filed objections which were

dismissed on 24-3-1979. The revision of the petitioner was also dismissed by the

High Court on 24-11-1979. Even thereafter, the petitioner approached the Hon"ble Supreme Court and filed SLP No. 3849 of 1980 and the same was also dismissed by the apex Court. During all this period from trial Court to Supreme Court, the petitioner did not contest the notification which is now being challenged after a lapse of 30 years. It has also been pleaded by the respondents that the present writ petition has been filed with a mala fide intention and in order to delay the execution proceedings which are pending since 1977. The writ is liable to be dismissed on the short ground of delay and laches. It has also been pleaded that the present writ petition is not maintainable as repeatedly it has been held by the courts including the Hon"ble Supreme Court that the provisions of Sikh Gurdwara Act do not suffer from any constitutional infirmity. It is the stand of respondent No. 1 that the judgment of the District Judge, Barnala cannot be disturbed in the writ jurisdiction when the petitioner wants to drag the proceedings in order to retain the possession.

6. On merits, the stand of respondent No. 1 is that the institution is a Sikh Gurdwara known as Padshahi Chhemi and Dasmin Andruni Quilla, Bhadaur. It is a gurdwara entered in Schedule No. 1 at Sr. No. 212. The entries which are being relied upon by the petitioner of the revenue record are fabricated. The matter has already been conclusively decided by the Civil Court u/s 28 of the Sikh Gurdwara Act, which judgment of the trial court has been affirmed up to the Hon"ble Supreme Court. It has also been pleaded by the respondents that no provisions of Sikh Gurdwara Act are violative of any of the provisions of the constitution of India much less to the provisions of Articles 14, 16, 19, 25. Finally, it was prayed that all the provisions of Sikh Gurdwara Act are inter vires and the writ petition deserves to be dismissed.

7. Separate written statement was filed by respondent No. 2 which stated that notification u/s 3, 5, 7, 14, to 16 and 38 of the Sikh Gurdwara Act, 1925 was issued legally. Proper opportunities were granted to the owners of the property and after that notification was issued.

8. The parties placed documents in support of their pleas as contained in the pleadings. In the present writ petition I have heard Shri Sarjit Singh Sr. Advocate, on behalf of the writ petitioner and Shri N.B.S. Gujral, Advocate, on behalf of respondent No. 1 and Shri P.S. Chhinna, Sr. D.A.G.

Punjab, on behalf of respondent No. 2 and with their assistance I have tried to understand the controversy involved in the present writ petition.

9. Shri Surjit Singh, Sr. Advocate has invited my attention to Section 5 of the Sikh Gurdwara Act and submitted that when the Legislature has

incorporated in the Section that objections with regard to the right, title or interest in any property included any such consolidated list can be

determined an objection except a right, title or interest in the gurdwara itself, by doing so, the Legislature has violated the provisions of Articles 14,

16 and 19 of the Constitution of India and also infringed the principles of natural justice because no separate right has been granted to an individual

to establish that he had the right, title or interest in the institution declared as gurdwara. He submitted that denial of a right to be heard as expressed

in the maxim audi alteram partem whether by legislative or executive action or in any other manner is abhorrent to a civilised society; it is

destructive of the elementary principles of justice according to which every citizen has to be judged and is contrary to the cherished notions of the

rule of law which is the sheet-anchor and the umbilical of the democratic system of Government embodied in our Constitution. In support of his

contention the learned counsel of the petitioner Shri Sarjit Singh, Advocate, has referred to para No. 19 of the judgment reported as Mahant

Dharam Das and Others Vs. The State of Punjab and Others, from which the above arguments of the learned counsel has been taken note of.

10. The submission of Mr. Surjit Singh have been strenuously refuted by Shri Gujral, who led me to the provisions of Sections 3, 4 and 5 of the

Sikh Gurdwara Act and stated that as per scheme of the Act a right had been conferred upon the citizen to prove that a particular property sought

to be declared as Gurdwara was not as such and once the right has been afforded and considered and thereafter the publication is made, it is not

open to say that the principles of natural justice have been violated. Moreso, the petition is liable to be dismissed on the ground of delay and

laches and also on the ground of constructive res judicata as the petitioner had the opportunity to agitate all those pleas which are now being taken

by him in the present writ petition. Mr. Gujral also supplemented his argument and submitted that in the judgment relied upon by the opposite party

it has been categorically held that the provisions of Section 3(4) and Section 7(5) do not suffer from any constitutional or other legal empediments.

He submitted that in the said case a challenge was also given by the petitioner of that writ petition to Section 3 and 5 like the present one and the provisions were held to be inter vires. Mr. Gujral also relied upon para No. 37 of the said judgment by submitting that there is a presumption of the constitutional validity of a statutory provision. If a provision like Section 3(4) of the Act has been on the statute book for about half a century and a particular construction has been placed upon it by the High Court of the State which sustains the constitutional validity of the provisions, should lean in favour of the provisions of the Act and should not disturb the construction which has been accepted by the law Courts.

11. After considering the rival contentions of the parties, this Court is of the considered opinion that the present writ petition is devoid of any merit.

No doubt, the principle of natural justice is all fundamental, amounts to the several guarantees enshrined in our Constitution but there is one strong

exception to this general rule that the principle of natural justice would not apply to an act of Legislation. The Legislation in its wisdom thought it

proper at what stage and with regard to which property a right should be conferred upon a citizen to file objections. If a particular right has not

been conferred upon a citizen it does not necessarily always means that this action of the Legislature is violative of the provisions of the

Constitution. Support can be derived from *Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, and Sundarjas Kanyalal Bhathija*

and others *Vs. The Collector, Thane, Maharashtra and others*, ,

Reverting to the facts in hand it would be seen that as per item No. 318 *Gurdwara Padshahi Chhemi and Dasmi Andruni Qila, Bhadaur, Tehsil*

Barnala District Sangrur is notified Sikh Gurdwara. Section 3(1) deals with the list of property of scheduled Gurdwara to be forwarded to the

State Government and it lays down that any Sikh or any present office-holder of a Gurdwara specified in schedule I or added thereto by the

Amending Act, may forward to the State Government through the appropriate secretary to Government so as to reach the Secretary within 90

days of the commencement of this Act, or, in the case of extended territories, within one hundred and eighty days of the commencement of the

Amending Act, a list signed and verified by himself, or all rights, title or interests to immovable properties situated in Punjab inclusive of the

Gurdwara within his knowledge. It further lays down that on receiving such list the State Govt. shall as soon as possible would issue a notification

in that regard. According to Section 3(2) the State Govt. shall also issue notices of the claim to right, title or interest holders included in the

consolidated list and as per Section 3(3) the publication of a declaration and of a consolidated list under the provisions of Section 3(2) shall be

conclusive proof that the provisions of Sub-section (1)(2) and (3) have been complied with and that the gurdwara was a Sikh Gurdwara. It is the

stand of the Govt. also that all necessary compliance was done. The effect of non-filing of objections u/s 3 has been mentioned in Section 4 of the

said Act. The Legislature has purposely excluded in Section 5 of the Act the right of an individual from raising a dispute with regard to the right,

title or interest in the gurdwara itself.

12. A combined reading of Section 3, 4 and 5 of the Act would show that these provisions are not arbitrary nor violate the provisions of Articles

14 and 16 of the Constitution. A right has been conferred upon an individual to say that the properties proposed to be attached with the particular

institution, in fact, do not belong to the gurdwara. In my opinion, Guru Granth Sahib cannot be considered as a separate entity from its properties.

If a right has been conferred upon an individual to say that the properties do not vest in the gurdwara, he will have to necessarily show that there is

no gurdwara as such to which the properties are being claimed. The final answer of this Court is that the provisions of Section 5(1) of the Sikh

Gurdwara Act are neither unconstitutional nor violative and even the rights of natural justice has not been violated in the present case.

13. After considering the rival contentions, further, this Court is of the opinion that Jalour Singh the present petitioner tends to delay and defeat the

fruits of the decree of possession validly obtained by the S.G.P.C. He is estopped from raising this plea at this belated state. I fully agree with the

submissions of Mr. Gujral that the Legislative provisions should not be interfered with lightly when those provisions had stood the test of time.

14. Finally, this Court is of the opinion that this writ petition is devoid of any merit, which is hereby dismissed leaving the parties to bear their own

costs.