

(1991) 09 P&H CK 0123
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 307 of 1978

Nitya Nand etc.

APPELLANT

Vs

S.G.P.C.

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Evidence Act, 1872 — Section 57

Sikh Gurdwaras Act, 1925 — Section 16, 16(2), 7, 7(1)

Citation : (1992) 101 PLR 193

Hon'ble Judges : Harmohinder Kaur Sandhu, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Satish Bhanot, for the Appellant; Gurbachan Singh, for the Respondent

Judgement

G.R. Majithia, J.—This judgment disposes of F.A.O. Nos. 307 of 1978 and 294 of 1979. F.A.O. No. 307 of 1978 is directed against the order of the Sikh Gurdwaras Tribunal, Punjab (the Tribunal, for short) dated April 6, 1978, holding that Gurdwara Sahib Mehme Shahi, situated in the revenue estate of Lopon is a Sikh Gurdwara. F.A.O. No. 294 of 1979 is directed against the order of the Tribunal dated January 30, 1979, deciding the petition u/s 10 of the Sikh Gurdwaras Act, 1925 (the Act, for short) holding that the properties mentioned in the Punjab Government's Gazette Notification No. 1608-G.P., dated August 31, 1962 belong to Gurdwara Sahib Mehme Shahi determined as a Sikh Gurdwara in Petition No. 628 of 1974 filed by Nitya Nand Vashisht and other worshippers of Lopon u/s 8 of the Act.

2. Under sub-section (1) of Section 7 of the Act, more than fifty Sikh worshippers belonging to village Lopon, Dhamot, Jandali, Doraha, Rajgarh, etc. forwarded a petition to the Punjab Government through the Secretary, Home Department, praying that Gurdwara Sahib Mehme Shahi situated within the revenue estate of Lopon, Tehsil Sirhind, District Ludhiana (previously District Patiala) be declared to be a Sikh Gurdwara. This was duly notified by the State Government under the

provisions of sub-section (3) of Section 7 of the Act. Thereupon, Mahant Chanan Singh Chela Ram Singh, Sadh Nirmala of village Lopon, sent two composite petitions under Sections 8 and 10 of the Act to the appropriate Secretary to the Punjab Government, who forwarded the same to the Tribunal for disposal. These petitions were registered at Nos. 221 and 222 of 1963. Twenty or more worshippers of the institution also forwarded composite petition under Sections 8 and 10 of the Act to the appropriate Secretary to the Punjab Government claiming that the institution in dispute was not a Sikh Gurdwara but a Nirmala institution and the properties included in the consolidated list attached with Notification No. 1628-G.P., dated August 31, 1962 was the property of the Dera; that the institution in dispute is a Smadh of Baba Mehma Shah and not a Sikh Gurdwara: that Mehma Shah sect is different from Sikh religion and the disputed institution is a Dera of Sadhus; that the pilgrims and Sadhus are fed from the income of the property and the land belonging to Gurdwara Mehme Shahi and the Dera is also maintained from the income of its property; that a Mela is held every year at the Smadh; that Mehma Shah (Fakir) had composed his own Granth and followed different Maryada and that the Smadh is more than 200 years old.

3. Shiromani Gurdwara Parbandhak Committee, Amritsar (the Committee, for short) in its written statement controverted the pleas in the petitions made by the hereditary office holder and the worshippers. The petitions filed by the worshippers were numbered as Petitions No. 622 to 626 and 628 of 1974. These petitions were consolidated by the Tribunal vide its order dated August 10, 1976 and as these six cases involved the same points of law and the issues that arose were the same, it was ordered that the evidence would be recorded in Petition No. 628 of 1974 (Nitya Nand etc. v. S.G.P.C.). Various issues were framed in these petitions, but the issues which were adjudicated upon by the Tribunal read as under:-

(1) Is the institution in dispute a Sikh Gurdwara ?

(2) Whether the decision given by the civil Court about the nature of this institution bars the jurisdiction of this Tribunal to determine the nature of the institution ? OPP

On April 6, 1977, on the application filed by the counsel for the Committee, it was ordered by the Tribunal that Petitions No. 221 and 222 of 1963 be consolidated with the remaining six petitions, i.e. Petitions No. 622 to 626 and 628 of 1974 for the purpose of recording the evidence and that the evidence would be recorded in Petition No. 628 of 1974 (Nitya Nand and Ors. v. S.G.P.C.)

4. While deciding issue No. 1, the Tribunal relying upon ocular and documentary evidence and extracts from the book titled "Jeevan Moti" allegedly written by Gyani Avtar Singh "Lakhbir" of village Kaunke, District Ludhiana and published by Mahant Pt. Hari Krishan, Secretary, Dera Sudhar Committee, Mehme Shahi Nirmala in June, 1942, came to the conclusion that the institution in dispute is a

Sikh Gurdwara. Issue No. 2 was decided against the petitioners and in favour of the Committee and it was held that the decision of the Civil Court about the nature of the institution in dispute did not oust the jurisdiction of the Tribunal to determine the nature of the institution.

5. The Tribunal held that the institution in dispute was a Sikh Gurdwara since it fell within the ambit of clauses (ii) and (iii) of subsection (2) of Section 16 of the Act, but the evidence to be discussed shortly hereinafter will establish that the conclusion of the Tribunal that the institution in dispute falls within the ambit of clauses (ii) and (iii) of sub-section (2) of Section 16 cannot be sustained. To satisfy the conditions in clause (ii) of sub-section (2) of Section 16 tradition has to be proved which is connected with one of the Ten Sikh Gurus and owing to which the Gurdwara was used for public worship predominantly by Sikhs before and at the time of the presentation of the petition under sub-section (1) of Section 7 of the Act. The words "some tradition connected with one of the Ten Sikh Gurus" mean a tradition of an actual sojourn or miracle by one of the Gurus. It is impossible to show that the use of the institution in dispute for public worship predominantly by Sikhs was owing to a tradition of the character mentioned in clause (ii). The Tribunal has relied upon a vernacular work "Jeewan Moti" to hold that condition of clause (ii) is satisfied which is impermissible in law for reasons given in the later part of the judgment.

6. Now we deal with the evidence produced by the Committee.

Exhibit R. 1 is copy of Jamabandi for Samvat 1961-62 B. K. (=1904-05 A. D.) pertaining to the revenue estate of Tamkaudi. In the column of cultivation, it is recorded Gurdwara Sahib Be-ehtemam (under the care and management of) Ishar Singh Chela Buta Singh, Fakir Mehma Shahi, situated at Lapon, tenant u/s 6 of Act 16 of 1887."

Exhibit R. 22 is a copy of Jamabandi for the year 1961-62 B.K (= 1904-05 A. D.) pertaining to the revenue estate of Katre, Tehsil Payal and in the column of cultivation, it is recorded : "Gurdwara Sahib Lapon, Beehtemam (under the care and management of Mahant Ishar Singh Chela Buta Singh, Kaum Fakir Nirmala, resident of Dera Lapon, Section 8 of the Act."

Exhibit R-4 is the copy of Jamabandi for the year 1961-62 B.K. (=1904-05 A. D.) pertaining to the revenue estate of Lapon and in the column of cultivation, the entry reads thus : Gurdwara Sahib Mehme Shahi, Be-ehtemam (under the management of Ishar Singh Chela Buta Singh, Sadh Udasi Mehma Shahi, resident of the village, owner-in-possession."

Exhibit R-25 is the copy of Jamabandi for the year 1975-76 B. K. (=1918-19 A. D.) pertaining to village Lapon and in the column of cultivation, it is recorded "Gurdwara Sahib Lapon, Be-ehtemam (under the care and management of) Ram Singh Chela Sukha Singh. Kaum Fakir Nirmala, resident of Dera Lapon, occupancy tenant u/s 8 of Act 1887".

Exhibit R.3 is the copy of Jamabandi for the year 1975 B.K. (= 1918-19 A.D.) and in the column of cultivation, the entry reads thus : Gurdwara Sahib Mehme Shahi, Be-ehtemam (under the care and management of) Ram Singh Chela Sukha Singh Udasi Mehma Shahi, resident of the village, owner-in-possession."

Exhibit R. 16 is the copy of Jamabandi for the year 1978-79 B K. (= 1921-22 A. D.) and in the column of cultivation it is recorded : "Gurdwara Sahib, Be-ehtemam (under, the care and management of) Ram Singh Chela Sukha Singh. Fakir Mehma Shahi, resident of village Lapon, Maurusi (occupancy tenant) u/s 6 of Act 16 of 1987 (wrongly written as 1987)".

Exhibit R-2 is the copy of Jamabandi for the year 1982-83 B. K. (= 1925-26 A. D.) and in the column of cultivation, it is recorded : "Gurdwara Sahib, Be-ehtemam (under the care and management of Ram Singh Chela Sukha Singh, Fakir Mehma Shahi, situated at Lapon tenant u/s 6 of Act 16 of 1987".

Exhibit R-24 is the copy of Jam abandi for the year 1991-92 B.K. (-1934-35 A. D.). In the ownership column, it is recorded : "Sham-lat Deh Hazura Singh, etc." and in the cultivation column, it is recorded : "Shri Gurdwara Sahib Lapon, Be-ehtemam (under the care and management of) Mahant Ram Singh Chela Sukha Singh, Kaum Fakir Nirmala, resident of the village, Dera Lapon, occupancy tenant under Act 16 of 1887". Ram Singh is shown in cultivating possession of Shamlat Deh.

Exhibit R-26 is the copy of Jamabandi for the year 2000-01 B.K. (= 1943-44 A. D.) and in the column of cultivation, the entry reads thus :-

"Shri Gurdwara Sahib Mehme Shahi, Be-ehtemam (under the care and management of) Ram Singh Chela Sukha Singh, Kaum Sadh Nirmala Mehma Shahi, resident of the village. Mohtmim in possession as owner".

Exhibit R-21 is the copy of Jamabandi for the year 1950-51 A.D. and against the column of cultivation, it is recorded: "Gurdwara" Sahib Lapon Be-ehtemam (under the care and management of) Chanan Singh Chela Ram Singh, Kaum Fakir Nirmala, village Lapon."

Exhibit R. 23 is the Copy of Jamabandi for the year 1958-59 A.D. In the ownership column, the entry reads thus :-

"Shri Gurdwara Sahib Lapon, Be-ehtemam (under the care and management of) Chanan Singh Chela Ram Singh Chela Ishar Singh, resident of Lapon".

In the column of cultivation, the entry read thus :-

"Sampuran: Singh, Pritam Singh, Kartar Singh son of Jeeva Singh, Kaum, Jat Sakan Deh, Ghair Marusi.

Exhibit R-15 is the copy of Jamabandi for the year 1971-72 A.D. and the entry in the column of ownership is recorded thus :-

"Gurdwara Sahib, Be-ehtemam (under the care and management of) Chanan

Singh Chela Ram Singh Chela Sukha Singh, resident of Lopon."

Exhibit R. 5 is the copy of Jamabandi for the year 1972-73 A.D. and the entry in the column of cultivation reads thus : -

"Gurdwara Sahib Mehme Shahi, Be-ehtemam (under the care and management of) Chanan Singh Chela Ram Singh Chela Sukha Singh, resident of the village, owner in possession."

Exhibit R. 6 is an extract of contested mutation deciding the claim with regard to occupancy rights.

Exhibit R. 7 is an extract from the mutation register by which cultivation rights on "Shamlat Deh" were transferred in favour of Gurdwara Sahib under the management of Ishar Singh Chela Buta Singh, Fakir Mehme Shahi, resident of the village, under Act 16 of 1887.

Exhibit R. 8 is an extract from the mutation register by which cultivation rights on "Shamlat Deh" were transferred in favour of Gurdwara Sahib under the management of Ram Singh Chela Sukha Singh, Fakir Mehma Shahi, Dera Lopon, resident of the village, under Act 16 of 1887.

Exhibit R. 9 is an extract from mutation register by which Ram Singh Chela Sukha Singh was succeeded by his Chela Chanan Singh.

Exhibit R. 10 is an extract from the mutation register by which cultivation rights on the "Shamlat Deh" were transferred in favour of Gurdwara Mehme Shahi, Lopon under the care and management of Chanan Singh, Mohtmim, Chela Ram Singh.

Exhibit R. 11 is an extract from the mutation register by which mutation was amended in view of Ordinance No. 4 of 2007 B.K.

Exhibit R. 12 is an extract from the mutation register by which mutation was entered on the basis of Firman-i-Shahi No. 6, dated 11-3-1947 in favour of Gurdwara Mehme Shahi.

Exhibit R-13 is an extract from Muafi Register of the year 1932-33 B. K. (=1875-76 A. D.) under which muafi was granted in favour of Shri Gurdwara Sahib Mehme Shahi under the care and management of Chanan Singh Chela Ram Singh, Chela Sukha Singh Sadh Nirmala Mehma Shah, resident of village Lopon.

Exhibit R-14 is an extract from the Muafi Register dated 14-11-1908 regarding religious properties, under which muafi granted in favour of Ishar Singh was cancelled and it was sanctioned in favour of Ram Singh and the entry reads thus:-

"Gurdwara Mehme Shahi, Be-ehtemam (under the care and management of) Ishar Singh Chela Buta Singh, Fakir Udasi, resident of the village ; Be-ehtemam (now under the care and management of) Ram Singh Chela Ishar Singh, Kaum Udasi, resident of the village".

Exhibit R. 17 is an extract from the mutation register indicating that Sant Dial Singh, Sant Attar Singh, Sant Narain Singh, Sant Ram Singh, Tarlok Singh and other respectables stated that in place of Ishar Singh, Ram Singh had been selected as a Mohtmim and mutation by sanctioned in his name and it was so done.

Exhibit R. 18 is an extract from the mutation register dated 19-1-2002 B.K. (=1945 A. D.) by which Mahant Ram Singh was succeeded by Mahant Chanan Singh.

Exhibit R-19 is an extract from the mutation register dated 11.6.1978 B. K. =(= 1821 A.D.) evidencing the death of Ishar Singh Muafidar and in his place Ram Singh was recorded as Muafidar.

Exhibit R-20 is an extract from the mutation register dated 29-6-1890 B. K. (=1833 A. D.) evidencing gift of agricultural land in favour of Gurdwara Sahib under the management of Ram Singh, Sadh Nirmala.

Exhibit R-27 is an extract from Khatauni Istemal of village Khaira, in which consolidation was carried on co-operative basis and in the column of ownership, it is recorded thus :-

"Shri Gurdwara Sahib, owner-in-possession, Be-ehtemam (under the care and management of) Ram Singh Chela Sukha Singh, Kaum Sadh Nirmala Mehme Shahi, resident of the village occupancy tenant u/s 8 of Act 16 of 1887."

Exhibit R-28 is an extract from Khatauni Istemal Consolidation was carried out on co-operative basis and the new entry reads thus :-

"Shri Gurdwara Sahib Mehme Shahi, owner-in-possession, Be-ehtemam (under the care and management of) Chanan Singh Chela Ram Singh Sadh Nirmala Mehme Shahi, resident of the village, with rights in Shamlat."

Exhibit R-29 is a pedigree table, wherein is recorded "Gurdwara Sahib Mehme Shahi."

Exhibit R-35 is the copy of the order dated 19th Poh Sambat 1976 (= 1919 A.D.) passed by the Revenue Officer directing that the mutation of muafi of land revenue be sanctioned in favour of Ram Singh. The order was passed after receipt from Naib Tehsildar (copy Exhibit R-36) The order reads as under :

"Today, this file has been put up in the presence of Ram Singh, Waryam Singh and Kehar Singh that neither service has has been effected to Mangal Singh nor he has turned up. His presence is required. The facts are that Ishar Singh Mahant has died. There were four Deras under the management of Ishar Singh Mahant aforesaid, i.e. at "village Lepon, village Dhatt, village Ruqa, village Burail. There is an area of Muafi at village Lapon. Apart from the estate, relating to the Dera, there is no Muafi in any other Dera. The mutation of the estate of village Burail has been sanctioned in favour of Waryam Singh instead of Ishar Singh deceased. This village is situated in Tehsil Kharar District Ambala. The mutation

of the estate of village Dhatt has been sanctioned in favour of Kehar Singh. Mutation of the estate of village Ruqa has been sanctioned in favour of Mangal Singh. Both the said villages are situated in Tehsil Jagraon. Mutation of the Estate of village Lupon, Tehsil Dhuri has been sanctioned in favour of Ram Singh. This file regarding Muafi, relating to village Lupon has been pending. Four persons, "Ram Singh, Kehar Singh, Waryam Singh and Mangal Singh, are the claimants. The Tehsildar has given his opinion in favour of Ram Singh, whereas the mutation regarding the estate situate at village Lupon relating to the Dera of Ishar Singh deceased has been sanctioned in favour of Ram Singh at this time. If the remaining claimants, in this case, get themselves declared to be the deserving Mahants and get the estate situate at village Lupon, then the mutation of Muafi will be sanctioned in favour of the person who proves himself to be the Mahant. At this time, when the mutation of the Estate of Dera situate at village Lupon has been sanctioned in favour of Ram Singh, then the mutation regarding Muafi should be sanctioned in favour of Ram Singh like-wise. Due to the above reasons, we agree to the opinion of the. Tehsildar. This file be put up before the Nizamat for proper and final orders. The persons present have been informed."

Exhibit R-32 is a copy of the order dated Maghar 6, 1996 B. K. passed by the Revenue Commissioner, Patiala to the effect that the Muafi shall continue to be sanctioned so long as Gurdwara Sahib Mehme Shahi exists. This order was passed after receipt of the reports, Exhibit R-30, R-31, R-33 and R-34.

Exhibit R-37 is a letter from the Deodi Mualla, Patiala, saying that entry be made in favour of Chanan Singh as Mohtmim of the agricultural land measuring 154 Bighas 7 Biswas. Exhibits P-1 to P-13 are the positive photographs whereas P-1/1 to P-13/1 are negatives thereof and these depict various parts of the institution in dispute.

Exhibit P-14 is the copy of Jamabandi for the year 1999-2000 B K. (=1942-43 A. D.) and in the column of ownership, the entry reads thus :-

"Shri Gurdwara Sahib Mehma Shahi, Be-ehmtam (under the care and management of) Ram Singh Chela Sukha Singh, Kaum Sadh Nirmala Mehme Shahi, owner-in-possession."

Exhibit P-15 is the copy of Jamabandi for the year 1961-62 B. K. (1904-05 A. D.) relating to the revenue estate of village Lupon and in the ownership column the entry read thus :-

"Gurdwara Mehme Shahi zere-ihtemam (under the care and management of) Mahant Ishar Singh Chela Buta Singh, Sadh Udasi Mehma Shahi, resident of the village, owner-in-possession."

Exhibit P-16 is an extract from the Khatauni for the year 1984-85. In the ownership column, "Shamlat Deh" is recorded and in the column of cultivation, it is mentioned, "Dial Singh Chela Hira Singh, Kaum Sadh Nirmala Mehma Shahi, gair maurusi (tenant-at-will)."

Exhibit P-17 is the copy of Misal Haqiat (map) for 1941-42 A. D. giving details of wells in village Lopon. In the column of ownership, Gurdwara Mehma Shahi Zere-ihtemam (under the care and management of) Mahant Ishar Singh Chela Buta Singh, Kaum Sadh Mehma Shahi (inclusive of the right of irrigation) has been entered. In the remarks column, it is recorded thus :-

"This well had been dug by the owners of Patti Pheru for providing drinking water to Mehma Shah Sadh in Sambat 1870 B.K. Because its surrounding area was Dhak and in this year Mahant Sahib aforesaid had died and thereafter in Sambat 1910 B.K. Maharaj Nar Inder Singh Baikunth Wasi (deceased) gave the Muafi to Angre Sahib who was the Chela of Mehma Shah and limit to the extent of about 200 Bighas was fixed. Thereafter, Kahan Singh Chela Angre Sahib made the said land cultivable and started cultivating the same. - Since then, he has got the right of irrigation from the well and that right has never broken."

7. Now we will deal with the ocular evidence led by the parties.

In support of its case, the Committee examined nine witnesses. R. W. 1 Bachan Singh son of Sewa Singh, aged about 71 years, is an agriculturist of village Lopon. He deposed that the institution in dispute is known as Gurdwara Mehme Shahi and it came into existence for more than 200 years ago as told to him by his ancestors ; that one Sant Mohar Singh was a religious person who used to sing praises (mehma) of the Almighty and also used to recite Gurbani ; that Bhai Mohar Singh was an Amritdhari Sikh ; that the first Mahant of this Gurdwara whom he saw was Ram Singh ; that Ram Singh was succeeded by Chanan Singh, who was appointed by the Panchayat of the village and of the adjoining villages ; that the only object of worship in this institution is Shri Guru Granth Sahib that Mohinder Singh, who was present in Court at the time of recording of his deposition, used to do Kirtan in the Gurdwara and perform marriage in the village. In cross-examination, the witness stated that he had never noticed any writing on the main gate of the Gurdwara. He denied that one pair of leather shoes and five clothes belonging to Sant Mohar Singh were lying in the premises of the Gurdwara. He also denied that there was any Smadh or Tulsi plant in the premises of the disputed institution. He, however, admitted that Exhibit P-1 was the photo of the front side of the Gurdwara in dispute. Photograph, Exhibit P-2, according to him is of Manji Sahib of the Gurdwara and on the left side of Manji Sahib, there is Nishan Sahib and On the top of Nishan Sahib there is a Khanda. He also denied that inside the Gurdwara building there were the photo of Sri Ram Chandra and Sri Krishna.

R. W. 2 Major Pritam Singh, a retired military officer and a resident of village Lopon, deposed that the institution in dispute was known as Gurdwara Mehme Shahi and as told by his ancestors this Gurdwara was constructed more than 200 years ago ; that Sant Mohar Singh came to the village about 200 years ago ; that he was a very religious man and used to sing praises {mehma) of the Almighty and, therefore, he came to be known as Mehme Shah. In cross-examination, he admitted that Exhibit P-1 was the photo of the Gurdwara in

dispute, but he denied having seen any Smadh or Tulsi plant in the Gurdwara premises. He denied the suggestion that inside the Gurdwara there were photos of Sri Ram Chandra and Sri Krishna. He also denied that there was any smadh of Man Mastan Singh.

R. W. 3 Bharpur Singh is an agriculturist of village Khaira. In his examination-in-chief, he stated that there is a Gurdwara in village Lopon which is known as Gurdwara Mehme Shahi and it was founded by Sant Mohar Singh as was told to him by his ancestors. He stated that the residents of his village donated 14 Bighas of land to this Gurdwara for its maintenance and to run free Langar ; that Guru Granth Sahib is the only mode of worship. In cross-examination, he denied that photos of Sri Ram Chandra and Sri Krishna were hanging inside the institution. He denied that there was any Smadh of any person, including Mehme Shah in the Gurdwara premises or there was any Tulsi plant in the premises.

R. W. 4 Gurdial Singh, an agriculturist of village Tamkaudi, stated in examination-in-chief that the institution is known as Gurdwara Mehme Shahi and it was founded by Sant Mohar Singh. In cross-examination, he denied that there was any Smadh of any person in the Gurdwara premises.

R. W. 5 Balwant Singh, a cultivator of village Chak Sarai, district Patiala, in his examination-in-chief, he stated that his ancestors had told him that one Mohar Singh had founded this Gurdwara and it was built about 200 or 250 years ago and that all the Mahants/ Granthis had been Amritdhari Sikhs. Sant Mohar Singh used to sing praises of God all the time and therefore, he was known as Mehme Shah He also denied that the photos of Sri Ram Chandra and Shri Krishna Mahar were hanging in the premises in dispute and that there was any Tulsi plant. Regarding photographs, Exs. P-1 and P-2 he stated in his cross-examination thus :--

"I do not know if Exhibit P-2 is the photo of any part of the Gurdwara. I cannot say - whether Exhibit P-1 is the photo of any part of the Gurdwara in dispute."

He denied the suggestion that there were kharawan (wooden slippers) and some 4-5 books of Mehma Shah in the Gurdwara.

R. W. 6 Lt. Col. Surain Singh, resident of village Tamkaudi, district Ludhiana, deposed that the only object of worship in the Gurdwara in dispute is Guru Granth Sahib. In cross-examination, he stated that he had never seen any Smadh of Mehme Shah in the premises of the Gurdwara in dispute. He also denied a suggestion that no Hola Mualla is celebrated in the Gurdwara and that Mela is held on the death anniversary of Mohar Singh.

R. W 7 Sher Singh, an agriculturist of village Rupalaon & also, a Sarpanch of the village. He stated that he had seen the Gurdwara in dispute and it was constructed about 200 or 250 years ago. The only object of worship in this Gurdwara is Shri Guru Granth Sahib. According to him, Hola Mualla Mela, Gurpurabs of all the Gurus, Sankrant days and Puranmasi days are celebrated in

this Gurdwara. The first Mahant of this Gurdwara whom he saw was Chanan Singh. In cross-examination, he denied that he had seen any Smadh of Mehma Shah in the Gurdwara in dispute. He had only seen the Parkash of Guru Granth Sahib. He denied the suggestion that during Hola Mualla Mela there fell the death anniversary of Mehme Shah. R W 8 Chanan Singh, resident of Sultanpur, District Ludhiana, deposed that there was a very old Gurdwara in village Lapon and it was built about 200 years ago ; that the first Mahant of this Gurdwara whom he saw was Chanan Singh, who was an Amritdhari Sikh ; that Amrit Prachar is done in this Gurdwara and that the only object of worship in this Gurdwara is Shri Guru Granth Sahib. In cross-examination, the witness admitted that he knew Gyani Bharpur Singh, who was resident of village Lapon. R W. 9 Harcharan Singh, an agriculturist of Batala, deposed that the Gurdwara in dispute is called Gurdwara Sahib Mehme Shahi and the only object of worship in this Gurdwara is Shri Guru Granth Sahib that Chanan Singh was the Granthi/Mahant of this Gurdwara ; that there are lying dagger, kirpan, chakra and other articles of Sikhs in this Gurdwara. In cross-examination, he denied that there were books and Kharawan (wooden slippers) of Sant Mehma Shah lying in the Gurdwara. He also denied that the leather shoes of Sant Mehma Shah were lying in the Gurdwara. He, however, admitted the correctness of photograph. Ex. P-2, showing Nishan Sahib, but denied the suggestion that this was not the Nishan Sahib of the Sikhs but the Dhawaja Nirmala Sadhus.

8. The worshippers and the Mohtmim, who alleged that the institution in dispute is a "Dera", examined 15 witnesses.

P. W. 1 Gurdial Singh is Assistant Consolidation Officer posted at Behal, District Bhiwani. He belongs to village Lapon, where the disputed institution is located. He deposed that the building of the "Dera" was constructed by Ranger Sahib Chela Mehma Shah Sadhu about 175 years ago that Sant Mehma Shah was a Sadhu and resident of village Salana, Sub-tehsil Amlah, District Patiala ; that he died about 175 years ago and his Smadh was constructed at the place where he actually died and on that very place Ranger Sahib constructed the Dera in dispute ; that the land at Lapon attached to this institution was donated by Maharaja Narinder Singh; that this. Dera also owns land situate in village Tamkaudi and that land was donated by the Muslim owners of that village ; that the residents of the village visit the Dera to pay homage to the Smadh of Sant Mehma Shah ; that only one Granth (holy book) which is kept in the Dera is of Mehma Shah and Rangre Sahib ; that the first Mahant of this Dera was Mehma Shah, its founder, and after his death, Rangre Sahib succeeded him as a Mahant and the latter was succeeded by Kahan Singh as Mahant ; that Kahan Singh was succeeded by Ishar Singh ; that Ishar Singh was succeeded by Ram Singh and Ram Singh by Chanan Singh and all these Mahants were either Udasi Sadhus or Nirmala Sadhus; that Mahant Chanan Singh wears bhagwa colour clothes ; that he had not seen any previous Mahant except Chanan Singh ; that Mehma Shah was not a Sikh and he never took Amrit; that in the morning, the building of the Smadh of Mehma Shah is washed and the Mahant does Dhoop-deep there ; that

in the evening Aarfi is performed and while performing Aarti, counc (Sankh) and Khartals are used ; the Dhoop-deep is kept in a Thali while Aarti is performed by standing in front of the Smadh of Sant Mehma Shahi that inside the room where there is a Smadh, the photos of Sri Ram Chandra and Sri Krishna are hanging on the walls ; that there is a "Tulsi" plant in the premises of the Dera in dispute and he had been seeing the "Tulsi" plant there since the age of his discretion ; that the persons who visit the Smadh eat some leaves of the "Tulsi" plant and also offer some leaves at the Smadh. He identified the photo marked "Y" (later on marked as Exhibit P-10) as that of the Smadh of Sant Mehma Shah. Photograph, Ex. P-2, was identified by the witness to be that of Dhawaja situated in the premises of the Dera. The cloth put on the Dhawaja was described by him to be that of Bhagwa colour. On the top of the Dhawaja there is no symbol of Khanda. Adjoining this Smadh of Mehma Shah, there are the Smadhs of Rangre Sahib and Man Mastan. There are also 5/6 more Smadhs situated in the premises of the Dera. Man Mastan was a singer in this Dera and he used to remain with Sant Mehma Shah and used to sing songs. He was told by his ancestors that he danced while singing songs. He had seen the building constructed on the Smadh of Man Mastan. He also stated that there were photos of Sri Ram Chander and Sri Krishan hung on the walls of the building ; that there are also photos of several Hindu deities, including that of Ganesh Ji Maharaj ; that all these photos regarding which reference has been made above are paintings on the walls of the building of the Smadh of Man Mastan and they are not actually the photos. The photo marked "L", is that of paint. The photo marked "M" is of two singers which are painted inside the building of the Smadh of Man Mastan. He further stated that every year Mela is held in this Dera on the Puran-masi day in the month of Phalgun to celebrate the death anniversary of Sant Mehma Shah and this Mela is not held on the occasion of Hola Mualla ; that the people of adjoining villages come to this Dera and pray for blessings ; these people come to worship the Smadh in this Dera ; that Shri Guru Granth Sahib is also kept in this Dera in an almirah in the Does of the building of the Smadh; that Ramayana, Yog Vashist and some other religious books are also kept in the same almirah in which Shri Guru Granth Sahib is kept ; that the Granth containing the Bani of Mehma Shah and Rangre Sahib is also kept in the same almirah ; that in or about the years 1965-66, the Committee filed a civil suit for possession of this Dera in the Court of Sub-Judge at Ludhiana and that suit was dismissed ; that Hindus consisting of Brahmins, Khatris and others, and also Jat Sikhs come to the Dera to pay homage to the Smadh of Sant Mehma Shah. In cross-examination, he was asked about the location of the Smadhs of Rangre Sahib and Sant Mehma Shah, He stated with accuracy their location. He stated that the Smadh of Rangre Sahib is situated at a distance of 40 yards from the building of the Smadh of Sant Mehma Shah and about 20-30 yards from the boundary wall of the Dera in dispute ; that the distance between the Smadh of Man Mastan and the boundary wall of the Dera in dispute is about 15 yards ; that he was told by his grandfather that Sant Mehma Shah was living in a building situated near the place where his Smadh was built and that building consisted of

a hut The witness stated that he was a Sikh and village Loapon was predominantly inhabited by Sikhs He denied that Parkash of Sri Guru Granth Sahib was used to be made in this Dera at any time. He admitted that Shri Guru Granth Sahib was kept in the almirah and this could be read by any person who visited the Dera. If any Sikh visits the Dera and wishes to read Shri Guru Granth Sahib, the Mahant gives him the key of the almirah and the visitor takes out Shri Guru Granth Sahib and reads it. Sant Chanan Singh, who is the present Mahant of the Dera, appointed three persons, namely, Gurdial Singh (the witness), Karam Singh and Amarjit Singh as general attorneys to manage the affairs of the Dera in dispute, by executing a registered power of attorney in 1972. In re-examination, this witness admitted that in or about the year 1973, Sant Chanan Singh had cancelled the power of attorney executed in his favour, Karam Singh and Amarjit Singh and appointed Mohinder Singh Mahant as his general-attorney.

P.W. 2 Sarwan Singh is Lambardar of village Loapon who is aged about 70-71 years, he has deposed that he had seen the Dera in dispute, that there is a Smadh inside this Dera of Baba Mehma Shah; that people visit this Dera to worship the Smadh of Baba Mehma Shah and his shoes, Chola and wooden Vairagan which are kept inside the Smadh; that inside the building of the Smadh there are photos of Sri Krishna and Gorkh Nath hung on the walls; that there are Smadh of Rangre Sahib and Man Mastan; that besides this, there are also 8/9 other Smadhs; that every year a Mela is held in this Dera to celebrate the death anniversary of Sant Mehma Shah; that Mahant Chanan Das is the present Mahant of this Dera; that he had seen Mahants Ram Singh and Ishar Singh, who were Nirmala Sadhus and used to wear bhagwan clothes; that the photo marked "X" is of a Tulsi plant which is inside the premises of the Dera; there he had been seeing this Tulsi plant for the last 60 years; that he and some other persons of the village visit this Dera to worship the Smadh of Mehma Shah; that Mohinder Singh, attorney of Chanan Singh is managing the affairs of this Dera; that he Dhoop-deep is the morning as also in the evening; that no Gurparb of any Sikh Guru is celebrated in this Dera; that there are 4/5 Gurdwaras in our village and Gurparbs are celebrated there; that one of those Gurdwaras is in existence for the last about 100 years; that he had not seen Parkash of Shri Guru Granth Sahib in this Dera. He stated that photo Exhibit P-2 is of the Dhaja situated inside the premises of the Dera in dispute. In cross-examination, he was only asked regarding the distance between the various Smadhs inside the Dera Premises and he correctly described the same. According to this witness, the Mahant of the Dera is appointed by the Panchayat of village and also the Panchayats of the adjoining villages and they offer turban to him; that Ram Singh, Chanan Singh and Ishar Singh are Sadhus has got long hair and beard Mahant Ram Singh had Keshas and beard.

P.W. 3 Sadhu Singh, aged about 85 years, is Sarpanch of village Sultanpur. He has deposed that the distance between his village and Village Loapon is about half-a-mile; that he had seen the Dera in dispute that the object of worship in this Dera is the Smadh situated there; that a Mela is held annually in this Dera at the

Smadh; that Chanan Singh is the present Mahant of this Dera, who is lying ill and Mohinder Singh, on his behalf, manages the affairs of the Dera; that he visits this Dera on the occasion of the Mela which is held every year; that there is a Smadh of Man Mastan in the Dera; that no Gurpurb of any Sikh Guru is celebrated in this Dera and this Dera is visited by the people to pay homage to the Smadh of Meha Shah, who was a Sadhu. In cross-examination, he stated that Sant Mehma Shah used to worship his own Gurus, who were Sadhus and not Sikh Gurus. The Mahant of this Dera daily serves food to the persons who visit the Dera. P.W. 4 Gurdev Singh and P.W. 5 Santok Singh, residents of village Loapon, deposed on the same lines as deposed to by P.W. 3 Sadhu Singh.

P.W. 6 is Nitya Nand, one of the worshippers/petitioners, who with accuracy gave the minutest details regarding the institution in dispute. He deposed on the same line as was done by P.W. 1 Gurdial Singh, whose statement has been alluded to in detail supra. The witness was cross-examined at length but nothing was elicited to discredit his testimony. In cross-examination, he also stated that the Mahant of the Dera in dispute is appointed by the Nirmala Akhara Hardwar and at the time, the Panchayat and other respectables of the village also collect there. In re-examination, he stated that Baba Mehma Shah had died on Puranmasi day and, therefore, Jor-Mela is held on this Dera every month on puranmasi day.

P.W. 7 Harbhajan Singh, resident of village Chak Sarain and P.W. 8 Gurdev, labourer and resident of village Sultanpur, deposed on the same line as that of P.Ws. 4 and 5.

P.W. 9 Farzand Ali an agriculturist and labourer of village Loapon is a Mohmmedan who initially belonged to village Tamkaudi which is situated at a distance of one mile from village Loapon. The whole of village Tamkaudi was inhabited by muslims prior to the partition of the country in 1947. The muslims of that village also used to come to village Loapon to worship the Smadh of Baba Mehrna Shah. The witness deposed that the muslim residents of village Tamkaudi had gifted about 50 or 60 Bighas of land to this Dera. His father is alive and resides in village Loapon. He also goes to this Dera to pay homage to the Smadh of Baba Mehma Shah. There are also Smadhs of other Sadhus in this Dera. An annual Mela is held in this Dera in the memory of Mehma Shah. In cross-examination, he stated that the residents and Sikh residents of the adjoining villages visit the Dera on Mela day to worship the Smadh of Baba Mehma Shah.

P.W. 10 Bachan Singh, who is a resident of village Loapon, deposed that he had seen the Dera in dispute; that his house is situated just near the Dera; that the Dera in dispute was constructed by Baba Rangre Sahib, who was a Nirmala Sadhu and Chela of Mehma Shah; that inside the Dera there is a Smadh of Baba Mehma Shah and the object of worship in this Dera are the Smadh of Baba Mehma Shah and his Pothi (holy book); that there are Smadhs of Man Mastan and Rangre Sahib; that Baba Man Mastan was the Chela of Mehma Shah; that he used to perform the Aarta and also used to do singing; that Baba Man Mastan

was his ancestor and he and others were his descendants; that the Sadhus of Nirmala Bhok from Hardwar perform the "Pagri" ceremony of a Mahant at that time of his appointment that the annual Mela is held in this Dera to celebrate the death anniversary of Baba Mehma Shah and no Gurparb of any Sikh Guru is celebrated in this Dera. In cross-examination, it was suggested to this witness that Parkash of Guru Granth Sahib is done in a room on the ground floor of the Dera, but he denied the suggestion and maintained that there is Parkash of Pothi (holy book) of Baba Mehma Shah in a room of this Dera.

P.W. 11 Bilbhadar Kumar, Photographer visited the Dera in dispute, prepared the photographs and produced on record their positives, Exhibits P-1 to P-13 and their negatives, Exhibits P-1/1 to P-13/1. According to him, Exhibits P-1 and P-2 are the photographs of the Dera and were correct. Exhibit P-3 is the photograph of Tulsi plant in the premises of the Dera. In Ex. P-1, the words "Dera Mehma Shah Lapon" are written in Punjabi and on the top of the Dera building (above its main gate) are written the words "Dar Ek Onkar Waar. Shri Mehme Shahi, Mora Akal Ji Sahai." Above the main entrance gate of the Dera building, it is written in Punjabi, "Ek Onkar Saroop Ji Sahai". Ex. P-2 is the photograph of other part of the Smadh Baba Mehma Shah and adjoining it is Dhawaja and it is written in Punjabi, "Dhawaja De Darshan". Ex. P-3 is the photograph of "Tulsi" plant near the Smadh of Baba Mehma Shah. Ex. P-4 is the photograph of Smadh Baba Mehma Shah depicting its outside view. Ex. P-5 is the photograph of the personal belonging of Fakir Baba Ji Mehma Shah showing Palang, Gidri, Sirhana, Chola, Soti, Kharawa (wooden slippers) etc. Ex. P-6 is the photograph depicting the Smadhs of Baba Man Mastan Ji and Baba Rangre Sahib Ji. Ex. P-7 is the photograph of some portion of the Smadh Baba Mehma Shah Ji Ex. P-8 is the photograph depicting that some holy book written in Punjabi is lying. Ex. P-9 is the photograph of the Smadh Baba Mehma Shah Ji and the holy Dhawaja. Ex. P-10 is the photograph of the Smadh Baba Mehma Shah Ji depicting its inner view as also its main gate. Ex. P-11 is the photograph of Smadh of Baba Man Mastan Ji depicting its inner view, and on the walls portraits of two musicians are painted besides some other paintings. Exhibit P-12 is the photograph of the Smadh of Baba Man Mastan Ji depicting Deorhi and on the walls of the Deorhi of the Smadh, there are paintings of various Hindu deities. Exhibit P-13 is the photograph of Smadhs of certain other religious personalities inside the precinct of the Dera.

No question was put to P. W. 11 in cross-examination challenging the veracity of his statement so far as it relates to the fact that he went to the spot, visited the Dera in dispute and took photographs of various parts thereof. It was also not put to him that the inscription in Gurmukhi script, as depicted in the photograph, on the walls of the Dera building did not exist. No question was put to him that there was Parkash Asthan and that Bani of Shri Guru Granth Sahib was being recited there ceremoniously or there was any Nishan Sahib.

It is well established rule of evidence that a party should put to each of his

opponents's witness so much of his case as concerns that particular witness. In this behalf, reliance can be placed on the following observations of Lord Herschell in *Browne v. Dunn* (1893) 6 R. 67 (A):-

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point to direct his attention to the fact by some questions put in cross-examination showing that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworth of credit.

I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give him an opportunity of making any explanation which is open to him ; and, as it seems to me, that it is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with the witnesses."

P. W. 12 Bir Singh, a resident of village Lapon, deposed on the same lines as by P. W. 5 Santokh Singh.

P. W. 13 is Mohinder Singh Chela Mahant Chanan Singh. It will be useful to reproduce his statement in extenso :-

"I came in this dera in the month of June, 1973. Early in the morning the Aarta of Baba Mehma Shah is recited. The Aarta is also recited in the evening. Early in the morning we add some milk in the water and with that water we wash the Smadhs of Baba Mehma Shah and Rangre Sahib. Dhoop-deep is also done in the Dera in the morning and in the evening. In one room of the Dera, there is a bed having eight legs and on that bed the clothes, Chipi, Vairagan, pillow, etc. of Baba Mehma Shah are kept. The Sukhasan of the Pothi of Baba Mehma Shah is done on this bed which is all called Takhat Sahib The Parkash of the Pothi of Baba Mehma Shah is done in the first room as we enter the Deorhi of this Dera. In the evening, Aorta is performed at that time in a Thali seven Jots (earthen lamps) are burnt. The Aarta is performed in front of the Granth of Mehma Shah while standing. No Gurgurab of the Sikh Gurus is celebrated in this Dera. The objects of worship in this Dera are the Smadh of Baba Mehma Shah and his Granth, besides the Smadhs of other persons like Aangre Sahib.

I am an Amritdhari Sikh. I was previously the Chela of Sant Ishar Singh of Gurdwara Rara Sahib, District Ludhiana. All the above ceremonies and practices which are followed in this institution are not followed in any Sikh Gurdwara.

Every year a Mela is held in this Dera on the Puranmasi day in the month of Phalgun. There is a Havan-Kund in front of the Smadh of Baba Mehma Shah Havan is performed in the Havan-Kund on every Puranmasi day and also on the

Barsi of Baba Mehma Shah when the annual Mela is held. (Firstly, he stated on the Hola Mualla day but later on corrected himself). There is a Nirmala Panchayati Akhara at Hardwar (Kankhal) and the Sadhus from that place come on the annual Mela and they perform the Havan.

XXn:-by Mr. Charan Singh, counsel for the respondent-Committee.

It is correct that Baba Ishar Singh of Rara Sahib was an Amritdhari Sikh. Throughout his life Sant Ishar Singh had been doing Gurbani Parchar. So long as I remained as his Chela and lived at Rara Sahib, I believed in the Ten Gurus and the Granth Sahib and none else. Mahant Chanan Singh brought me to this Dera from Rara Sahib after making request to Sant Ishar Singh, who was then alive. Sant Ishar Singh of Rarewala died about two years ago. I know* Gurdial Singh PW. I do not know whether Gurdial PW was the attorney of Sant Chanan Singh at the time when I came here. Sant Chanan Singh is not an Amritdhari Sikh. He does not wear Kachhera. He has long hair and a beard. He is aged more than 100 years. He is not bed-ridden. He can walk even now. Guru Granth Sahib is kept in an almirah in a room in this Dera. There is no Parkash of Guru Granth Sahib in any part of this Dera. I do not read Guru Granth Sahib, at all, in this Dera. The Mehme Shahi Granth contains about 600 leaves. This Granth contains the banis of Baba Mehma Shah, Rangre Sahib and Sant Mann Singh, who was the contemporary of Sant Mehma Shah. I neither saw Sant Mehma Shah nor Sant Mann Singh and, therefore, cannot say whether they were Sikhs or not. When I came to this Dera in 1973 as the Chela of Sant Chanan Singh I was told the pedigree table of the various Mahants of this Dera right from Mehma Shah downwards.

Sometimes I work as a Granthi for Akhand-Path performed in the village along with others. The other persons are the Granthis of the various villages. We take the Guru Granth Sahib from the Gurdwara of village Lapon. Guru Granth Sahib is kept in this Dera in an almirah before I joined this Dera in 1973. There is only one copy of Guru Granth Sahib in this Dera. I cannot give the number of the Akhand Paths performed by me along with other persons in this village. The distance between the Smadh of Mehma Shah and Kangre Sahib is about 30 Karams. However, the distance between the Smadh of Man Mastan and the Dera in dispute is only 15 or 20 feet. We celebrate Sankrant, i.e. the first day of every Indian month but no outsider visits this Dera on that occasion. We celebrate every Puranmasi in this Dera. No Kirtan according to Sikh rites is performed but the Katha of Mehma Shah is performed on that occasion. The Sikh residents of village Lapon come to this Dera to pay homage to the Smadh and the Granth of Mehma Shah only.

"I have seen the Sikh Gurdwaras. I have seen Takhat Damdama Sahib, Talwandi Sabo. I have not seen the Smadhs of Bhai Mal Singh and Bhai Dal Singh in that Gurdwara. I have not seen any Dera where the Smadh is on the first-floor of the building, excepting the Dera in dispute where there is Smadh on the first-floor. I have read in the Granth of Mehma Shah that the Smadh of Mehma Shah is on

the first-floor of this Dera. I go to village Lapon on some occasions to perform marriages according to the Sikh rites.

I do not know why Guru Granth Sahib is kept in this Dera. It is lying there in the Dera before I joined this Dera in 1973. I have never asked Sant Chanan Singh as to why Guru Granth Sahib is kept in this Dera. I cultivate the land of this Dera with my own hands.

Re-examination :-

Mehma Shah died on Purnmasi and, therefore, we celebrate Purnmasi day every month."

A bare reading of the statement of P. W. 13 shows that the witness save details of the religious ceremonies which are performed every day in the Dera. He also gave the description of the room in which a bed having 8 legs was lying and on that bed the clothes, chipi Vairagan, pillow etc. of Baba Mehma Shah are kept. The Sukhasan of the Pothi (holy book) of Baba Mehma Shah is done on this bed - which also called Takhat Sahib. The Parkash of the Pothi (holy book) of Baba Mehma Shah is done in the first room. No question was put to this witness regarding the worship at the Smadh conducted in the morning and in the evening. He was asked if he was a Chela of Sant Rarawala, who was an Amritdhari Sikh. He admitted but farther stated that Mahant Chanan Singh had brought him to this Dera with the permission of Baba Ishar Singh of Gurdwara Rara Sahib since he had gone old He also stated that Sant Chanan Singh is not an Amntdhari-Sikh. Shri Guru Granth Sahib is kept in an almirah.

P W. 14 Nahar Singh, an agriculturist of village Lapon, deposed that inside the Dera building, there is a Smadh of Baba Mehma Shah and he goes to worship the Smadh ; that there are also Smadhs of Rangre Sahib and Man Mastan in the Dera and that no GURPURAB is celebrated in the Dera. He stated that he had seen photo, Exhibit P-3, which is the photo of Tulsi plant on the left side, of the Dera. He had also seen photo Exhibit P-9, which is of Dhaja of Nirmalas. In cross-examination he stated that when one enters the first room there is kept a Granth, compiled by Baba Meha Shad, and they pay homage to that. This Granth is not Shri Guru Granth Sahib but a very smaller book than that of Gum Granth Sahib. He danied the suggestion that they worship the Ten Gurus but stated that they workshop only Mehma Shah.

P. W. 15 Hajura Singh, who is a dealer in hardware of Doraha, District Ludhiana, deposed that he goes to the Dera in dispute to worship Smadh of Mehma Shah ; that in the month of Chet every year a Mela is held at this Smadh to celebrate the anniversary of Mehma Shah ; that there is a Havan-kund and one cot inside the building, besides there is a Tulsi plant and at the time of annual Mela, Havan is performed at the Havan-kund. In cross-examination he stated that one Granth is read on the performance of the Havan and some Shaloks are also read from that Granth ; that that Granth is called Mehma Shah Granth and that he had seen that book but not read the same. He denied the suggestion that there is no

Smadh in this Dera and there is a raised platform where Parkash of Shri Guru Granth Sahib is done.

9. A resume of the evidence of the Committee's witnesses, i.e. R.W. 1 to R.W. 9, indicates that their evidence is partly hearsay and partly concoction. They deliberately denied the admitted facts like the existence of Smadh of Baba Mehma Shah. Pothis (holy books) and the personal belongings of Sant Mehma Shah lying in the premises of the disputed institution. The Smadhs of other religious celebrities inside the premises of the disputed institution and paintings of Hindu deities on the walls of the Dera building were also denied by these witnesses. As observed earlier, P.W. 11 Bilbhadar Kumar, photographer, went to the spot, prepared photographs and produced on record their negatives and positives. He prepared photographs of various parts of the institution in dispute. In the photographs is also shown what is inscribed on the top of particular part of the Dera building. The testimony of this witness was never challenged in cross-examination that photographs prepared by him do not reveal the existing state of affairs. These witnesses told lies with impunity and their evidence is unreliable. Out of these witnesses, only R. W. 1 Bachan Singh and R. W. 2 Major Pritam Singh belong to village Lapon. The other witnesses belong to different villages.

10. On the other hand, the evidence of P. W. 1 to P. W. 15 rings true. They are independent and straight-forward witnesses. Their evidence establishes that in the institution in dispute Smadh of Baba Mehma Shah is the object of worship. Smadh of Rangre Sahib, who was the Chela of Baba Mehma Shah and Smadh of Bhai Man Mastan, a contemporary of Baba Mehma Shah, are also in the Dera premises. Inside the Smadh of Bhai Man Mastan, there are paintings of Hindu deities. Inside the premises of the Dera building, photos of Lord Krishna and Lord Rama are hanging. There are Smadhs of Certain religious celebrities on the land adjoining the Dera, Aorta at the Smadh is performed in the morning and evening with due ceremonies akin to the one performed in Hindu temples. Evidence has also come on record that the Dera in dispute owns land situate in village Tamkaudi. This village was inhabited by Mohammadans prior to partition of the country and the Mohammadan residents had donated and to the Dera as deposed to by P. W. 9 Farzand Ali. His statement receive corroboration from P. W. 1, Gurdial Singh and Ex. R. 1 Jamabandi for the year 1904-05 A. D. showing that the institution in dispute possessed land measuring 43 Bighas 13 Biswas. This part of his statement was never challenged in cross-examination by the Committee. Shri Guru Granth Sahib is not the object of worship in the Dera. Dhawaj as shwon in photograph, Exhibit P-2, is of Nirmalas and is not the Nishan Sahib, as alleged by the Committee.

11. Following facts emerge from the evidence, oral and documentary, produced by the parties :-

(i) The institution in dispute-Gurdawara Sahib Mehme Shahi remained under the care and management of Nirmala Sadhs who are not Sikhs as held in Mahant

Harnam Singh, Chela of Bhai Narain Singh Vs. Gurdial Singh and Another, .

(ii) In one of the Jamabandis, the Mohtmim of the Dera was recorded as Udasi Fakir Mehme Shahi. Udasi Fakirs are not Sikhs for the purposes of Sikh Gurdwaras Act as held in AIR 1936 93 (Privy Council) .

(iii) The succession to the office of Mohtmim (Manager) has been passing from Guru (religious preceptor) to Chela (religious disciple).

(iv) The Muafi (exemption from payment of land revenue) was granted in the name of Mohtmim (Manager) and on the death of the Mohtmim, muafi was sanctioned in the name of the successor Mohtmim.

(v) Aangre Sahib was the first Chela of Sant Mehma Shah. He was granted muafi to the extent of about 200 Bighas of land by Maharaja Narinder Singh. There is no evidence that muafi was sanctioned to any institution by way of charity and contained any reference to public worship by the Sikhs.

(vi) The revenue entries do not indicate the object of worship in the institution in dispute.

(vii) Smadhs of religious celebrities exist within the precincts of the institution in dispute.

(viii) Smadh of Sant Mehma Shah is the object of worship. The erection and worship of Smadhs is opposed to the teaching of Shri Guru Gobind Singh Ji and presence of the Smadhs in the institution is a significant indication of its unorthodox character from the standpoint of the true followers of Shri Guru Gobind Singh (See in this connection, Kirpa Singh v. Ajaypal Singh (1930) 31. P. L. R. 424.

(ix) The documents do not indicate that Shri Guru Granth Sahib is the object of worship in the institution.

(x) The documents do not indicate that Sikhs were ever found to be predominant worshippers.

(xi) Photos/paintings of Hindu dieties exist in the precincts of the institution in dispute.

(xii) In the documents produced on record by the parties, no reference is made to Sant Mehma Shah or to Mohar Singh who has been described as Mehma Shah by the Tribunal except in the remarks column of Exhibit P-17, depicting the rights of irrigation in the wells. In this document, it is recited that a well was dug by the owners of Patti Pheru for providing drinking water to Sant Mehma Shah in Sambat 1870 B.K. (=1813 A.D.). Apart from this entry, the record of rights and the order granting muafi do not indicate the name of Sant Mehma Shah and at what point of time he came to the village. Exhibit. P-17 indicates that Sant Mehma Shah had died in the same year and muafi was granted to his Chela Aangre Sahib. In fact, the words "Mehma Shah" amply fit in with the oral

evidence. The word "Mehma" has been suffixed by the word "Shah". "Mehma" means a person who recites the glory of God. "Shah" connotes a person who has enriched himself by continuously reciting the glory of God. In the instant case, "Mehma Shah means a person who recites the glory of God and by doing so has enriched himself. PW-13 deposed that Aarta is performed in front of the Granth of Mehma Shah while standing. No Gurmurb of the Sikh Gurus is celebrated in this Dera. The objects of worship in this Dera are the Smadh of Baba Mehma Shah and his Granth, besides the Smadhs of other persons like Aangre Sahib. All the above ceremonies and practices are not followed in any Sikh Gurdwara.

12. The Act is an enactment of a special nature and contains a legal procedure by which such Gurdwaras and shrines as are, owing to their origin and habitual use, regarded by Sikhs as essential place of Sikh worship may be brought effectively and permanently under Sikh control. Sub-section (1) of Section 16 of the Act draws a distinction between the Sikh and other Gurdwaras. In case of dispute whether a Gurdwara is or is not a Sikh Gurdwara the Tribunal constituted under the Act has to resolve it in accordance with the provisions of sub-section (2) of Section 16. A Gurdwara can be declared a Sikh Gurdwara if any of the conditions mentioned in clauses (i) to (v) of sub-section (2) of Section 16 of the Act is satisfied :-

(i) that the Gurdwara was established by or in memory of the Ten Sikh Gurus, or in commemoration of any incident in the life 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) that the Gurdwara, owing to some tradition connected with one of the Ten Sikh Gurus, was used for public worship predominantly by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of Section 7 ; or

(iii) that the Gurdwara 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) that the Gurdwara was established in the memory of a Sikh martyr, saint or historic person and was used for public worship by Sikhs before and at the time of the presentation of the petition under sub-section (1) of Section 7 ; or

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

13. To declare an institution a Sikh Gurdwara u/s 16 (2) (iii) of the Act, it was incumbent upon the Committee to prove that the institution had been established for use by Sikhs for the purpose of public worship and has been so used for that purpose upto the date of presentation of the petition u/s 7(1), of the Act. In the instant case, there is no evidence that the institution in dispute was established for use by Sikhs for the purpose of public worship. In Hardit Das

v. Gurdit Singh and Ors. A. I. R. 1936 Lah 819, (at page 822) it was observed thus :-

"To declare a place a Sikh Gurdwara u/s 16 (2) (iii), it is necessary to prove that the institution was (a) established for use by Sikhs for the purpose of public worship and (b) that it was used for such worship by Sikhs before and at the time of the presentation of the petition under sub-section (1) of Section 16. In the present case it appears to me that it has not been proved that the institution was established for use by Sikhs for the purpose of public worship. The evidence points rather to the fact that the institution was a college of Udasi Fakirs consisting of a Guru and his Chelas ; travellers and fakirs were fed at the langar and the Granth Sahib was read. It is infact an institution very similar to that at Latala dealt with in 15 Lah 247(1), I would, therefore, hold that the institution is not a Sikh Gurdwara."

14. The evidence brought on the file does not show what is the nature of worship which was originally practised in the institution in dispute or the purpose of the foundation of the institution. Mohtim/Mahants have been Nirmala sadhu or Udisis. In this connection, the following observations in Santokh Singh and Ors. v. Devi Das A. I. R. 1934 Lah. 969, are relevant:-

"The institution is an old one and its Mahants have always been Udisis and though there is evidence that Sikh worship has been practised in the Gurdwara, this evidence shows nothing of what happened before the year 1904. The institution founded before 1850 and lands were granted by the villagers who were Sikhs for its upkeep, but there is no evidence of any kind to show the nature of the worship, which was originally practised or the purpose of the foundation : there is nothing to show that it was not at its origin an Udasi dera."

15. The unshaken ocular evidence which is worthy of credence. produced by the worshippers, indicates that the Smadhs were and are being worshipped in the institution in dispute. The existence and worship of the Smadhs is in negation of the teachings of Shri Guru Gobind Singh and is a strong factor and a pointer to the conclusion that the institution is not a Sikh Gurdwara. In this connection, reliance can usefully be placed on the decision of the Lahore High Court in Naginder Singh and Anr., v. Pal Das A. I. R. 1934 Lah. 60 where in it was held thus :-

"On the evidence it must be held that it has not been established that any worship takes place there, except by Udasi Sadhs and by persons in sympathy with that section. The existence of the old Smadhs goes a long way to prove that this is a purely Udasi institution where the Granth Sahib not read and which is not used for worship by Sikhs any more than it was established for use by Sikhs for the purpose of public worship."

16. The use of the word "Gurdwara" is not confined to Sikh institutions. The mere fact that the place has been called a Gurdwara as well as a Dera as is referred to in Exhibit R-3 does not warrant the presumption that it was founded

for Sikh worship. It will be useful to refer to the following observations in Shiromani Gurdwara Parbandhak Committee, Amritsar v. Tarlok Nath and Ors. A. I. R. 1937 Lah. 324, :-

"Here I may note that the use of the word Gurdwara is not confined to Sikh institutions and the mere fact that the place has been called a Gurdwara as well as Mandir and Thakardwara does not warrant the presumption that it was founded for Sikh worship. As pointed out by the learned President, Section 16(1), Sikh Gurdwaras Act, itself draws a distinction between Sikh and other Gurdwaras, and Schedule 2 of the Act which mentions three Gurdwaras shows that a Gurdwara may be a non-Sikh shrine."

17. In Pritam Dass Mahant Vs. Shiromani Gurdwara Prabandhak Committee, , their Lordships of the apex Court dealt at length with various aspects of Sikhism and the conditions which were to be satisfied for declaring an institution to be a Sikh Gurdwara, It also dealt with the facts which indicate the existence of a Sikh Gurdwara. The dispute in that case arose whether the institution known as "Dera Bhai Bhagtu" was an Udasi institution or a Sikh Gurdwara. In this context, it was pointed out thus:-

"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."

After analysing the evidence in that case, the apex Court held thus :-

"This analysis of the evidence clearly indicates that it has been unquestionably established without the slightest shadow of 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 the character of the institution as a Sikh Gurdwara because they are inconsistent with the tenants of the Sikh religion."

18. In the light of the authoritative pronouncement of the apex Court in Pritam Dass Mahant's case (supra) and the evidence on record, it is not possible to hold that the institution in dispute falls within the ambit of the provisions of Section 16(2) (iii) of the Act.

19. In order to bring the institution in dispute within the ambit of clause (ii) of sub-section (2) of Section 16 of the Act, the Tribunal based its decision only on the extracts from the book titled "Jeewan Moti" allegedly written by Gyani Avtar Singh "Lakhbir" and published by one Pt. Hari Krishan, Secretary, Dera Sudhar Committee, Mehme Shahi Nirmalas in June, 1942. Reference to this book was made to point out that Bhai Mohar Singh was an Amritdhari Sikh. The Tribunal observed as under :-

"In this case the institution appears to have come into existence about 175--200 years ago, and hence the oral evidence would not be of much assistance as to the establishment of the institution, but it is supported by the documentary evidence as well as the contents of the book Jeewan Moti, written by Gyani Avtar Singh "Lakhbir" of village Kaunke, District Ludhiana and it is published by Mahant Pt. Hari Krishan, Secretary, Dera Sudhar Committee, Mehma Shahi Nirmala, in June, 1942, much before the start of the present inquiry. Sant Hari Krishan Udoke, the publisher of the book, was a petitioner u/s 8 regarding Gurdwara Ugoke and he had lost that petition in the Gurdwara Tribunal and his appeal (F.A.O No. 102 of 1965) was also decided against him by a Full Bench of the Punjab & Haryana High Court, on 21-4-1975. This book which is version of life-history of Sant Mohar Singh by Gyani Avtar Singh and is published by a person who is opposed to the Shiromani Gurdwara Parhandhak Committee, corroborates the assertions made by the various witnesses of the respondent-Committee about the establishment of the institution and other assertions made by them. At page 4 of this book, it is mentioned that Sant Mohar Singh was known as Mehma Shah because he used to praise the Almighty. On the same page, it is written that the name of the father of Sant Mohar Singh was Bhai Gurbux Singh, who was a Raghi (Sikh Musician); he was born on 1815 B. K. Magh Sudhi 5 and at page 5 it is mentioned that his naming celebration (Janam Sanskar) was performed before Guru Granth Sahib and he was named as Mohar Singh from the first letter of the holy verse of Guru Granth Sahib which was :-

"Man mandir tan ves kalandar ghat hi tirath nawan."

"At page 20 of the book, it is written that he was baptized by Sant Gurbux Singh and his colleagues, who formed the "Panj Piaras", according to the Sikh rites, at the place where the present institution is situated. At pages 22 and 23 of the book, it has been explained why Bhai Mohar Singh was called Mehma Shah It is written that he used to sing praises (Mehma) and hence he always used the word

"Mehma" and later on, came to be called Mehma Shah. At page 27 of the book it is written that Bhai Mohar Singh went out for preaching of Sikh religion and baptized many people. Hence it is clear that Mohar Singh was a Sikh, who used to preach Sikhism and he was called Mehma Shah. At page 29 of the book, it is written that before leaving the place for the second tour he asked Bhai Vir Singh and Bhai Man Mastan Singh to establish the Gurdwara at the the place where the present institution is situated and he, himself, went out on a pilgrimage of the Gurdwara in Punjab. At page 35 of this book, the pedigree-table of Sant Mehma Shah is is given, which is as under :-

Guru Gobind Singh Ji. Bhai Daya Singh Ji Piara. Sant Padarath Singh Ji. Sant Santokh Singh Ji. Sant Gurbux Singh Ji. Sant Mohar Singh Ji (Mehma Shah). "It is clear from the extracts which have been brought to our notice by the counsel for the respondent-committee during arguments that Bhai Mohar Singh was an Amritdhari Sikh and he used to preach Sikhism and that the institution in dispute was constructed according to his wishes."

The book is not on the record of this file. There is no evidence on record to establish as to who was its author and publisher. The book does not contain facts of which the Court can take judicial notice and can be deemed to have been proved without proof. It was injudicious on part of the Tribunal to rely upon this book. There can be no presumption in law that the book contains correct facts This book was not produced by either of the parties even at the time of arguments for perusal of the Court. Even otherwise, it was inadmissible in evidence.

20. u/s 57 of the Evidence Act, the Court may presume that any book to which it refers for information on matters of Public or general interest was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published. In questions of public history, the Court can only dispense with evidence of notorious or undisputed facts. But before any judicial notice could be taken of any passages in books relating to the alleged tradition something more than the mere existence of the passages would have to be proved before the passages could be regarded as evidence of the existence of the tradition. It must be shown that the writer had any special knowledge of the alleged tradation, or that the tradation is a repetition of that given in the history. Reference can be usefully made to the following observations in the Division Bench decision of the Lahore High Court in Achal Singh and Ors. v. Mahant Girdhari Dass (1937) 39 P. L. R. 802.

"Before any judicial notice could be taken of any passages in books relating to the alleged tradation something more than the mere existence of the passage would have to be proved before the passages could be regarded as evidence of the existence of the tradation. It must be shown that the writer had any special knowledge of the alleged tradition or the tradition is a repetition of that given in the history."

In that case, the question was whether the institution in dispute could fall within the ambit of clause (ii) of sub-section (2) of Section 16 of the Act. The Committee had relied upon the extracts from some publication which purports to have been compiled during the land revenue settlement operations of 1868-73 at the instance of the settlement officers under the supervision of Extra Assistant Settlement Officer and in pursuance of the orders of the Financial Commissioner, and the passage was relied upon to prove the story that "Guru Gobind Singh, accompanied by five horsemen, met Bhuman Shah who was then a boy, but already devoutly religious, grazing cattle in a jungle, and discerning his spiritual greatness asked him for food, whereupon the boy gave him his only piece of bread. This so pleased the Guru that he blessed the lad promising him renown as a saint and worker of miracles. The Guru instructed him to go to Kot kutab and dig up a bush of high grass which had been his place of worship (dhua) during the boy's previous incarnation as a devout Faqir. There, under the grass, he would discover his sandals and his blanket and there he must establish his langar. So Bhuman Shah became the disciple of Bawa Pritam Faqir of Pakpattan, calling himself Bhai Bhuman Shah, He went to Kot Qutab, then owned by Wattus, and asked for land which the Wattus at first refused but on his digging up the bush and discovering his sandals and blanket realized that he was a worker of miracles and gifted him the whole of the Kot Kapura lands. There Bhuman Shah settled and built his famous langar which succeeding Mahants had duly maintained.". Commenting on the alleged story, the Bench observed thus:-

"Now whether Section 57 is or is not applicable it is clear that before any judicial notice could be taken of any passages in these books relating to the alleged tradition something more than the mere existence of the passages would have to be proved before the passages could be regarded as evidence of the existence of a tradition. But no attempt to produce evidence was made by the objectors to show that the writers had any special knowledge of the alleged tradition or that the story was described as a tradition or was merely the repetition of that given in the history of the Montgomery District referred to above. All we are asked to do is to take notice of the passages. In the circumstances I am not prepared to accept the books in evidence now. I may add that it appears from the findings of the tribunal that the books were produced not only to prove the existence of a tradition but also as evidence of a historical fact. It is not however now argued that the alleged tradition is a true story."

21. In AIR 1943 89 (Oudh) , it was observed that vernacular histories which have never received any recognition as historical works of value and reliability relating to matters of public or general interest nor have been referred to in any well-known historical work are inadmissible. It was held thus :-

"The others were vernacular histories which have never, so far as we know, received any recognition as historical works of value and reliability relating to matters of public or general interest. Nor were we shown any well-known historical work which contained a reference to them. We are of opinion therefore

that they are inadmissible."

22. Apart from the extract from the book titled "Jeevan Moti" there is no other evidence on the record to suggest that the institution in dispute falls within the ambit of the provisions of Section 16(2) (ii) of the Act. The order of the Tribunal, therefore, cannot be sustained.

23. For the reasons aforesaid, F.A.O. No. 307 of 1978 succeeds, the order under challenge is set aside and it is held that Dera Mehme Shahi, Lopon, although in the revenue records it is recorded as Gurdwara Sahib Mehme Shahi, is not a Sikh Gurdawara within the ambit of clauses (ii) or (iii) of sub-section (2) of Section 16 of the Act. There will be no order as to costs.

20. Pursuant to the decision in Petition No. 628 of 1978, dated April 6, 1978, by which the petitions u/s 8 of the Act were decided by the Tribunal two petitions u/s 10 of the Act were filed by the worshippers and the Mahant of the Dera, which were registered as Petitions No. 768 and 770 of 1978, respectively. These petitions were dismissed by the Tribunal vide order dated January 30, 1979. In view of the judgment rendered in F. A. O. No. 307 of 1978, F. A. O. No. 294 of 1979 is allowed and it is held that the properties mentioned in Punjab Government's notification No. 1608-G.P. dated August 31, 1962, published under sub-section (3) of Section 7 of the Act, are the properties of Dera Mehma Shahi, Lopon and not of the Sikh Gurdwara as alleged by the Committee. There will be no order as to costs. If the Committee has taken possession of the Dera building or of any other building attached to the Dera, it should restore back the possession of Mahant Mohinder Singh, the present Mohtmim of the Dera, forthwith.