
(2016) 08 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No.101 of 1977. (O&M)

Ram Singh

APPELLANT

Vs

Shiromani Gurdwara Prabandhak Committee

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Sikh Gurdwaras Act, 1925 — Section 16

Citation : (2017) 1 PLR 290

Hon'ble Judges : Mr. Mahesh Grover and Mr. Shekher Dhawan, JJ.

Bench : Division Bench

Advocate : Shri Sidharath Grover, Advocate, for the Respondent; Shri Tushar Sharma, Advocate, for the Appellants

Final Decision : Allowed

Judgement

Mahesh Grover, J. - By this order we shall dispose of F.A.O. Nos.101 of 1977 and 1579 of 1996. For the sake of convenience, brief facts have been taken from F.A.O. No.101 of 1977.

2. The questions that arise for determination in these appeals is as to whether the order dated 10.2.1977 of the Sikh Gurdwara Tribunal, Punjab, Chandigarh declaring the Dera situated in Village Loohwan as a Sikh Gurdwara is valid or not.

3. In terms of Section 7(1) of the Sikh Gurdwara Act, 1925 (hereinafter referred to as the Act), 55 Sikhs claiming to be residents of Village Loohwan, Tehsil Rajpura, District Patiala filed an application seeking declaration of the Dera as a Sikh Gurdwara on the plea that it is being used for worship as per Sikh rites.

4. The State of Punjab issued a notification dated 3.10.1974 under Section 7(3) of the Act notifying the Dera as a Sikh Gurdwara pursuant to which one Ram Singh and other residents of Village Loohwan filled a petition under Section 8 of the Act on behalf of the worshippers of the Dera to claim that it is not a Sikh Gurdwara, but an Udasi Dera.

5. The facts as noticed in the impugned order need to be extracted here as well for proper appreciation of the matter. Previously, a notification was issued on 8.9.1961 pertaining to the same Dera which was quashed in C.W.P. No.874 of 1964 (Mahant Parkash Nand v. State of Punjab decided on 10.3.1966) and thus, in the applications under Section 8 of the Act it was pleaded the impugned notification dated 3.10.1974 to be barred by res judicata.

6. The worshippers of the Dera claimed to be an Udasi institution where the Murti of Baba Siri Chand, Gola Sahib, Dwara Sahib and Mandir Shivji are located and worshipped with no worship of Guru Granth Sahib. The principle object of worship in the Dera is a Samadhi of previous Mahant Parkasha Nand as hereditary office-holder.

7. The Tribunal vide its order dated 17.1.1975 consolidated the proceedings under Sections 8 and 10 of the Act and upon pleadings of the parties, proceeded to determine the matter in view of the conflicting stands where the status of Parkasha Nand as hereditary office-holder was also disputed, as also the character of the Dera as being an Udasi institution. The following issues were framed:-

1. Is the Notification under Section 7, bad in view of the decision in Writ Petition No.874 of 1964, as alleged in para 2 of the petition ?

2. Is the institution in dispute a Sikh Gurdwara under Section 16 of the Sikh Gurdwara Act ?

8. For the purpose of reference, Sections 7, 8 and 10 of the Act are extracted here below :-

7. Petitions to have a gurdwara declared a Sikh Gurdwara.- (1) Any fifty or more Sikh worshippers of a gurdwara, each of whom is more than twenty-one years of age and was on the commencement of this Act, (or in the case of the extended territories from the commencement of the Amending Act) resident in the police station area in which the gurdwara is situated, may forward to the (appropriate Secretary to Government) so as to reach the Secretary within one year from the commencement of this Act or within such further period as the (State) Government may by notification fix for this purpose, a petition praying to have the gurdwara declared to be a Sikh Gurdwara :

Provided that the (State) Government may in respect of any such gurdwara declare by notification that a petition shall be deemed to be duly forwarded whether the petitioners were or were not on the commencement of this Act (or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be), residents in the police station area in which such gurdwara is situated, and shall thereafter deal with any petition that may be otherwise duly forwarded in respect of any such gurdwara as if the petition had been duly forwarded by petitioners who were such residents:

Provided further that no such petition shall be entertained in respect of any

institution specified in Schedule I or Schedule II unless the institution is deemed to be excluded from specification in Schedule I under the provisions of section 4.

(2) List of property claimed for the gurdwara and of persons in possession thereof to accompany a petition under sub-section (1).- A petition forwarded under the provisions of sub-section (1) shall state the name of the gurdwara to which it relates and of the district, tahsil and revenue estate in which it is situated, and shall be accompanied by a list, verified and signed by the petitioners, of all rights, titles or interest in immovable properties situated in Punjab inclusive of the gurdwara and in all monetary endowments yielding recurring income or profit received in Punjab, which the petitioners claim to belong within their knowledge to the gurdwara the name of the person in possession of any such right, title or interest, and if any such person is insane or a minor, the name of his legal or natural guardian, or if there is no such guardian, the name of the persons with whom the insane person or minor resides or is residing, or if there is no such person, the name of the person actually or constructively in possession of such right, title or interest on behalf of the insane person or minor, and if any such right, title or interest is alleged to be in possession of the gurdwara through any person the name of such person shall be stated in the list ; and the petition and list shall be in such form and shall contain such further particulars as may be prescribed.

(3) Publication of petition and list received under subsections (1) and (2).- On receiving a petition duly signed and forwarded under the provisions of sub-section (1) the (State) Government shall as soon as may be, publish it along with the accompanying list, by notification, and shall cause it and the list to be published, in such manner as may be prescribed, at the headquarters of the district and of the tahsil and in the revenue estate in which the gurdwara is situated, and at the headquarters of every district and of every tahsil and in every revenue estate in which any of the immovable properties mentioned in the list is situated and shall also give such other notice thereof as may be prescribed :

Provided that such petition may be withdrawn by notice to be forwarded by the Board so to reach the (appropriate Secretary to Government), at any time before the publication, and on such withdrawal shall be deemed as if no petition had been forwarded under the provisions of sub-section (1).

(4) Notice of claims to property to be sent to persons shown in the list as in possession.- The (State) Government shall also, as soon as may be, send by registered post a notice of the claim to any right, title or interest included in the list to each of the persons named therein as being in possession of such right, title or interest either on his own behalf or on behalf of an insane person or minor or on behalf of the gurdwara :

Provided that no such notice need be sent if the person named as being in possession is a person who joined in forwarding the list.

(5) Effect of publication of petition and list under subsection(3).- The publication of a notification under the provisions of sub-section (3) shall be conclusive proof that the provisions of sub-sections (1),(2),(3) and (4) have been duly complied with.

8. Petition to have it declared that a place asserted to be a Sikh Gurdwara is not such a gurdwara.- When a notification has been published under the provisions of sub-section (3) of section 7 in respect of any gurdwara, and hereditary office-holder or any twenty or more worshippers of the gurdwara, each of whom is more than twenty-one years of age and was on the commencement of this Act (or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be), a resident of a police station area in which the gurdwara is situated may forward to the (State) Government, through the (appropriate Secretary to Government) so as to reach the Secretary within ninety days from the date of the publication of the notification, a petition signed and verified by the petitioner, or petitioners, as the case may be, claiming that the gurdwara is not a Sikh Gurdwara, and may in such petition make a further claim that any hereditary office-holder or any person who would have succeeded to such office-holder under the system of management prevailing before the first day of January, 1920 (or, in the case of the extended territories, before the 1st Day of November, 1956, as the case may be), may be restored to office on the grounds that such gurdwara is not a Sikh gurdwara and that such office-holder ceased to be an officeholder after that day :

Provided that the (State) Government may in respect of any such gurdwara declare by notification that a petition of twenty or more worshippers of such gurdwara shall be deemed to be duly forwarded whether the petitioners were or were not on the commencement of this Act (or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be), resident in the police station area in which such gurdwara is situated, and shall thereafter deal with any petition that may be otherwise duly forwarded in respect of any such gurdwara as if the petition had been duly forwarded by petitioners who were such residents.

9. xxx xxx xxx xxx

10. Petition of claim to property including in a list published under sub-section (3) of Section 7.- (1) Any person may forward to the (State) Government through the (appropriate Secretary to Government) so as to reach the Secretary within ninety days from the date of the publication of a notification under the provisions of sub-section (3) of Section 7, a petition claiming a right, title or interest in any property included in the list so published.

(2) Signing and verification of petitions under sub- section (1).- A petition forwarded under the provisions of sub-section (1) shall be signed and verified by the person forwarding it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of plaints, and shall specify the

nature of the right, title or interest claimed and the grounds of the claim.

(3) Notification of property not claimed under sub- section (1) and effect of such notification.- The (State) Government shall, as soon as may be, after the expiry of the period for making a claim under the provisions of sub-section (1) publish notification, specifying the rights, titles or interests in any properties in respect of which no such claim has been made, and the notification shall be conclusive proof of the fact that no such claim was made in respect of any right, title or interest specified in the notification."

9. Maintainability of the petition in terms of Section 7 of the Act was not disputed before this Court and what is questioned is the declaration of the Dera as a Sikh gurdwara.

10. A perusal of the record would show that both Sections 7 and 8 granting a locus to the disputants to raise an issue were adequately met in terms of the language of the statute.

11. It is Section 16 which becomes relevant as it provides the guiding principles to be considered while declaring a Dera or a gurdwara to be a Sikh gurdwara. Of particular importance would be Section 16(2)(iii) and 16(2)(iv) and thus, the reason for its emphasis. Section 16 is extracted here below :-

16. Issue as to whether a gurdwara is a Sikh gurdwara to be decided first and how issue is to be decided.- (1) Notwithstanding anything contained in any other law in force, if in any proceedings before a tribunal it is disputed that a gurdwara should or should not be declared to be Sikh Gurdwara, the tribunal shall, before enquiry into any other matter in dispute relating to the said gurdwara, decide whether it should or should not be declared a Sikh Gurdwara in accordance with the provisions of sub-section(2).

(2) If the tribunal finds that the gurdwara -

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

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

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

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

(v) owing to some incident connected with the Sikh religion (was) used for such worship by Sikhs, (before and at the time of the presentation of the petition under sub-section (1) of Section 7); the Tribunal shall decide that it should be declared to be a Sikh Gurdwara, and record an order accordingly.

(3) Where the tribunal finds that a gurdwara should not be declared to be a Sikh Gurdwara, it shall record its finding in an order, and, subject to the finding of the High Court on appeal, it shall cease to have jurisdiction in all matters concerning such gurdwara, provided that, if a claim has been made in accordance with the provisions of section 8 praying for the restoration to office of a hereditary office-holder or person who would have succeeded such office-holder under the system of management prevailing before the first day of January, 1920 (or, in the case of the extended territories, before the first day of November, 1956) the tribunal shall, notwithstanding such finding continue to have jurisdiction in all matters relating to such claim; and if the tribunal finds it proved that such office-holder ceased to be an office-holder on or after the first day of January, 1920 (or, in the case of the extended territories, after the first day of November, 1956), it may by order direct that such office-holder or person who would have so succeeded be restored to office."

12. Evidently, the issue which is germane to the controversy, would revolve around the parameters of Section 16(2)(iii) and 16(2)(iv) and to simplify, we would encapsulate them as below :-

(1) To be a Sikh Gurdwara, it has to be established that it was used for Sikhs for the purpose of public worship ;

(2) Was used as such for worship by Sikhs before and at the time of presentation of the petition under sub-section (1) of section 7.

(3) Was established in memory of a Sikh martyr, saint or a historical person and was used for such worship by Sikhs before and at the time of presentation of the petition.

13. The aforesaid would depend on the evidence that has been brought on record by the disputants, but before we evaluate the same, we would refer to the observations of the Hon'ble Supreme Court in *Pritam Dass Mahant v. Shiromani Gurdwara Prabandhak Committee* (1984) 2 S.C.C. 600, wherein it was held as under :-

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

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

collection which he had compiled and installed in the newly-built Darbar Sahib in 1604 for he was acknowledged the higher authority or the Bani due to the personal importance and significance which he possessed as Guru.

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

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

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

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

The Eternal Father Willed, and I raised the Panth.

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

Have faith in the Holy Granth as your Master and consider it The visible manifestation of the Gurus.

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

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

13. Temples are found almost in every religion but there are some differences

between Sikh temples and those of other religions. The Sikh gurdwaras have the following distinctive features :

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

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

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

14. 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."

14. In *Shiromani Gurdwara Prabandhak Committee, Amritsar v. Mahant Kirpa Ram and others* (1984) 2 S.C.C.614, the Hon"ble Supreme Court held as under :-

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

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

19. It is at this stage necessary to point out the distinction between Sikhs and Udasis. In the past it was attempted to be urged that Udasis are a mere order of Sikh preachers and that there is no difference between two faiths. In fact it was urged that they are not two separate faiths but two separate interpretations of the same faith. Repelling this contention way back in *Hem Singh v. Basant Das* it was observed as under :

Indeed the Udasis do not appear to their Lordships to have been a mere order of mendicant preachers among the Sikhs. Nor can it be held proved that they were merely Sikhs who had lapsed into Hindu practices. On the contrary they appear to have a long and independent history as a separate sect or persuasion occupying a position somewhere between the Sikhs and the orthodox Hindus. The differences in belief as well as in practise between Sikhs and Udasis deserve to be described as serious, extensive and inveterate, and some were outwardly striking ...

At another stage it was observed that since the time of Siri Chand, the founder of Udasi Sect there came into existence a sect of Udasis who, while using the same sacred writings as the Sikhs, kept up much more of the old Hindu practices, followed asceticism, were given to the veneration of Samadhs and tombs, and continued the Hindu rites concerning birth, marriage and Shradh. It was also observed that the Udasis so far as the matter can be decided by beliefs and practices, are, from the point of view of Sikhs, schismatics who separated in the

earliest days of the movement and never merged thereafter. It would thus appear that Udasis form an independent sect. They do venerate Sikh scriptures. Therefore, in an institution of Udasi sect, one can visualize reading of Granth Sahib or veneration of Sikh scriptures. That itself is not decisive of the character of the institution. On the contrary, if the succession was from Guru to Chela and those Gurus were followers of Udasi faith and the institution was known as Dera of Udasi Bhekh and they followed some of the practices of Hindu traditional religion that would be completely destructive of the character of the institution as Sikh Gurdwara. In a very recent decision of this Court in *Pritam Dass Mahant v. Shiromani Gurdwara Prabhandhak Committee* it has been held that mere reading of Granth Sahib or veneration of Sikh scriptures is not decisive of the character of the institution because Udasis are midway between Sikhs on the one hand and Hindus on the other and that the Udasis also venerate Granth Sahib. Earlier also this view has been consistently taken by this Court as will appear from the decision of this Court in *Mahant Dharam Das v. State of Punjab* (SCC p.350, para 12)

They do not subscribe to idol worship and polytheism, nor do they have any Samadhi in their shrines. The teaching of Sikhs was against asceticism. They believe in Guru Granth Sahib, which is a rosary of sacred poems, exhortations etc. During the time of the Sikh Gurus, the Gurdwaras were under their direct supervision and control or under their Masands or missionary agents. After the death of Guru Gobind Singh the Panth is recognised as the corporate representative or the Guru on earth and thereafter they were managed by the Panth through their Granthis and other sewadars who were under direct supervision of the local Sangat or congregation. During Maharaja Ranjit Singh's time Sikhism became the religion of the State and large estates and Jagirs were granted to the Gurdwaras, apart from the Jagirs which had been earlier granted during the Mugal period. The position of the Gurdwaras changed during British regime. The Mahants who were in charge of the Sikh Gurdwaras could either be a Sikh Mahant or Udasi Mahant ..."

15. It is thus, clear that in order to bring a case within the ambit of Section 16(2) (iii), it must not only be established that the institution was established for use by Sikhs for the purpose of public worship, but was used for such worship by the Sikhs before and at the time of presentation of the petition. It is, thus, the usage which has to be established and existence of the religious practise at the time of presentation of the petition with the word "and" used in Section 16(2)(iii) and (iv) committing clearly that both parameters have to be in existence and one to the exclusion of the other would not necessarily lead to a declaration of the institution being a Sikh gurdwara.

16. In *S.G.P. Committee v. M.P. Dass Chela (dead) by LRs* (1998) 5 S.C.C. 157, the Hon"ble Supreme Court observed as follows :-

"16. It is quite evident from the language of section 16(2) that the burden of proving an institution to be a Sikh Gurdwara is on the person who asserts the

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

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19. On a perusal of the records, we find that the following facts are proved :

- (a) The original grant was to an individual who belonged to Udasi sect. (Ex.R-14).
- (b) All Mahants of this institution have been Udasi sadhus. (para 16 of the Tribunal's order).
- (c) Succession to Mahantship is from guru to chela.
- (d) Several samadhis exist on the property which are objects of worship (PW9 and PW16).
- (e) Shradhs are performed and Ram Naumi festivals are celebrated. Gola Sahib and murti of Baba Siri Chand are worshipped (PW10).
- (f) There is no Nishan Sahib.
- (g) No proof of public worship by Sikhs."

17. It is pertinent to mention here that on the basis of the afore-extracted observations the onus to prove an institution to be a Sikh Gurdwara lies squarely on the person who asserts so.

18. In the case in hand, no person from amongst the signatories took to the witness-box leading to an argument by the counsel for the appellant with which we propose to deal with subsequently that onus to establish the institution to be a Sikh Gurdwara was not discharged by the applicant.

19. We may also notice the observations of the Hon"ble Supreme Court in Shiromani Gurdwara Prabandhak Committee, Amritsar v. Miha Singh (dead) Rep. y Baba Banta (1993) 3 S.C.C. 650, wherein it was observed as follows :-

"9. In post independent era, a Full Bench of the Punjab and Haryana High Court in Mahant Budh Dass v. Shiromani Gurdwara Prabandhak Committee apparently reiterated the Lahore view and has ruled that before an institution could be declared a Sikh Gurdwara, it must be established that the Gurdwara was established for use by Sikhs for public worship;that it was being actually used for

worship by Sikhs; and it was used by Sikhs for public worship both before and at the time of the presentation of the petition under Section 7.

10. Even English diction does not advance the case of the SGPC. The meaning of the word "establish" as given in the New Collins Concise Dictionary, 1983 edn., is : "1. to make secure or permanent in a certain place, condition, job etc. 2. to create or set up (an organization etc.) as on a permanent basis." According to Webster's Comprehensive Dictionary (International edn.), the word "establish" means "1. to settle or fix firmly ; make stable or permanent. 2. to set up ; found, as an institution or business. 3. to set up, install (oneself or someone else) in business, a position, etc."

11. Thus, in our view, on precept and otherwise, the law is firmly ingrained and placed on a firm footing that before a Gurdwara or an institution could be declared a Sikh Gurdwara, it must be established that it was founded at its inception by the Sikhs for public worship. The mere fact that was actually being used for public worship before and at the presentation of the petition under Section 7(1) is of no help singularly. Evidence as to the founding or establishing of the institution for public worship by the Sikhs is the sine qua non before the tribunal or the court, as the case may be, can sustain the claim of the SGPC for declaring an institution to be a Sikh Gurdwara. The High Court on this aspect expressed its opinion as follows :

"In our opinion even the best interpretation on the testimony of Mihan Singh would not show that he admitted that the institution, when it was established, was dedicated by Gulab Singh for public worship by Sikhs. His admission that Gulab Singh was a strict Sikh ; that Guru Granth Sahib was kept therein and worshipped as the only object of worship or that Gulab Singh performed all "Rahats" of a Sikh would not go to show that Gulab Singh had dedicated at the inception the said institution for public worship by Sikhs."

20. The respondents, on the other hand, have stated that the Dera was merely being managed and headed by Udasis Sadhus which would not change its character from that of a Sikh Gurdwara. Reliance was placed upon a Division Bench judgment of this Court in Sarup Dass v. Shiromani Gurdwara Prabandhak Committee, Amritsar 1983 CrL.J. 55.

21. The witnesses (PWs) in support of the plea of the institution being a Sikh Gurdwara, stated variously and it would be appropriate to record the answers which are relevant to the controversy, to be extracted here below :-

"(PW-1) :

I have seen the institution in dispute which is a Dera of Udasis. At this Dera Shiv Mandir is there, some Samadhis are there and there is a Murti of Baba Sri Chand ji. These are the objects of worship in this Dera. They recite Gita there and of Shiv Puran. This Dera is connected with the Dera at Khanaura.

XXn:- S.Charan Singh, counsel for the respondent-committee.

The Samadhis are just outside the building of the Dera. Yoga Bhayas was my father's Guru and his samadh is one of the smadhs. There is one other smadh of Ganga Ram. I have not seen Ganga Ram, but my father told me that he was the earliest Mahant of the Dera. I did not see even Yoga Bhayas.

There are four rooms in the building of the Dera. Adjoining the boundary wall, is the Shiv Mandir also. There is a Shivling in the Shiv Mandir. The plan shown to me at page 2043 of the Notification is the correct plan). He (witness) says that the Murti of Baba Siri Chand ji is in the room which is in the north west of this plan. This has been shown as place of Parkash Asthan. This Murti is of silver. It is placed in an Aala. The Murti has no beard and looks of the age of about 18 years. It has got Jattas. I go to offer respect at this place regularly. In particular during the month of Sawan, I regularly go for the worship of Shivji. Ordinarily, I go to offer respects to the Smadh of my father's Guru when I go to the Shiv Mandir, while returning I also pay respects to the murti of Baba Siri Chand ji. The Udasi Panth was started by Baba Sri Chand ji son of Baba Guru Nanak Dev ji. Free food is served to the wayfarers in this institution. About 50 persons of the residents in the village are Sikhs. The remaining are of mixed castes. There is no Baniya, but there are Ramgarias. They are not Sikhs. The Sikhs of the village go to offer respects and worship at this institution. Some are Brahman and Harijans. At the time of marriage the newly wedded couples go to offer respects at this place. Charawa is given by them. I have never seen the Udasis reciting Guru Granth Sahib. I have not seen Guru Granth Sahib in his Dera. I am literate and can read Gurmakhi.

... ..

(PW-2) :

This is a Dera of Udasis and there are Smadhis. Baba Ganga Ram founded this Dera and in this Dera Smadh of Baa Ganga Ram is there. The Smadh and the Shiv Mandir are worshipped. There is also a Murti of Baa Siri Chand ji.

Q. What types of the Murti are installed there?

Ans: Murti of Baba Siri Chand ji and of Shivji. There is a photo of Shri Bhagwan Krishan also.

The Mahants belong to Udasis of Chotta Akhara. This Dera is connected with the Dera of Khannaura as well as some others. Just adjoining and outside the boundary wall towards the Dera, there are two Smadhis. The Mandir is also nearby the Smadhis. The land outside the boundary wall, where the Smadhis are situated belongs to the Dera. There are at the minimum three rooms at the Dera. As one enters in the Dera, the murti is in the room towards the right near a wall. Bhagvatgita and Ramayan are recited there Seva Nand Sadh recites these.

Xxn: By S.Charan Singh, counsel for the respondent committee.

Sewa Nand is still alive. Sewa Nand is incharge of Khannaura. He has left as

Pandit there. I am a Sikh. The whole of the residents in the village, like me, keep Keshas and Daris but there may be only 20 who have taken Amrit. This village was founded by Sikhs. It is not correct that our people recognised Ganga Ram and Yoga Bhayas as Sikhs. They respected them as Sadh Udasis. I know Udasis of this Dera of Chotta Akhara, because Udasis of Chotta Akhara come on elephant. After the death of Yoga Bhayas however, they never visited this Akhara on elephant. He died in 1990-91. B.K. free food is served to the visitor by the Mahant, even if he collects food from the villagers. The repairs of the Dera and the Langar are run out of the income of the land as supplemented the donation made by the villagers. During consolidation some land was taken out of the share of the proprietors and given to the Dera. The Murti of Shivji, which is in this temple, is of stone.

This murti is of male. There is no hand or rose, but is a round thing.

Q:- What type of Murti is of Baba Siri Chand ji, which is in the room on the right side ?

Ans:- That Murti is made on a paper. To Court:-

Do you mean only a photo of picture ?

Ans:- Yes.

This is kept in an almirah in the room. Almirah has no shutters. I daily do worship at this Dera. We first of all go before the Murti of Shivji, then at the Samadhis and then go before the photo of Baba Sri Chand ji and then return home. There is no other Guru Granth Sahib in our village, but there is one place where foundation has been made. The place, in which the foundation has been placed, is towards the west of the village. Sikhs do not come to worship at this place but only Shatani residents who worship everybody, even Mandir of Shivji, as well as Guru Granth Sahib ji. One Mohni has a Guru Granth Sahib in his own house. Those who are not Shatanis go to worship there.

... ..

(PW-3) :

I have seen the institution in dispute. This is known as Dera Udasis. Udasis have been Mahants in this Dera. In this institution Baba Siri Chandji, Gola Sahib, Dhuna Sahib and Shiv Mandir and the Samadhis of Mahants are worshipped. There are two Samadhis. No other object of worship is there. There is a branch of the Dera of Village Khanaura.

Xxn:- By. S.Charan Singh, counsel for the respondent- Committee.

I have seen Mahant Kishan Chand of Khanaura, under whom I had seen Mahant Sewa Nand working at this Dera. The Udasis of this Dera are of Naya Akhara, which is also known as Chhota Akhara.

Q. I put it to you that this Naya Akhara was created in respect of Bhai Pheru,

Sangat Singh Sahib Sodhi Dari ?

Ans: I do not know.

Q. Can you tell, who created this Naya Akhara ?

Ans:- I do not know, I know only Baba Siri Chandji.

Q. I put it to you that there are four Dhunas and six Bakshish of Udasis ?

Ans: I do not know.

Q. I put it to you that four Dhunas are of Bhai Ulmaste, Goind, Phool Sahib ji, and Balu Hassna, which were founded by Baba Gurditta ji after the demise of Baba Sir Chand ji ?

Ans: I do not know.

I do not know who were the first Chela of Baba Siri Chand ji cannot know even my own Genealogy. The Shiv Temple and the Samadhis are inside the boundary wall. As one enters the building, these are on the left. These Samadhis and the Mandir are in the open and not in a room. I will be able to tell the plan, where Dhuna Shaib, where Gola Sahib and where the photo of Baba Siri Chand ji are. As one enters the building, on the right hand side is the residential room of Mahant Parkasha Nand and in that room the photo was hanging on the outer wall and in the almirah. I do not know in which side the wall is situated. Mahant keeps religious books like Ramayan and Mahabharata and Bhagvatgita and Guru Granth Sahib ji. In the room on the front, which is shown in the plan (at page 2043 of the notification) on the western side is the langar and on the eastern side is kept Gola Sahib and Dhuna. In fact this big room is partitioned by a wall. (marked in black pencil as stated by the witness. At the place, where there are Dhunas and Gola Sahib smoke fire is kept by burning either wood or cowdung. People who come to worship, before the Samadhis, Shiv Mandir Dhunas, as well as the Mahants. I have not seen him reciting religious books, but he must be reading in the rooms. He reads there for his own knowledge. I visit there, whenever I have something to do. I might have visited there so many times. I belong to Naya Akhara, but I cannot say who founded this Naya Akhara. I cannot tell when was New Akhara created out of the old one.

(PW-4) :

... ..

A roof is being built over the Shivling. As one enters in the room, on the right hand side a photo of Baba Siri Chand ji is there. The photo of Baba Siri Chand ji along with other photos is placed in an almirah in the room, which is used as a residential room.

Xxn: S.Charan Singh, counsel for the respondent-Committee

My Dera is known as Dera Giyan Dhyani, then stated Dera Khushal Dass, again

stated, there are two Deras. Khushal Dass was remote the remote ancestor, but Mahant of these Deras is the same. I do not know who founded the Dera in dispute. It is correct that it was a Naya Akhara, Bhai Sangat Singh Sahib. Again said Sangat Dass who founded this Dera.

Q. Was he also known as Bhai Sachhi Dari ?

Ans; May be, I am not sure, because I have not read this.

Q. I do know know.

It is correct that Bara Akhara was founded by Pritam Dass Nirman, who was Udasi, but however, I do not know completely

... had four chelas but I do know remember the names, again said Goinda Umaste, and Phool Sahib.

Q. Was the fourth known as Balu Hassna.

Ans: Yes, he was known as Balu Hassna Dass. I have visited this Dera three or four times. I cannot say whether Shri Guru Granth Sahib ji is one of the religious books there, because I have there only on very rare occasions. Like once on Shivratri and second time on Ramnaumi and then, on the Birth anniversary of Baba Sri Chand ji. When I visited last time, there was no roof on Shivling. Preparation was there for putting over the roofs. I may be about a year, when I visited there."

(PW-5) :

I am the Mahant of the disputed Dera. There is a branch of this Dera at Village Khannaura. I am the only Mahant of both these Deras. I am installed there the Mahant. I am the Mahant of two Deras at Khannaura and Loohwan. One Sewa Nand who is my Chela stays at Loohwan for looking after the Dera in my absence, when I am at Khannaura I also visit this Dera occasionally. This Dera was found by Yoga Bhayas. There are two Samadhis, one of Yoga Bhayas and the other of Ganga Ram. I do not know whether Ganga Ram came after Yoga Bhayas or before him, but he was a Sadhu, Samadhis, Gola Sahib, photo of Baba Siri Chand and Shivling are worshipped. There is no other object of worship there.

Xxn. S.Charan Singh, counsel for the respondent-committee

I had also filed a petition under Section 8. It is correct that was dismissed on the ground that I was not an hereditary. It is also correct that Sewa Nand had also filed the same petition. Sewa Nand alleged that he had been put incharge of the same petition.

Q. I put it to you that he alleged that he was hereditary officer-holder and that petition was dismissed ?

Ans. I do not know.

Q. It is absolutely correct that Naya Akhara was founded by Guru Sangat Sahib Sachhi Dari, but he was not known by the name of Bhai Pheru.

Q. I put it to you that the title of Sachhi Dari was granted by the 10th Guru.

Ans: No, Guru Sangat Sahib was the Chela of Karta Har Rai Sahib who in turn was the

Siri Chand ji, and this title of Sachi Dari was the gift of Karta Har Rai. The Karta Har Rai Ji was different from Guru Har Rai ji.

Q. I put it to you that the only Chela of Baba Siri Chand ji is Baba Gurditta ji ?

Ans: It is not correct. Balu Hassan, Goind Sahib, Phool Sahib, and Bhagat Bhagwan, were the chelas of Baba Siri Chand ji. It is not correct that it was the Baba Gurditta, who founded the various Dhunas, known by the name of Balu Hassna, Goind Sahib, Phool Sahib and Ulmaste. There are six Bakshishs known as Bhagat Bhagwan, Guru Sangat Sahib, Bhagat Mal, Jit Mall, Mian Sahib and Suthre Shah. I belong to the Bakshish of Guru Sangat Sahib. Bara Akhara consists of the remaining Bakshishs. Pritam Dass Nirmal belongs to the Rara Akharas, he was the earlier then Bakshish of Guru Sangat Sahib. I keep Shri Guru Granth Sahib but no parkash is made. I used it as a reference book. Shri Guru Granth Sahib is kept in the almirah. Originally there was 8 bighas of land and now, 3 bighas of land, attached with the institution. It was during consolidation that the area became larger and there was no donation by the villagers. It is correct that in the revenue record the entire land is in the name of Shri Guru Granth Sahib. It was about 15 years ago, when these litigation started relating to Khannaura when I found that these entries were in the name of Shri Guru Granth Sahib. I did put in application after the decision of the earlier case by High Court which was decided by I.B.Dua, and S.P.Kapoor, JJ., but that was dismissed and I did not pursue the matter any further. This was dismissed by the R.A. (possibly he means Revenue Assistant).

Q. What did you write in the application.

Ans.

Q. Did you say that Guru Granth Sahib should be deleted in your substitution ?

Ans; In fact I do not remember what I wrote in that application. Khannaura is 32 miles from my Dera.

The land attached with Dera at Khannaura is quite different and separate from the land attached with Dera Loohwan. Khannaura is in Tehsil Nabha and Loohwan is in Tehsil Patiala. Langar prepared in the Dera in dispute daily both in the morning and as well as in the evening and is served to the visitors and wayfarer. The residents do not donate anything even at the time of Bhandara, but they come and take part in the langar. Daily Langar is run out of the income of the land. At the time of Bhandara, of course, residents do contribute ration or money according to their own inclination. the Sikhs do visit this Dera to worship, but

they never take Guru Granth Sahib on the occasion of marriage. The newly wedded couples do come to worship and they make offerings and also offer Charawa. Some of them worship Samadhis some Shivling and others photo of Baba Siri Chand ji. They also come and pay respects and worship Dhunas, but no offerings are made there. I reside in the room which is on the right side as one enters, and Sri Guru Granth Sahib and other religious books are in an almirah, in that room. The photo is not in the almirah, but that is in a nitoh.

(PW-6) :

I have seen the Dera in dispute, which is a branch of Khannaura. We worship the Samadhis, Shiv Mandir, Dhunas and photo of Baba Siri Chand ji.

XXn: By S.Charan Singh, counsel for the respondent committee.

Q. Do you believe in Guru Nanak ?

Ans:- We believe in everything. We also worship Shri Guru Granth Sahib.

Q. Do you worship Shri Guru Granth Sahib in this Dera ?

Ans: We go to offer respects to Shri Guru Granth Sahib, at another place. That Shri Guru Granth Sahib is in the house of Mohni, son of Doctor Sampuran Singh. He has kept Shri Guru Granth Sahib in his own house.

Q. Do you know Udasis ?

Ans:- They are sants.

Q. Do they worship Shri Guru Granth Sahib ji ? Ans: I do not know.

Our signatures were obtained on the present petition by Parkasha Nand.

Q. Do you know what is write in the petition ? Ans: I am not literate, how can I ?

They got my thumb impression, and the petition saying that was in respect of the institution being a Dera, or a Gurdwara.

... ..

(RW-2) :

... ..

XXn. by Mr. P.K. Palli, counsel for the petitioners.

The land attached with the Gurdwara is the one which was donated by Sant Singh. This gift was made more than 20-30 years back. It may be even more than 30 years. I do not know who actually built this Gurdwara, but it was built by the residents. I do not know if the Mahant appointed always used to be the Chela of the previous Mahant. The person who was appointed as incharge was selected by the residents.

Q. Can you name a single person who was appointed Mahant from the village ?

Ans: Sant Singh was such a person. No other incharge was from the village.

It is not correct that the person who was appointed as incharge was always the person staying with the previous Mahant in the Dera. There is a Smadh of Yog Bhayas outside the Dera. It is at a same distance from the wall, may be 5-7 karams. I do not know if the incharge of this institution have all been Udasis. There are five rooms in the Dera. The Parkash Asthan is in the room which is towards the well.

... ..

(RW-4) :

(Examination-in-chief)

I have seen the institution in dispute. I was Sarpanch last year. There are about 80-90 houses of Jat Sikhs of Loohwan Got in this village, only 15 years ago and I have been seeing this institution as a Gurdwara since then. I do not know who established this. The only object of worship in this Gurdwara is Guru Granth Sahib. When I came to this village Sewa Nand was the incharge. There is Parkash of Guru Granth Sahib in the morning when people come to offer respects and those who can read and write recite the Path of Guru Granth Sahib. Kirtan is recited only on Sangrand days. In addition to this, two Gurpurabs, namely that of Guru Nanak Dev ji and Guru Gobind Singh ji are celebrated. There is no other object of worship in this Gurdwara. I go to this Gurdwara daily. I visited the Gurdwara, even today. What I have mentioned above is the programme since I came to this village.

Xxn: by Mr. P.K. Pall, counsel for the petitioners.

There are five rooms in this building. As one enters the building, the Parkash Asthan is towards the right. There is a Smadh outside the building at a distance of 5-7 karams but I cannot say whose Smadh it is. The land in which the Smadh is situated does not relate to the Gurdwara. The land is said to belong originally to Sant Singh. I cannot say if the Smadh is in that very land of Sant Singh. Sewa Nand is a Sikh having keshas and is a Granthi in the Gurdwara. It is not correct that Sewa Nand is illiterate. He can read and write. It is also incorrect that he does not recite Path of Guru Granth Sahib."

22. A perusal of the relevant extracts of the statements of the witnesses establishes that the Dera has idols of Shiv ji, Baba Siri Chand ji and Bhagwan Krishna as well besides having two Samadhis where Aarti is performed. This would establish it is not strictly being used as a Sikh Gurdwara thereby defeating the language of Section 16(3)(iv).

23. The next requirement of the place being established for use of Sikhs or in the memory of martyr, saint or a historical person also does not emerge from the evidence adduced by the appellants under Section 7(i). Therefore, both the parameters contained in Section 16(3) and (4) do not manifest themselves in the

evidence adduced in support of the institution, to conclude the plea of the institution being a Sikh Gurdwara.

24. As noticed above, The Hon"ble Supreme Court in *Shiromani Gurdwara Prabandhak Committee, Amritsar v. Mahant Kirpa Ram and others* (supra) held both the conditions to be conjunctive and since the facts and evidence on record do not offer themselves to satisfy the ingredients of Section 2, there would be little hesitation to say that the impugned order of the Gurdwara Tribunal is erroneous with a finding that the institution namely the Dera situated in Village Loohwan is a Sikh institution, founded on absolutely no evidence, we would unhesitatingly set it aside particularly when none of the signatories to the application under Section 7(1) even testified in support of their plea.

25. The witnesses examined also could not conclusively establish that the institution was either established by the Sikhs or was being used by Sikhs as a Gurdwara.

26. For the aforesaid reasons, both the appeals are accepted and the impugned order is set aside.