

(2015) 04 P&H CK 0297
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 541 of 1994 (O&M)

State of Punjab and Others	Vs	APPELLANT
Mahant Jatinder Dass Chela and Others		RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 13, 13(1), 13(2)(a), 13(3)(a), 14
Penal Code, 1860 (IPC) — Section 120-B, 406, 408, 420
Pepsu Tenancy and Agricultural Lands Act, 1955 — Section 10, 2
Punjab General Clauses Act, 1898 — Section 2(46), 4-A, 6
Punjab Laws (Application) Act, 1957 — Section 3
Punjab Laws (Extension No. 1) Act, 1957 — Section 6
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 4, 7
Religious Endowments Act, 1863 — Section 22
Sikh Gurdwaras Act, 1925 — Section 3, 3(4)
States Reorganisation Act, 1956 — Section 11, 2(b), 2(c), 3(1), 4(1)

Citation : (2015) 3 RCR(Civil) 476

Hon'ble Judges : Surya Kant, J;Raj Mohan Singh, J

Bench : Division Bench

Advocate : Ashwani Talwar and Sunil Kumar Vashisht, A.A.Gs., for the Appellant; M.L. Sarin, Senior Advocate and Ankita Sambyal, Advocates for the Respondent

Judgement

Surya Kant, J.—We propose to decide LPA Nos. 541, 542, 543, 793, 794 and 797 of 1994 preferred by the State of Punjab and its authorities and LPA No. 1306 of 1994 filed by Mahant Madan Mohan Dass Chela Mahant Atma Dass, Mandir Thakur Dwara Bihari Dass Wala, Rajpura, Patiala along with CWP Nos. 4575 of 1991; 3762, 3586, 14844, 14532 and 14529 of 1996; 5885 and 13515 of 1997; 15892 of 2004; 11537 of 2005; 18313 of 2006; 11136 of 2007; 3174, 6988, 10064, 2712, 9690 of 2008; 10438 of 2009; 1428 of 2010 by way of a composite order as the issues that arise for consideration in these cases are broadly common in nature. The brief facts of each case are also being distinctly

noticed.

2. We also propose to treat LPA No. 541 of 1994 as the lead case amongst the Appeals though the short order under appeal in that case dated 01.02.1994 draws its reasons from the judgment dated 14.01.1994 rendered by learned Single Judge in CWP No. 7142 of 1992 (Dera Sullar, Tehsil and District Patiala vs. State of Punjab etc.) against which State of Punjab has preferred LPA No. 542 of 1994. Similarly, amongst the writ petitions, we propose to treat CWP No. 18313 of 2006 as the lead case wherein the petitioners have laid challenge to the constitutionality of "Farman-i-Shahi" dated 18.04.1921 AD issued by the Princely State of Patiala which has been held to be a valid "law" by the learned Single Judge vide his judgment under challenge in these batch of Appeals. The facts giving rise to LPA No. 541 of 1994 may be noticed briefly for the correct appreciation of the principal controversy.

LPA-541-1994 (State of Punjab etc. vs. Mahant Jatinder Dass)

3. Mahant Jatinder Dass (first respondent) - alleged chela (disciple) of Narotam Dass who was the Mahant of Mandir Dun, Patiala, filed CWP No. 7582 of 1991 for quashing of the show-cause notice dated 26.02.1991 (Annexure P7) issued by Financial Commissioner Revenue, Punjab whereby his explanation for frittering away the properties of Dera Bir Kheri Gujran and Mandir Doon at Patiala was sought. The show cause notice was based upon a report of Deputy Commissioner, Patiala to the effect that in total disregard to the terms and conditions of his appointment and also in violation of Farman-i-Shahi, the Mahant of Dera had entered into an Agreement of Exchange of dera land/property measuring 32 bighas 7 biswas situated within Patiala city, with the land of one Krishna Devi measuring 37 bighas situated at Haridwar (now in Uttrakhand). It was further alleged that the Mahant appeared in Civil Court and made a statement in support of the exchange to secure a collusive decree.

4. Mahant Jatinder Das challenged the above-stated show cause notice asserting that State had no right to interfere in the performance of his religious duties. He claimed that the mandir and dera belong to Bairagi Sadhus and their Sect. The land measuring 32 bighas 7 biswas was attached to Mandir Dumbwala which was being managed by him as a Mahant. He further claimed that the Bhekh (religious congregation) of Bairagi Sadhus decided to build an Ashram at Haridwar and for that purpose he entered into an agreement for exchange of land with Krishna Devi. The exchange was acted upon by the parties who got possession of their respective land at Patiala and Haridwar. The entries in the revenue record were also made. Thereafter, Krishna Devi filed a suit for declaration of her title on the basis of exchange deed dated 18.12.1989 wherein he filed his written statement admitting the factum of exchange agreement; his statement was recorded by Civil Court in which he had to admit the correct facts and consequently the judgment and decree dated 08.05.1990 (Annexure P1) were passed. Mutation was then sanctioned in favour of Smt. Krishna Devi.

5. Mahant Jatinder Dass further averred that pursuant to a letter sent by the Officer-in-Charge, Branch Office of Dharmarth Board at Patiala, a case under Section 420/406/408/120-B IPC was registered against him and Smt. Krishna Devi vide FIR No. 59 dated 22.02.1991 alleging that he exchanged the land of mandir/dera without prior permission of State Government for which he had no right whatsoever. The first respondent was arrested in that case. After his release on bail on 08.03.1991, Mahant Jatinder Dass immediately obtained stay of further proceedings as also against his dispossession from this Court.

6. The first respondent also asserted that he was entitled to manage the affairs of the religious institutions as per Hindu law in view of the protection granted under Article 26 of the Constitution and that the State Government or its authorities had no jurisdiction to interfere with his religious affairs through the impugned show cause notice or otherwise. The competence of Deputy Commissioner, Patiala to recommend the removal of Mahant or to direct the Sub Divisional Officer, Patiala to take charge of all properties of Mandir, was also questioned.

7. The first respondent claimed that vide notification No. 2 dated 13.02.2006 (BK) issued by Sardar Sahib Deodhi Mualla though the Dharmarth Board was constituted for the management of Religious Institutions but vide subsequent notification No. 11 dated 04.04.2006 (BK), it stood clarified that the said Board was there to look after Gurdwaras and Deras of Sikh Sampradaya only and it had no control over the religious institutions of non-Sikh Sampradaya. Dharmarth Board or its Branch Office at Patiala thus has no authority to intermeddle in the affairs of a Dera or a Mandir managed by a non-Sikh religious denominations.

8. State of Punjab and its authorities in their written statement controverted the claim and raised a preliminary objection that the first respondent himself applied (Annexure R1) for his appointment as Mohtmim of Dera Dumbwala. He was so appointed under the Financial Commissioner (Revenue's) Standing Order No. 7 dated 19.10.1983 (Annexure R2). It was expressly stipulated in the terms and conditions of appointment that the first respondent shall not alienate, transfer, sell, mortgage, exchange or lease etc. the land or property of Dera without prior approval of State Government. The first respondent in fact sought permission of State Government to exchange the Dera land but his application was rejected, it being not in the interest of Dera. Despite that the first respondent exchanged highly valuable urban land of Dera with the agricultural land of Krishna Devi at Haridwar thereby causing a loss of crores of rupees to the Dera. The judgment and decree passed in a declaratory suit filed by Smt. Krishna Devi against the first respondent were alleged to be collusive.

9. The official respondents further averred as follows as to how the land came to be vested in the Dera:-

"The land of the dera was originally donated Mai Aas Kaur of the Royal Family of erstwhile Patiala State for the maintenance of the dera, dhoop, deep, punarth

food for sadhu and poor etc. Later on 2 bighas 12 biswas of more land was donated to this dera by the State in "Ijlas-i-Khas" on 15.7.1891. Copy of the proceedings of the Ijals-e-khas is annexure R/6 and its true translation is R/6/1 which layd down conditions that the land shall be only used for day to day expenses of the dera and Dhoop Deep etc. the land/property so donated could not be used for any other purposes. By entering into an agreement of exchange of land of the Dera the petitioner has violated the purpose for which the land was donated."

10. The stand of State authorities thus was that (i) 1st respondent himself sought his appointment as Mohtmim; (ii) the State Government appointed him subject to specific terms and conditions; (iii) he acted in derogation of those terms and conditions, namely, that he shall not alienate, transfer, sell, mortgage, exchange or lease etc. the land or property of Dera without prior approval of the State Government; (iv) he exchanged the Dera land causing immense loss to Dera even though his request for such exchange had been declined by State Government; (v) State of Punjab was not party to the civil suit filed by Krishna Devi against the first respondent; and (vi) that the criminal case was rightly got registered against the Mahant for he indulged in fraudulent exchange of Dera land. The action of the State Government in deciding to remove the writ-petitioner from Mohtmimship was, thus stated to be perfectly lawful and justified.

11. Some of the documents relied upon by the official respondents along with their written statement are also relevant to be noticed. The order dated 19.10.1983 (Annexure R2) appointing the first respondent as Mahant stipulates such appointment "...on the terms and conditions mentioned in column 6 of the enclosed performa...". Clause 6 of the enclosed pro forma categorically states that "he shall not alienate any dera property in any manner and will abide by the shahi Farman...".

12. The first respondent's application seeking permission of State Government for the exchange of dera land is attached as Annexure R/3. Copy of Farman-i-Shahi dated 18th April, 1921 AD has been appended as Annexure R/8/A. The respondents filed an additional affidavit of Deputy Commissioner, Patiala dated 10.09.1991 also explaining the following:-

"2. That Mohtmims are governed under Farman-i-Shai, a copy of the same showing the powers exercised and functions by Deodhi Maulla Department as circulated vide demi-official letter No. 1793 dated 30.10.1946 is annexed R/13. This record is very important to arrive at any conclusion.

3. That according to these powers invested vide Farman-i-Shahi dated 18.4.1921, Sardar Sahib Deodhi Maulle is Competent to recommend appointment and dismissal of a Mahant or a Mohtmim of the Religious Institution in the State. Thus all the religious institution belonging to different communities were kept by the Ruler in his own hands and the engagement of religious institutions is made through Sardar Sahib Deodhi Maulle who carries out and conveys His Highness

Gracious Commands.

4. That vide Daznarcha Commands dated 10.7.2000 Sardar Sahib Deodhi Maulla is further empowered by His Highness Shri 108 Maharaj Adhiraj Mahendra Bahadurji, that no Mahant Mutwali or Pujari is competent in his own capacity for leasing out lands and renting shops for any period whatsoever without the sanction of Sardar Sahib Deodhi Mualla.

5. That besides shows document an attested copy of Book No.IX Application for Maufiat of the revenue Department of Patiala State is enclosed at Annexure P/14 and its English translation is annexure P/14-0 which clearly shows that the land attached to Dera Dumb was deposited by No. 1 Sahiba Aas Kaur a member of ruling family towards Baun Dharmarth under Dharam Sanklap for the development of State.

6. That a close perusal of this document will reveal that land is not owned by Mahant but sponsored by the Government."

(emphasis applied)

13. Learned Single Judge albeit allowed the writ petition of 1st respondent by a short order dated 01.02.1994, following his views taken in the lead case of Dera Sullar. The relevant extracts of the short order are as follows:-

"The matter stands concluded in favour of the petitioner by my judgment recorded in Civil Writ Petition No. 7142 of 1992 Dera Sullar, Tehsil and District Patiala v. The State of Punjab etc. decided on January 14, 1994 wherein it has been held that Dharam Arath Board headed by the Deputy Commissioner has no jurisdiction to deal with the appointment of Mahant or Mohitmim of a non-Sikh religious institution. This writ petition is allowed and Annexure P-7 is quashed."

(emphasis by us)

14. We now deem it appropriate to briefly notice the facts of the case treated as the lead case by learned Single Judge i.e. CWP No. 7142 of 1992 (Dera Sullar Tehsil and District Patiala vs. State of Punjab etc.) which is also the subject matter of challenge in LPA No. 542 of 1994.

LPA-542-1994 (State of Punjab and Ors. vs. Dera Sullar and Anr.)

15. Dera Sullar through Mahant Jaspal Dass, Chela late Mahant Braham Rattan, Tehsil and District Patiala approached this Court (CWP No. 7142 of 1992) for quashing of the public notice dated 12.03.1992 (Annexure P9) whereby Deputy Commissioner, Patiala informed the general public that Mohtmim of Dera Sullar was required to be appointed by State Government after the death of its previous Mahant Shri Braham Rattan and any person who fulfilled the prescribed qualifications could apply within a period of 15 days, provided that the applicant belonged to Udasi Sampradaya. Various other terms and conditions were also stipulated in the Public Notice including that the person so appointed shall not be authorized to sell, mortgage or create any Trust regarding immovable property of

the Dera. Besides seeking the quashing of Public Notice, Mahant Jaspal Dass also assailed the forwarding letter dated 12.05.1992 (Annexure P10) of SDO (Civil) addressed to the Tehsildar, Patiala for giving due publicity to the above-mentioned public notice to the village people. His claim was that Mohtmimship of Dera was always based upon succession devolving from Guru to Chela. He claimed that Mahant Braham Rattan during his lifetime had executed a registered Will nominating his chela, namely, Jaspal Dass to be the next Mahant after the death of the former as per the customs and rituals of Udasin Sampradaya though subject to approval by Sants, Mahants and local inhabitants in a Congregation. It was further claimed that the petitioner was duly installed as Mahant of the Dera following the established customs on 26.04.1974 after the death of Mahant Braham Rattan on 04.04.1974.

16. The writ-petitioners pertinently made the following averments about himself in paragraph 5 of the writ petition:-

"That Mahant Jaspal Dass was minor at the time of his appointment as Mahant and has been brought up under the best traditions of the Udasin Samperdai by his mother who also happens to be a widow of late Mahant Braham Rattan. At the time of his appointment Mahant Jaspal Dass was of about three years and is now aged about 21 years. It is he who is managing the affairs of the petitioner institutions as its lawful Mohtimim and there has been no invasion on his rights..."

(emphasis applied)

17. Mahant Jaspal Dass in paragraph 6 of the writ petition further averred that respondent No. 5 (Mahant Ram Sarup Dass) also claimed himself to be a chela of Mahant Braham Rattan and brought a suit against him and his mother (Darshana Devi) for possession of the Dera property in the year 1977. The Civil Court dismissed that suit vide judgment and decree dated 25.11.1985 and so was the fate of the first Civil Appeal which was turned down on 30.01.1987. Mahant Jaspal Dass further averred that respondent No. 5 has been dragging him and his mother into one frivolous litigation or the other even after the decision of Civil Court(s) and it was on the complaint of respondent No. 5 only that the mother of Mahant Jaspal Dass received a notice dated 22.06.1990 (Annexure P5) in relation to the alleged dispute "regarding possession of Dera Sullar, after the death of Mahant Braham Rattan...".

18. Mahant Jaspal Dass further alleged that though the impugned notice was without any authority in law yet he contested it by filing a reply, but instead of dropping the proceedings in the light of the Civil Court judgment and decree in his favour, fresh claims were invited for appointment of Mohtmim on the pretext that there was no lawfully-appointed Mahant after the death of Braham Rattan.

19. Mahant Jaspal Dass thus claimed that he was appointed as Mahant following the "principle of succession" from Guru to Chela on the basis of a registered Will executed by Mahant Braham Ratan and as per the rituals of Udasin sect and that the State Government had no authority to interfere with the management of

such religious affairs.

20. The official respondents have reiterated the same plea as taken by them against Mahant Jatinder Dass, namely, that the appointment of Mahant of the Deras is governed by Farman-i-Shahi dated 18.04.1921 AD issued by the then Maharaja of Patiala which still carries the force of "law" and since appointment of Mahant Jaspal Dass was never approved by State Government, the entries in the revenue record manipulated by him through revenue officials were inconsequential. The Civil Court judgment and decree passed in a suit inter se between Mahant Jaspal Dass/his mother on one hand and respondent No. 5 on the other, were claimed to be not binding as the State of Punjab was not a party defendant. The allegation of contravening Articles 25 and 26 of the Constitution are also controverted as the appointment of Mohtmim/Mahant by State Government was claimed to be in accordance with law which did not interpose the religious affairs.

21. The official respondents have taken yet another interesting plea on facts as according to them "...Shri Jaspal Dass and his mother Smt. Darshana Devi got the mutation sanctioned in his favour in connivance with the revenue officials with a view to grabbing 675-bighas 15 biswas of agricultural land donated by Maharaja Karam Singh for the institution in 1891 Bikrami Samvat. Sh. Jaspal Dass in connivance with the revenue officials and by taking the advantage of illegal entries in the revenue record in his name has alienated and has allowed encroachments on the land to the extent of 669 bighas 6 biswas. And now only 6-09 biswas is left with the Dera. The alienation has been made in favour of Smt. Darshana Devi, his mother, and others. Copies of jamabandis are attached as annexure R/6. Copies of true translation would be produced at the time of arguments."

(emphasis applied)

22. The principal issue that arose for determination before the learned Single Judge, thus, was "whether the appointment of Mohtmim of a Dera was regulated and controlled by the dictate of Farman-i-Shahi?" And if so, "what are the mandatory conditions or rituals required to be followed for appointment of a Mohtmim?" and "if a Mohtmim or Mahant is appointed not as per the Farman-i-Shahi, whether such appointment or installation would withstand the legal force?"

23. After an extensive reference to the facts as pleaded by the parties, learned Single Judge has amplified the judgment and decree passed by the Civil Court rejecting the claim of respondent No. 5 against Mahant Jaspal Dass and his mother. The official viewpoint that Farman-i-Shahi issued by the Ruler of Patiala State is a "law" and it still regulates the appointment of a Mahant or Mohtmim of Religious Institution (Dera) and that the Financial Commissioner Revenue is competent under the post-Independence regime to decide all such matters as per the Allocation of Business Rules 1986, is duly noticed.

24. Learned Single Judge has thereafter indubitably held that Farman-i-Shahi is

"law" and continues to be a law till repealed or substituted by the competent Legislature, yet has further viewed that Farman-i-Shahi does not vest the Deputy Commissioner or the Financial Commissioner with the powers to appoint the Mahant of religious institutions hence the impugned show cause notice was totally without any authority of law.

25. Learned Single Judge has divided Farman-i-Shahi in two parts: the first part prohibits the entries of mutation of land in favour of Mahant who might be entitled to receive honour like "headgear", "muafi" etc. from the State till such time his appointment is approved by the State Government. The second part deals with the ownership of the property attached to religious institutions which cannot be entered in the name of Mahant and instead shall be the property of the religious institution. Learned Single Judge has also held that since the land measuring 675 bighas 15 biswas was donated to Dera by Maharaja Karam Singh in 1891 BK i.e. much before issuance of Farman-i-Shahi and whatever entries were to be made in the mutation, the same already stood made, hence Farman-i-Shahi was inapplicable in the case in hand. To say it differently, the Farman-i-Shahi in question is not a law to operate retrospectively.

26. It has also been held that Farman-i-Shahi would not regulate the appointment of Mahant or Dera affairs when it was not a case of approval of appointment of Mahant of the kind who was entitled to receive any Headgear, Robe of Honour or fixed stipend from the Government.

27. Learned Single Judge then referred to various notifications, circulars/orders etc. issued during the time of Ruler of Patiala State or post-Independence to conclude that Farman-i-Shahi was meant to set up Dharmarth Board and the office Circular No. 2 dated 13.02.2006 (BK) clarifies that the Dharmarth Board was constituted for controlling the property and administration of Gurdwaras, Deras and other religious institutions of Sikh Sampradaya only. It has no control over the religious institutions of non-Sikh sects.

28. Learned Single Judge relied upon a decision of this Court in Krishna Gopal Kataria and Another Vs. State of Punjab and Others, AIR 1986 P&H 328 : (1987) 1 ILR (P&H) 145 to conclude that Farman-i-Shahi, even if a law, as contemplated by Article 13 of the Constitution, was not enforceable or workable. The writ petition was consequently allowed and the public notices inviting claims for appointment of Mahant of Dera Sullar were quashed.

29. A few more writ petitions filed by the alleged Mahants or Mohtmims of Deras complaining against the interference by State Government in the management of their religious affairs, like CWP No. 7582 of 1991 filed by Mahant Jatinder Dass have been subsequently allowed by learned Single Judge following his judgment in Dera Sullar's case. These short orders are also challenged by the State of Punjab in the accompanying Letters Patents Appeals.

LPA-543-1994 (State of Punjab and Ors. vs. Dera Samadh Baba Sarv Viyapi)

30. State of Punjab has assailed the order dated 01.02.1994 of learned Single Judge whereby CWP No. 2940 of 1992 filed by respondent-Dera Samadh Baba Sarv Viyapi, Patiala through its Mahant Parmeshwar Das Chela Mahant Parkashanand has been allowed following the reasons assigned in Dera Sullar's case (supra) and consequently, mutation of Dera property sanctioned in favour of Dharmarth Board has been quashed with a further direction to the State authorities not to interfere with the management of Dera.

31. The above stated Dera sought a Writ of Prohibition to restrain the State of Punjab and its District Administration from interfering in the rights of Mahant/Mohtim in respect of management of Dera and its properties. The Dera statedly belongs to Udasin Sect and its last Mahant, Mahant Prakashanand Chela Mahant Kishan Dass, died on 12.01.1992. Parmeshwar Dass through whom the Dera filed the writ petition claimed to have been chosen as the successor Mahant on 28.01.1992 as per customs of Dera of Udasin Sampradaya; the proceedings of the election of Mahant were duly recorded. The writ-petitioner alleged that on 07.02.1992, the revenue Patwari accompanied by Kanungo circle visited the Dera and sought information and particulars of various tenants and the properties of Dera as also the amount of rent payable by each tenant. The newly-appointed Mahant claims to have visited the Patwari's office on 12.02.1992 and requested for substituting the name of new Mahant and make necessary entries in the Rapat Roznamcha but the revenue officials declined to do so unless ordered by Tehsildar or the Deputy Commissioner. The Mahant then moved an application before the Deputy Commissioner, Patiala (Annexure P1) but instead of directing the revenue authorities to enter his name in the revenue record, the Deputy Commissioner referred the application to Dharmarth Board, clearly suggesting that the internal affairs of the Dera were to be controlled by that Board. Mahant Parmeshwar Dass thus sought prohibitory directions on the grounds identical to those taken in Dera Sullar's case (supra).

32. State of Punjab contested the claim of Mahant Parmeshwar Dass denying his appointment as Mahant and reiterating its plea that in terms of the powers conferred under the Farman-i-Shahi, the appointment of Mahant was required to be made by the State Government. It is in this backdrop that the learned Single Judge has allowed the writ petition by a brief order adopting the reasonings assigned in Dera Sullar's case (supra).

LPA-793-1994 (State of Punjab and Ors. vs. Mahant Sant Parkash and Anr.)

33. This appeal by State of Punjab and its District Administration, Patiala assails the order dated 18.01.1994 of the learned Single Judge whereby the writ petition filed by respondent-Mahant Sant Prakash Chela Mahant Aad Ram @ Yad Ram of Dera Bir Kheri Gujran, Patiala has been allowed for the reasons assigned in Dera Sullar's case decided on 14.01.1994, holding that the Deputy Commissioner or the Dharmarth Board have no jurisdiction to interfere in the affairs of Dera or its properties. A consequential restraint order was also passed.

34. Mahant Sant Prakash filed CWP-5388-1991 claiming that the previous Mahant of Dera Bir Kheri Gujran, namely, Mahant Aad Ram @ Yad Ram, willingly relinquished his office in the year 1985. The Dera belongs to Udasin Bhekh Sadhus, who in a religious gathering held on 10.02.1985 appointed him as the new Mahant of Dera in place of his Guru. Dera had vast properties comprising 263 bighas land in village Sahabajpur and another 200 bighas 12 biswas land in village Bir Kheri Gujran. The petitioner-Mahant claimed that it was in the interest of Dera only that he entered into an agreement of exchange of the land of Dera in village Bir Kheri Gujran (i.e. 200 bighas 12 biswas) with the land of Santokh Singh and others situated at Village Sahabajpur measuring 201 bighas 4 biswas so that the entire land of the Dera could be consolidated at one place. The said agreement dated 16.08.1990 was given effect as possession of the land was exchanged and the Mahant acknowledged the claim of Santokh Singh and others in a civil suit which was decreed vide the judgment and decree dated 31.10.1990. Resultantly, the Dera land in village Bir Kheri Gujran was transferred in favour of Santokh Singh and others while their land in village Sahabajpur was mutated in the name of Dera. The above-stated transaction led to registration of FIR No. 58 dated 22.02.1991 under Section 420, 408, 406, 120-B IPC at PS Kotwali Patiala as the exchange was made without any permission of the State Government and the Civil Court decree was suffered by Mahant with a view to cause loss to the Dera.

35. Deputy Commissioner, Patiala further recommended the Financial Commissioner, Revenue for the removal of Mahant of Dera and pursuant to those recommendations, the Financial Commissioner on 20.03.1991 directed the writ-petitioner to show cause as to why he be not removed from the Mahantship of Dera. The above-stated action of the State authorities was challenged by Mahant Sant Parkash raising those very grounds which were taken by writ-petitioner in Dera Sullar's case (supra).

36. The State Government defended its action on the strength of its powers purportedly traceable under the Farman-i-Shahi and, inter alia, maintained that the writ-petitioner had caused immense loss to Dera property. Learned Single Judge has passed a brief order allowing the writ petition for the reasons assigned by him in Dera Sullar's case.

37. State of Punjab took a pertinent plea during the course of hearing of these appeals that the writ-petitioner (Mahant Parmeshwar Dass) is misusing the property of Dera Bir Kheri Gujran for commercial purposes and has set up a school with profit motive. Mahant has rebutted those allegations and placed on record Registration Certificate dated 03.09.2008 (Annexure A1 in Civil Misc. No. 4370-LPA-2014) re: constitution of the Society "Udaseen Educational Society" under the Societies Registration Act, 1860, for "non-profitable activities" to be done on "no-profit-no-loss basis". The Memorandum of Association of the Society has also been appended which suggests that majority of the members of Society are local residents or "agriculturists" who possibly have no concern with Udasin

sect. The Society has set up the school with infrastructure valuing crores of rupees.

LPA-794-1994 (State of Punjab etc. vs. Krishna Devi (died) and Anr.

38. The instant appeal has arisen out of CWP-7746-1991, allowed by learned Single Judge vide short order dated 01.02.1994 following the reasons culled from Dera Sullar's case.

39. Krishna Devi daughter of Ramji Dass Singh r/o. Haridwar (UP) filed the above-stated writ petition seeking a direction to the State of Punjab and its District Administration, Patiala to hand over possession of the land measuring 32 bigha 7 biswa situated within the revenue estate of Patiala city and fully described in the headnote of the writ petition. She also sought restoration of her possession on the house situated near Mandir Doom at Patiala, besides damages for auctioning the standing wheat crop etc.

40. Krishna Devi claimed that she was owner in possession of land measuring 37 bighas at Haridwar. She entered into an agreement with Mahant Jatinder Dass Chela Mahant Narotam Dass of Mandir Doom, Patiala on 18.12.1989 for exchange of the above-stated land in lieu of land measuring 32 bighas 7 biswas of the Mandir Doomwala, situated inside Patiala city. The Mahant wanted the writ-petitioner's land at Haridwar for construction of Dera whereas she agreed to take the Dera-land at Patiala. Both the parties acknowledged the exchange through Civil Court decree dated 21.02.1990. Mutation No. 16939 was also entered by the Tehsildar, Patiala in her favour.

41. However, the Deputy Commissioner, Patiala got FIR No. 59 dated 22.02.1991 registered under Section 420, 408, 406, 120-BIPC against the writ-petitioner as well as Mahant Jatinder Dass at Police Station Kotwali, Patiala. Mahant Jatinder Dass challenged those criminal proceedings before this Court and despite an order passed on 21.03.1991 to maintain status quo re: possession, the standing wheat crop of petitioner was auctioned on 17.04.1991 and her house was also taken into illegal possession and locked by the district administration.

42. Krishna Devi claimed that the State authorities have no jurisdiction to interfere in the affairs of Dera with whom she had entered into the agreement of exchange. State of Punjab contested her claim taking all those pleas which were taken in the case of Mahant Jatinder Dass. It is in this backdrop that learned Single Judge followed his reasons given in Dera Sullar's case and allowed the writ petition briefly.

LPA-797-1994 (State of Punjab and Ors. vs. Mandir Thakar Dwara Bihari Dass Wala and Ors.)

&

LPA-1306-1994 (Mahant Madan Mohan Dass vs. State of Punjab and Ors.)

43. Of these two appeals mentioned above, one is directed by State of Punjab

and its authorities and the second by respondent No. 7 - the alleged Mahant, namely, Madan Mohan Das against the judgment dated 04.01.1994 whereby learned Single Judge has allowed CWP No. 3284 of 1989 preferred by Mandir Thakar Dawara Bihari Dass Wala through its Trust Committee represented by Hans Raj Garg - member of that Committee at Old Rajpura, District Patiala.

44. Mandir Thakar Dawara Bihari Dass Wala challenged the action of State Government and its authorities in taking over the possession, control and management of the Mandir property comprising Temple, Janjghar, shops, houses and agricultural land. It was averred that the writ-petitioner is a religious and charitable institution and its affairs are being run by the Trust Committee from the last 35 years. There is a temple of Lord Krishna, Radhaji, Lord Hanuman and Lord Vishnu, open for public worship. To offer prayers as per the Hindu religious ceremonies, a regular Pujari has been appointed by Trust Committee. The complex includes a Janjghar, various rooms and shops as well as a house for the Pujari in addition to huge open space adjoining the Thakar Dawara complex. The institution owns agricultural land measuring 37K - 14M.

45. The writ-petitioner specifically pleaded that the properties of the institution had no concern with Deodhi Mualla, namely, the Ruler of erstwhile State of Patiala as none of these properties were given by way of a gift, grant or concession by Patiala State except the exemption against payment of land revenue granted by Maharaja in 1885 BK. The petitioner-institution further averred that as per historical document of "Kaifiat Dehi" prepared at the time of first settlement regarding the Shajra Nasab (pedigree), rights and title of the proprietors, there was a mention of the petitioner-institution as Thakar Dawara Bihari Dass Wala. This document reveals that Rajpura town was founded by Raja Todar Mal during the regime of Mughal Emperor Akbar and the petitioner-institution was in existence from the time immemorial. The town of Rajpura was a part of Patiala State and the revenue record prepared by the Patiala State, namely, jamabandi for the year 1960-61 BK, recorded the title of the property as Thakar Dawara Bihari Dass Wala under the management of Sarup Dass Mohtim.

46. The writ-petitioner further averred that Thakur Dawara received huge gifts comprising land/immovable properties in the year 1956 and at that time, one Atma Das was its Mohtim. After the death of Atma Das, Madan Mohan Das who is impleaded as respondent No. 7 in the writ petition (appellant in LPA-1306-1994), claimed himself to be a Chela of Atma Das and filed a suit for injunction in the year 1976 against the Trust Committee propounding a Will allegedly executed in his favour. The civil suit was dismissed by all the Courts upto the Hon"ble Supreme Court on 20.04.1988.

47. It was also averred on behalf of Thakur Dawara that Issue No. 6 in the above-stated Civil Suit was "whether the property of the institution was managed by Trust Committee consisting of the members who were impleaded as defendants" and that all the Courts concurrently decided issue No. 6 in favour of the Trust Committee.

48. Despite thereto, however, the Tehsildar and other Revenue officers along with a huge police force reached the petitioner-institution on 01.06.1988 and forcibly took possession of the institution after securing signatures of one of the Trustees by putting him under pressure and coercion. Various entries to this effect were made by the District authorities.

49. This Court at the time of preliminary hearing on 15.03.1989 directed the parties to maintain status quo re: possession. Thereafter, when both the parties were heard on 17.08.1989 and the writ petition was admitted, the respondent-authorities were further restrained from interfering with the possession, management and control of the institution and the properties attached thereto.

50. Learned Single Judge vide a hard-hitting order has held that the authorities under the oral directions of the then Deputy Commissioner have acted in the most high-handed manner and took forcible possession of the petitioner's property in total disregard of the law even though there was a categorical finding in the civil suit filed by respondent No. 7 that it was Trust Committee who was running the affairs of the temple.

51. The written statement filed by the State of Punjab and its officers in this case controverts the control and management of the Trust Committee and claims respondent No. 7 as the person at the helm of affairs. It is further claimed that possession of the petitioner-institution and its properties had already been with the Deputy Commissioner since 01.06.1988 and since then the "puja" was being performed by Pandit Vyas Kumar and Pandit Bahu Raj, appointed by the Deputy Commissioner. Farman-i-Shahi has again been cited as the source of power to take over the management and control of such like religious institution(s).

52. Learned Single Judge while relying upon the findings of Civil Court in the previous round of litigation between Trust Committee and respondent No. 7 has ruled that the District Administration had no power whatsoever to interfere in the religious affairs of the petitioner-institution and it acted in a totally illegal manner.

CWP-4575-1991 (Bhai Waryam Singh vs. State of Punjab etc.)

53. Amongst the bunch of writ petitions, CWP-4575-1991 has been filed by one Bhai Waryam Singh claiming himself to be Mohtmim of Gurdwara (Dharamshala) of Baba Daya Ram at Kapurthala. He has challenged the orders passed by Revenue authorities appointing a Receiver in respect of the land and property of the Dharamshala as there arose a dispute between the petitioner and private respondent No. 5 etc. on the appointment of Mohtmim or Mahant of the subject Dharamshala. The writ petition was filed a few days after the decision of learned Single Judge in Dera Sullar's case. The record reveals that no interim stay was granted but subsequently learned Single Judge directed to put up this case before Division Bench along with LPA preferred by the State of Punjab in Dera Sullar and other connected cases.

CWP-3762-1996 (Dera Kalan Mandir Thakur Ji vs. State of Punjab etc.)

54. Dera Kalan Mandir Thakurji (Bada Dera) at Dhanaula Kalan, Tehsil and District Barnala impugns the order dated 08.02.1996 (Annexure P2) passed by Financial Commissioner, Revenue Punjab whereby Mohtmim of the Dera has been removed. The order is challenged primarily on the ground that the petitioner is a religious and charitable institution of Bairagi Sect and it follows the rule of succession from Guru to Chela and that the present Mohtmim was appointed by Bhekh, namely, the Congregation of religious fraternity as per their past convention.

55. It was averred that the Dera is in existence for the last over 100 years and its affairs have always been managed by the Mahant/Mohtmim appointed by the rule of succession from Guru to Chela. The Dera has vast property measuring 966K - 15M land within the Municipal limits of Dhanaula out of which more than 643K - 1M is in its physical possession whereas the remaining land is with the lessees. The possession of another piece of land measuring 3K - 12M where a retail outlet (petrol pump) was installed has been taken over by Revenue staff.

56. The present Mohtmim of the Dera is claimed to have been appointed on 03.01.1993 after the demise of his Guru Mahant Madan Mohan Dass.

57. The Financial Commissioner, Revenue, Punjab vide order dated 08/12.02.1996 has removed the Mohtmim in public interest observing that he misused his position while executing 99-years Pattanama (lease deed) and is thus guilty of mismanagement and acting against the interest of Dera.

58. State of Punjab has filed its written statement defending the impugned order on the ground that the Mahant of Dera had no power to "permanently" lease out or sell the property attached to the Dera without prior permission of State Government and that action was taken against him after receipt of various complaints. It is maintained that the institution was created by erstwhile State of Nabha for religious and educational purposes as well as for the stay of Sadhus and pilgrims. It is further claimed that the property vested in the State and not in the Mahant or Mohtmim. Reference has also been made to provisions of the Hindu Religious and Charitable Endowment Act and the Hindu law.

CWP-3586-1996 (Dera Dharamshala, Dhanaula Kalan vs. State of Punjab etc.)

59. Dera Dharamshala through its Mohtmim Dheeraj Dass Chela Khazan Dass has filed this writ petition with the averments identical to those made in CWP-3762-1996. The common order passed by Financial Commissioner, Revenue, Punjab for the removal of two Mohtmims including the petitioner herein, is under challenge. The defence plea taken by State of Punjab and its authorities is also the same as taken by them in CWP-3762-1996.

CWP-14532-1996 Dera Rudarpuri (Shivdwala) Dhanaula vs. State of Punjab etc.)

60. Dera Rudarpuri (Shivdwala), Dhanaula, District Sangrur (now District Barnala) through its Mahant/Mohtmim Sinder Puri Chela Ruderpuri has in this case challenged the order dated 11.09.1996 of Financial Commissioner, Revenue,

Punjab whereby the Mahant of petitioner-Dera has been removed on the ground that he illegally leased out the Dera land for a period of 25 years without prior permission of State Government and has thus acted against the interest of Dera. The grounds of challenge taken by petitioner Dera are identical to those raised in CWP-3762-1996.

61. State of Punjab and its authorities have defended the action of Financial Commissioner in the same pitch which they have raised in CWP-3762-1996.

62). It is most relevant to notice here that the petitioner-Mahant has filed an additional affidavit dated 18.12.2014 to build up the ground of hostile discrimination within the meaning of Article 14 of the Constitution and in its para-3, the particulars of various other religious institutions (deras) situated within the State of Punjab but located outside the erstwhile State of PEPSU have been furnished. It is further averred that all these deras were granted muafi by the then Rulers and some of them were awarded the annual stipend as well. The payment of stipend was stopped after the Independence. On this premise, it is alleged that the petitioner-institution and the institutions mentioned in para-3 of the affidavit are similarly-placed in every respect yet it is the petitioners alone who have been subjected to the rigors of Farman-i-Shahi while others have been exempted. It is thus averred that the applicability of Farman-i-Shahi qua selected religious institutions and its non-applicability on the other similarly-situated religious institutions renders this alleged piece of law totally discriminatory.

CWP-14844-1996 (M/s. Bharat Petroleum Corpn. Ltd. and Anr. vs. State of Punjab and Ors.)

63. The instant writ petition is an offshoot of CWP-14532-1996 filed by Dera Ruderpuri. M/s. Bharat Petroleum Corporation Ltd. and M/s. Kundan Lal Dharam Pal have also challenged the order dated 11.09.1991 of Financial Commissioner, Revenue, Punjab for the reason that Dera Ruderpuri has leased out its land to them for 25 years to set up a retail outlet. The Financial Commissioner while ordering the removal of Mahant for leasing out the dera land unauthorisedly, further ordered to seal the premises of retail outlet. The aggrieved petitioners have, therefore, challenged that order of Financial Commissioner.

64. The written statement filed by Sub Divisional Magistrate, Barnala broadly replicates the State's plea taken in CWP-14532-1996.

CWP-14529-1996 (Dera Talabwala vs. State of Punjab etc.)

65. This writ petition is at the instance of Dera Talabwala through its Mahant-cum-Mohtmim. It impugns the order dated 11.09.1996 (Annexure P2) of Financial Commissioner, Revenue, Punjab whereby the Mahant of petitioner-Dera has been removed for his act of selling the Dera land to Lal Chand s/o. Nand Ram without prior permission of the State Government. The Financial Commissioner has passed a common order for removal of Mohtmims of two Deras - one of whom has filed CWP-14532-1996. The parties in this case have

also raised their respective pleas similar to those taken in CWP-14532-1996.

CWP-5885-1997 (Samadh and Anr. vs. State of Punjab etc.)

66. The petitioner is a Samadh under the management of Pritam Gir Chela Harchand Faquir Sanyasi and is claimed to be a religious and charitable institution set up for worship by the Sanyasis (saints) etc. The institution owns huge chunks of immovable property measuring 821 kanal 12 marla in village Kalbanu, Tehsil Samana, District Patiala and is more than 100 years" old. The petitioner"s grievance is against the order passed by Deputy Commissioner, Patiala dated 23.04.1997 followed by another order dated 24.04.1997 (Annexure P1) of Sub Divisional Officer (Civil) Samana, regarding taking over the management and control of the petitioner-institution in purported compliance of the Deputy Commissioner"s order. Private respondents have also been impleaded against whom allegations have been made.

67. The official as well as private respondents have, through their respective replies, defended the action on the ground that petitioner No. 2 is guilty of mismanagement of the institution"s property and has sold 55K - 8M land to one Parkash Chand. A case under Section 406 IPC was registered in which petitioner No. 2 was convicted by the Sub Divisional Judicial Magistrate, Samana and his appeal was dismissed by Additional Sessions Judge, Patiala. The official respondents have maintained that the Deputy Commissioner was competent to take over the management and control through the Dharmarth Board. It is averred that the Samadh is a Dharmarth property and as per the Standing Order No. 7 (Annexure R/4), the Financial Commissioner, Revenue, Punjab alone is the competent authority to sanction the succession of heirs, namely, appointment of a Mohtmim and that petitioner No. 2 was removed from Mohtmimship as he had been found guilty of misappropriating the Samadh property.

CWP-13515-1997 (Samadh and Anr. Vs. State of Punjab and Ors.)

68. This petition is also filed by the Samadh of Village Kalbanu, Tehsil Samana and District Patiala through its Mahant Pritam Gir Chela Harchand Faquir Sanyasi, challenging the order dated 12.03.1997 (Annexure P1) of Financial Commissioner, Revenue, Punjab whereby that Mahant was ordered to be removed. The pleadings are identical to those of CWP-5885-1997.

CWP-15892-2004 (Mandir Shivala Bishan Dass Wala and Anr. vs. State of Punjab and Ors.)

69. The first petitioner - Mandir Shivala Bishan Dass Wala through its Manager/ Mahant/Mohtmim-cum-next friend and petitioner No. 2 - Suresh Chand Sharma have laid challenge to the orders dated 27.08.1985, 05.01.1988 and 27.07.2004 (Annexure P3, P5 and P16) respectively, passed by the Financial Commissioner, Revenue, Punjab. The last order pertains to the appointment of Mahant Narinder Dass Chela late Mohtmim Sham Lal (respondent No. 6) as Mohtmim of 1st petitioner - Mandir Shivala Bishan Das Sanauri Gate, Patiala. Vide the first order

dated 27.08.1985 (Annexure P3), one Sham Lal was appointed as Mohtmim of petitioner No. 1 in place of Kanhiya Lal and vide the second order dated 05.01.1988 (Annexure P5), the subsequent order dated 27.10.1987 (Annexure P4) annulling the appointment of Sham Lal, was cancelled and appointment of Sham Lal as Mohtmim was restored. The second petitioner appears to be the son of the Mohtmim who was removed in 1985 and he alleges that the impugned orders amount to illegal interference in the religious affairs of the first petitioner.

70. State of Punjab through the written statement filed by Deputy Commissioner, Patiala has defended the appointment of respondent No. 6 as the Mohtmim. It is alleged that after the death of Kanhiya Lal the then Mohtmim on 14.07.1977, petitioner No. 2, his mother, brothers and sisters, got the mutation sanctioned in their favour which was set aside on appeal as the property belonged to the Temple - petitioner No. 1 and could not have been mutated in favour of private persons. It is further averred that the mother of petitioner No. 2 filed a civil suit besides taking other recourses but all her efforts to retain the property failed. Kanhiya Lal is said have appointed "no Chela" during his lifetime. It is further averred that the entire temple property was donated by the then Ruler of Patiala State Maharaja Rajinder Singh and the land was granted Muafi as per the Commissioner's assessment orders dated 29.05.1908 (Annexure R-15). The property was thus, according to the respondents, regulated under the Farman-i-Shahi dated 18.04.1921 AD and now the Financial Commissioner, Revenue, Punjab is competent to appoint the Mohtmim.

CWP-11537-2005 (Mahant Meenu Kumar and Anr. Vs. State of Punjab and Ors.)

71. Petitioner No. 1 - who is 18 year-old, claims himself to be the Mahant of petitioner No. 2 - Dera Khakian Sanauri, Patiala, he being the Chela of Mahant Balram Chela Mahant Ram Sunder Dass. They seek quashing of the orders dated 14.07.1997 and 17.07.1997 (Annexures P5 and P6) passed by Financial Commissioner, Revenue, Punjab and Deputy Commissioner, Patiala, Dharmarth Branch, respectively, stating the removal of the Mahant of Dera Khakian. A writ of mandamus is also sought for appointment of first petitioner as Mahant/Mohtmim of petitioner No. 2. The Civil Court judgment and decree dated 27.08.1992 as well as the judgment dated 14.01.1994 of the learned Single Judge rendered in Dera Sullar's case (supra), are the backbone of all the contentions. Petitioner No. 2-Dera is statedly a religious and charitable institute and its Mahant is appointed by way of succession from Guru to Chela. It is claimed that previous Mahant Balram died on 09.04.1999 whereupon petitioner No. 1 was declared as the successor on the basis of a Will dated 05.03.1999. The petitioners have made allegations against the rival group led by one Mahant Arjan Puri Chela Mahant Gautam Puri and have further relied upon the judgment and decree passed in a Civil Suit between the two groups. It is further averred that removal of Mahant by the Financial Commissioner, Revenue, Punjab amounts to interfering in the religious affairs without any authority of law as held by this Court in Dera Sullar's case (supra). The State of Punjab has defended its

action taking broadly the same pleas as were pressed into aid by it in various other cases including Dera Sullar's case (supra).

CWP-11136-2007 (Sarve Samperdya Sadhu Mandal, Patiala vs. State of Punjab etc.)

72. Sarve Samperdya Sadhu Mandal Patiala, namely, a Sectarian body of Mahants and Sants has questioned the constitutional validity of Farman-i-Shahi dated 18.04.1921 AD, as according to them, it does not carry any force of "law" and is hit by Article 13(1) of the Constitution of India. Since the pleas taken in the instant writ petition are reiteration of those taken in CWP-18313-2006, it is not necessary to repeat the same for the sake of brevity.

CWP-3174-2008 (Bhan Singh vs. State of Punjab and Ors.)

73. The instant writ petition is truly a proxy legal battle on behalf of Dera Thakurdwara Ramana - respondent No. 5 as the petitioner claims that he and his brother are tenants on the dera land measuring 162K - 7M and their possession is duly protected under the Civil Court decree dated 08.10.1999. He has further alleged that respondent No. 4, namely, Sub Divisional Magistrate, Tappa demanded illegal gratification from the newly-appointed Mahant of Dera (Hukam Dass) and when the Mahant refused to oblige, respondent No. 4 by misusing his official position started harassing the Mahant. The petitioner was also directed to vacate the Dera land failing which physical possession would be taken forcibly, hence this petition was filed.

74. The official respondents have filed their reply/affidavit explaining that the petitioner is in possession of 159K - 5M of Dera land which he got in collusion with Mahant Jangir Dass and has not paid even a single penny towards lease money. It is further averred that the Mahant had no authority to give the Dera land on lease for a period of more than 3 years but the petitioner and his brother are in occupation of the Dera land from the last more than 36 years without paying any lease money. The legal averments made by the respondents are the reiteration of those taken in Dera Sullar or other cases.

CWP-6988-2008 (Ved Parkash and Ors. vs. State of Punjab and Ors.)

75. The instant writ petition has been filed by 17 residents of village Tapa, District Barnala with a view to counter the claim in CWP-3174-2008. The petitioners herein seek a mandamus to direct the State of Punjab and its authorities to appoint Mohtmim of Dera Thakur Dwara Ramana, Village Tapa, Barnala. They have made various allegations of misappropriation and embezzlement of Dera property against Mahant Jangir Dass from whom the writ-petitioner in CWP-3174-2008 is claimed to have taken the land on lease. The instant writ-petitioners obviously rely upon those very official documents which the State of Punjab has referred to in extenso in several written statements in the connected cases.

CWP-10064-2008 (Angad Dass vs. State of Punjab and Ors.)

76. The petitioner (Angad Dass s/o. late Mahant Malkiat Dass) claims himself to be the Chela of Mahant Jangir Dass and further asserts his possession over the Dera land measuring 336K in village Tapa. While claiming that he belongs to Bairagi sect he further proclaims to be the "Mahant" appointed by the Bhekh. He has made allegations against Hukam Dass - respondent No. 7 and the Deputy Superintendent of Police, Tapa, who are allegedly hellbent on forcibly dispossessing him from the land in his possession or his family members. The petitioner's claim, in a way, is similar to the one made in CWP-3174-2008 as he is also claiming right and interest in the Dera land through Mahant Jangir Dass, who is accused by some of the private respondents of gross irregularities and misuse of Dera assets.

CWP-2712-2008 (Dera Thakur Dwara Ramana vs. State of Punjab and Ors.)

77. The instant writ petition is a cross-case to CWP-10064-2008. Here, Dera Thakur Dwara Ramana of village Tapa and Mahant Hukam Dass - the alleged Chela of Mahant Jangir Dass have impugned the order dated 08.02.2008 (Annexure P8), the Ordinance dated 14.01.2004 (Annexure P9) and the complaint dated 28.09.2007 (Annexure P7). Vide order dated 08.02.2008, the Financial Commissioner, Revenue, Punjab has notified that upon the death of Jangir Dass of Dera Thakur Dwara on 23.11.2007, the State of Punjab has taken over the possession of Dera in public interest till the new Mohtmim is appointed. Petitioner No. 2 claims himself to be the Chela of Mahant Jangir Dass and the next Mahant/Mohtmim hence he has challenged the above-stated order. One Angad Dass also claiming himself to be Chela of Mahant Jangir Dass has filed CWP-10064-2008 wherein he has made allegations against petitioner No. 2 (by impleading him as respondent No. 7). Both writ-petitioners have thus made rival claims for their respective appointment as the next Mahant/Mohtmim after the death of Mahant Jangir Dass. The State of Punjab has not only alleged gross illegalities against Jangir Dass but have strongly controverted the appointment claim of petitioner No. 2 as well.

CWP-9690-2008 (Dera Shahi Samadahan vs. State of Punjab and Ors.)

78. Dera Shahi Samadahan through Mahant Depinder Dass, Dal Daliya Chowk, Patiala has impugned the order dated 09/10.04.2008 (Annexure P10) passed by the Financial Commissioner, Revenue, Punjab and has further laid challenge to the validity of Farman-i-Shahi dated 18.04.1921 AD issued by erstwhile Ruler of Princely State of Patiala. Vide order dated 09/10.04.2008, the Financial Commissioner, Revenue, Punjab has notified that upon the death of Jagat Ram, Mohtmim of Dera Shahi Samdahan, Patiala on 04.04.2008, the State of Punjab has taken over possession of the Dera in public interest till the appointment of new Mohtmim.

79. So far as the challenge to Farman-i-Shahi is concerned, the petitioner-Dera has repeated the grounds taken in CWP-18313-2006. The respondents have also defended their action on the same plank besides disputing the status of Depinder

Dass as the Chela of Mahant Jagat Ram or that he was appointed as Mahant on 13.12.2005, namely, during the lifetime of the previous Mahant Jagat Ram. According to Depinder Dass, he was nominated as the next Mahant by Mahant Jagat Ram in a congregation of Sadhus and Mahants held in the Dera premises on 13.12.2005.

CWP-10438-2009 (Dera Shahi Samadhan vs. DC, Patiala and Ors.)

80. This writ petition is also an offshoot of CWP-9690-2008 as it has been filed by Dera Shahi Samadhan through its alleged Mahant Depinder Dass challenging the order dated 21.06.2009 (Annexure P15) passed by Deputy Commissioner, Patiala for auctioning the land of Dera. The grounds of challenge are identical to those taken in CWP-9690-2008.

CWP-1428-2010 (Rajinder Pal Sharma and Ors. vs. State of Punjab and Ors.)

81. The instant writ petition too is an offshoot of CWP-9690-2008 as the petitioners in this case, who are sons of late Shri Kishan Chand Sharma, have averred that their deceased father along with his two brothers were tenants in possession of Dera land measuring 33 bigha 6 biswa which was leased out to them in the year 1953 and since then they have been in continuous possession of the suit land. After the "illegal" removal of Mahant Jatindra Dass Chela of Mahant Jagat Ram, the authorities have initiated the proceedings under Section 4 and 7 of the Punjab Public Premises and Land Eviction and Recovery Act, 1973 seeking their eviction from the suit property. The grounds taken by the petitioners are similar to those taken on behalf of the Dera from whom they claim to have taken the land on leasehold basis.

CWP No. 18313 of 2006 (Parmeshwar Dass vs. State of Punjab and Ors.)

82. The instant writ petition is also being treated as the lead case from amongst the batch of those writ petitions where the very constitutionality of Farman-i-Shahi dated 18.04.1921 AD is under challenge. According to petitioner (Parmeshwar Dass), Farman-i-Shahi was neither issued by the erstwhile Ruler of Patiala State nor can it be termed as a "law" within the meaning of Article 13 of the Constitution. He further seeks a writ of mandamus to direct the authorities to enter mutation in his favour on the basis of sale deed vide which he purchased land measuring 2-bigha 10-biswa including an old house within the revenue estate of Patiala from respondent No. 7 - Panchayati Akhara Bara Udasin Nirwan, Allahabad through its Special Power of Attorney-holder, namely, Gurbachan Singh s/o. S. Sunder Singh.

83. The precise case of the petitioner is that he is a bona fide purchaser of the subject property. It is averred that the vendor had earlier executed a sale deed dated 29.04.1993 which the Sub Registrar, Patiala declined to register. Resultantly, he filed CWP No. 7199 of 1993 in this Court which was allowed in terms of the previous judgment in Krishna Gopal Kataria and Another Vs. State of Punjab and Others, AIR 1986 P&H 328 : (1987) 1 ILR (P&H) 145 . Though the

sale deed was thereafter registered on 28.09.1994 yet the respondent-authorities declined to sanction mutation, as according to them the Special Power of Attorney holder was not competent to alienate the Dera property.

84. According to the respondents, appointment of the so-called Mahant has never been in accordance with the Farman-i-Shahi nor was he competent to alienate the Dera property. The petitioner in this backdrop has questioned the very legality and constitutionality of Farman-i-Shahi; it not having been issued by the erstwhile Ruler of Patiala State and even if so issued, the same does not carry any force of law within the meaning of Article 13 of the Constitution. The petitioner's further case is that there was no adaptation of the Farman-i-Shahi under the Pepsu Code of Laws, 1951. Alternatively, the petitioner draws support from the judgment of learned Single Judge in Dera Sullar's case and urges that Farman-i-Shahi applies to those limited cases only where the Mahant wishes to obtain Headgear, Robe of Honour or fixed stipend from State. In other words, wherever Mahant is not desirous of seeking such like State "honour", there is no obligation to seek approval of his appointment under the Farman-i-Shahi or from State Government. It is also his case that the purpose of Farman-i-Shahi was to constitute Dharmarth Board to manage the affairs of Gurdwaras, Deras and other religious institutions of Sikh community and not Non-Sikh Sampradayas like respondent No. 7 - which is a Dera of Udasin Sect.

85. Respondents have in their preliminary objection contested the claim of petitioner. The sale deed dated 28.09.1994 is alleged to be totally void as it was executed by Gurbachan Singh who was the so-called Special Power of Attorney of Mahant Rajinder Dass Chela Mahant Gopal Dass and four other Mahants. It is maintained that Special Power of Attorney dated 28.09.1992 is said to have been attested by Notary Public (Kirpal Singh) at Haridwar. From the revenue record, it is found that the persons who executed the Special Power of Attorney did not figure anywhere in the Jamabandi at any point of time. It is explained that the petitioner wants the land to be mutated in his name as a purchaser even when the name of none of his alleged sellers ever existed in the revenue record. It is also explained that the Special Power of Attorney has not been authenticated by the Registrar or Sub Registrar under the Indian Registration Act, 1908 though it empowers the transfer of interest in an immovable property valuing more than Rs. 100/-.

86. The respondents have extensively explained on the legality and enforceability of Farman-i-Shahi and its subsequent adaptation. It is their case that in compliance to Farman-i-Shahi dated 18.04.1921 AD, the appointment of Mohtim/Mahant/Pujari etc. of the religious institutions was made by Ijlas-i-Khas through Deodhi Mualla and such appointee was entitled to receive from the Government, a Headgear, Robe of Honour or fixed honorarium. The land was not considered to be the property of Mahant/Mohtim and he was never authorised to sell or mortgage the land of Dera. DO letter No. 1793 dated 26.10.1946 (Annexure R1) laid down the powers and functions to be exercised by Deodhi

Mualla Department in the matter of appointment of Mahant or Mohtmim. Vide subsequent Circular dated 13.02.2006 (BK) (Annexure R2), the two departments, namely, "Karor" and "Deodhi Mualla" were amalgamated. Similarly, through that very order, the Dharmarth Board was constituted for the control of religious appointees and Institutions such as Gurdwaras, Deras and Dharamshalas. The subsequent Circular No. 11 dated 04.04.2006 (BK) i.e. 19.07.1943 AD then clarified that :-

"The Dharm Arth Board will control the property and administration of the Gurdwaras, Deras and other religious institutions of Sikh Sampardhas only, and it has no control over the religious institutions of non-Sikh sampardhas." As per this clarification the control over the Institutions of non-sikh Sampardhas was revested in Sardar Sahib Deodi Mualla under the orders of Ijlas-i-Khas Government has not made free, the non-sikh sampardhas free out of their control. For ready reference copy of Circular No. 11 dated 19.7.49/4.4.2006 BK is submitted at Annexure R-3."

87. The respondents have further pointed out that Patiala State was merged in Patiala and East Punjab State Union (PEPSU) and vide Pepsu Ordinance No.XVI of 2005 (BK) as amended by Pepsu Ordinance No.XVIII of 2006 (Annexure R4), all the laws, rules, regulations, byelaws and notifications having the force of law in Patiala State were ordered to be applied mutatis mutandis to the territories of the new State, namely, PEPSU. Similarly, all laws in force in the other amalgamated Princely States were ceased to have effect. Likewise, the aforesaid Ordinance also specified the official status to be given in the post-Independence era to the dignitaries and authorities of the Princely States. For example, a Ruler or Highness was equated to Raj Pramukh and Ijlas-i-Khas equivalent to the State Government.

88. The respondents have then explained that on merger of Pepsu State with Punjab w.e.f. 01.11.1956, the control of non-Sikh religious Institutions i.e. Deras etc. continued to be with the Successor authority i.e. the Financial Commissioner, Revenue, Punjab as the subject of Dharmarth Board, lands and properties of the erstwhile Patiala/Pepsu States, Jagir and Muafi or grant-in-aid to religious institutions is under the control of Financial Commissioner, Revenue, Punjab in terms of Allocation of Business Rules, 1994 of Government of Punjab.

89. According to the respondents, the ex-Rulers of Patiala State had donated lands in the names of Deras so that the income derived therefrom was utilized for the visiting Sadhus and other travelers, daily religious rituals, free langar and on the maintenance of Deras. However, most of the Mahants like the writ-petitioners or others with vested interests have indulged in large scale alienation of Dera properties in total disregard to the object for which such lands were donated.

90. We have heard Sarvshri M.L. Sarin, S.D. Sharma, Salil Sagar, Sanjay Kaushal, KS Sidhu, Senior Advocates and Sarvshri DD Gupta, Tushar Sharma,

Vikas Jain, Kanwalvir Singh Kang, Arun Jindal, Arihant Jain, Advocates in support of their contention that Farman-i-Shahi has no force of "law" and does not fall within the exceptions under Article 13 of the Constitution. On the other hand, Mr. Ashwani Talwar, Addl. Advocate General Punjab urged that Farman-i-Shahi is a "law" and it carries that force - it being in conformity with the Constitutional framework.

CONTENTIONS AND CASE LAW RELIED ON BEHALF OF WRIT-PETITIONERS (MAHANTS ETC.)

91. Mr. ML Sarin, learned Senior counsel while striking on the validity of Farman-i-Shahi contended that there is a brazen attempt to usurp the power to establish, maintain and manage institutions for religious and charitable purposes under the garb of appointment of Mahants of Deras by the Financial Commissioner, Revenue, Punjab. He contended that no valid law can confer such a power on the mere pretext that some Mahants have misused the dera properties. He argued that since Farman-i-Shahi is being cited by the respondents as a "law" enabling them to interfere with the appointment of Mahants of religious institutions, that purported law is liable to be annulled it being hit by Articles 25 and 26 of the Constitution. Reliance was placed on the Constitution Bench judgment of the Hon"ble Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, AIR 1954 SC 282 : (1954) 20 CLT 250 : (1954) 1 SCR 1005 which holds that the ingredients of both office and property of duties and personal interest are blended together in the rights of a Mahant who has the right to enjoy the Dera property or its beneficial interest so long as he is entitled to hold his office. The cited decision further holds that it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law and the law therefore must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose and that a law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would certainly violate the right guaranteed under Clause (d) of Article 26 of the Constitution.

92. Mr. Sarin relied upon *Sital Das Vs. Sant Ram and Others*, AIR 1954 SC 606 , where the controversy pertained to appointment of Mahant of Thakurdwara at Mouza Jamshed in District Jalandhar belonging to Ram Kabir sect of Hindu Bairagies. It has been held that succession of Mahantship has to be regulated by custom and if there exists a disciple of the Mahant, he has the first right to be appointed, except in case of proven disability. It was clarified that Mahantship is not hereditary and the authority to appoint vests in the Bhekh and Sewaks i.e. congregation of Bairagi sect.

93. Learned senior counsel vehemently urged that Farman-i-Shahi was at best a draft Ordinance proposed by Ijlas-i-Khas. As it does not bear the seal or signatures of erstwhile Ruler of Patiala State, the Farman did not acquire the

status of an enforceable law. On illustrative basis, learned senior counsel referred to some other farman-i-shahi(es) of Patiala State which, unlike the disputed one, bear the seal or signature of the Ruler.

94. On the objection that belated writ petitions challenging the vires of Farman-i-Shahi are not maintainable, more-so when writ-petitioners acquiesced and waived off such a right before learned Single Judge who held the Farman-i-Shahi a "law", it was explained that this Court under Article 226 of the Constitution possesses unfettered powers and in exercise thereof, a writ of certiorari can be issued save the conditions as elaborated by the Constitution Bench in *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, AIR 1955 SC 233 : (1955) 1 SCR 1104 are satisfied.

95. Mr. Sarin also contended that mere mismanagement of dera property by a Mahant is no valid ground for the State authorities to take over forcible management of religious institutions through police power, for if there is any mismanagement or misappropriation of Dera property, there lies effective remedy under Section 92 of Code of Civil Procedure to seek the removal of Mahant or appointment of new Mahant or other related issues. He also pointed out that Chapter XV "Offences Related to Religion" of the Indian Penal Code also adequately provides for imposition of penal consequences on the wrongdoer.

96. The writ-petitioners relied upon Section 22 of the Religious Endowment Act, 1863 which prohibits Central or State Governments or their officers to undertake or resume the superintendence of any land or property granted for the support of, or otherwise belonging to any mosque or other religious establishment or to take any part in the management or maintenance of such religious institutions.

97. Reference was made to the provisions of the Punjab Laws (Application) Act, 1957 (Punjab Act No. 33 of 1957) which was enacted "to enforce in the new State of Punjab certain laws applicable in the State of Punjab before the 1st of November, 1956". Section 3 says that the Acts specified in the Schedule together with all Rules, Orders and Notifications made thereunder "...have been declared to be applicable in the new State of Punjab". It was contended that though several old Acts since the year 1937 find mention in the Schedule but not the Farman-i-Shahi, hence it was no longer a "law" in the State of Punjab for want of its adaptation. Similarly, the respective Schedules of The Punjab Laws (Extension No. 1) Act, 1957; The Punjab Laws (Extension No. 2) Act, 1957; The Punjab Laws (Extension No. 3) Act, 1957; The Punjab Laws (Extension No. 4) Act, 1958; The Punjab Laws (Extension No. 5) Act, 1958; The Punjab Laws (Extension No. 6) Act, 1959; The Punjab Laws (Extension No. 7) Act, 1960; The Punjab Laws (Extension No. 8) Act, 1960; The Punjab Laws (Extension No. 9) Act, 1960; The Punjab Laws (Extension No. 10) Act, 1961; The Punjab Laws (Extension No. 11) Act, 1962 were also referred to where Farman-i-Shahi is again missing.

98. Mr. SD Sharma, learned Senior counsel representing some of the writ-petitioners, painstakingly explained the tenets of Hindu religion, to urge that

Religious Institutions in this part of the country are regulated by their own customs, practices and usages, according to which the office of Mahant is usually elective and not hereditary but a Mahant may nominate a successor subject to the confirmation by his fraternity. He referred to scriptures and some decided cases to explain that chelas (disciples) attached to a religious institution are entitled to maintenance befitting their condition so long as they behave properly and observe the proper subordination to the Head of institution. It was contended that all the properties acquired by individual members of religious fraternity belong, as a general rule, to the religious institution to which they are attached. Albeit, in a case where a Mahant misconducts, under the Hindu religion, such Mahant-cum-Mohtim can be expelled for misconduct or due to incompetency also.

99. Mr. Tushar Sharma, learned counsel for some of the writ-petitioners relied upon the decision in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, AIR 1954 SC 388 : (1954) 1 SCR 1055 where Constitutional validity of the Bombay Public Trusts Act, 1950 was assailed. The moot point was, how to draw a line between what are the matters of "religion" and what are not. Religious practices or performances of acts in pursuance of religious belief were held to be a part of religion, like faith or belief in some particular doctrines. It was further ruled that no outside authority has any right to call any particular practices or performances as not an essential part of that religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they fathom under the guise of administering the trust estate. Clause (3) of Section 55 and the corresponding provision contained in the latter part of Section 56(1) of the impugned Act were rendered ineffective as these provisions were found to have extended the doctrine of Cy-pres much beyond its recognized limits and had further introduced certain principles which run counter to the well established rules of law regarding the administration of charitable trusts.

100. Mr. Sharma also relied upon the commentary on "Hindu Law of Religious and Charitable Trusts" by BK Mukherjea, Fifth Edition to enlighten the Court of the mode and manner of appointment of a Mahant. He pointedly cited Para 7.49 where the author has clarified that the marriage by itself is not a disqualification for appointment as Mahant but "initiation of a married man must be preceded by the entire and permanent separation from his wife and by the giving up of all worldly ties". This is the rule in all ascetic foundations where the members have to take the vow of celibacy. The author has further pointed out that there are sects of Bairagies and Gossains who marry and have children and yet they can be appointed as Mahant. Two reported decisions of the Bombay and Lahore High Courts, *Dhancoober Bai vs. Advocate General*, 1 Bom LR 743 and *Bishambhar Das vs. Mst. Phulgari*, ILR 11 Lah 673 where in one case, a Bairagee Mahant appointed his own wife as successor in the office and in the other it was held that a woman can also be appointed as Mahant, are relied upon by the author. The para 7.64, according to which a Mahant has a right to the surplus income of the endowed property as well as Para 7.82 where the view taken by different High

Courts to the effect that Mahant can alienate the endowed property for legal necessity, were also relied upon in specific, by the learned counsel.

101. Having regard to the fact that the religious institutions-cum-deras involved in these cases mainly belong to Bairagi, Nirmali, Udasi and Gosain sects, Mr. Tushar Sharma, very commendably quoted extracts of the publication A Glossary of the Tribes and Castes of the Punjab and North-West Frontier Province; Vol-II A.-K. which is based upon the Census Report for the Punjab, 1883 by late Mr. Denzil Ibbetson, KCS-I and the Census Report for the Punjab, 1892 by Mr. ED Mac Lagan CSI and compiled by HA Rose. The aforementioned book-cum-compilation was duly published by Languages Department, Punjab in the year 1970 and thus is surely one of the most authenticated insights on the origin of various castes, communities, religious or social denominations in the erstwhile State of Punjab and the North-West Frontier Province.

102. Very brief information in respect of the above-stated four sects as extracted from the Publication unveils that:-

"(A) BAIRAGI.--The Bairagi (Vairagi, more correctly, from Sanskr vairagya, "devoid of passion,") is a devotee of Vishnu...

...The Bairagis are divided into four main orders (sampardas), viz., Ramanandi, Vishnuswami, Nimanandi and Madhavachari.

In the Punjab only two of the four sampardas are usually found. There are (i) the Ramanandis, who like the Vishnuswamis are devotees of Ramchandr, and accordingly celebrate his birthday, the Ramnaumi, study the Ramayana and make pilgrimages to Ajudhia: their insignia being the tar pundri or trident, marked on the forehead in white, with the central prong in red or white.

The only other group found in the Punjab is (ii) the Nimanandi, who, like the Madhavacharis, are devotees of Krishna. They too celebrate the 8th of Bhadon as the date of Krishna's incarnation, but they study the Sri Madh Bhagwat and the Gita, and regard Bindraban, Mathra and Dwarkanath as sacred places. On their foreheads they wear a two-pronged fork, all in white.

In the Punjab proper, however, even the distinction between Rama and Nimanandi is of no importance, and probably hardly known.

(B) "NIRMALA.--The Nirmala Sadhus, or "pure saints," are a Sikh order. They originated, like the Akalis, in the time of Guru Govind Singh, but the history of their foundation is obscure. According to one story a water-carrier was seized by the Guru's soldiers for supplying their enemies with water during a battle, but the Guru declared him stainless (nirmala). This account, however, undoubtedly arose out of a confusion between this order and the Sewapanthis, and the more probable version is that Guru Govind Singh sent three disciples to Benares to learn Sanskrit and designated them, on their return, the "stainless," as being the only learned men among the Sikhs. At first they took the pahul and wore white raiment, but they have adhered to the study of the orthodox Hindu scriptures

and thereby lost touch with Sikhism. They now wear the ordinary saffron robes of the Indian faqir, possibly to facilitate begging, which they profess to avoid as they claim to subsist on offerings voluntarily made. They retain the kes. The Nirmala form a well-disciplined and highly respected organisation. Each monastery is under a guru, while a council or committee periodically visits their societies throughout the Province. Almost always celibate they bear a far higher reputation for morality than most of the other religious orders in the Punjab. Their principal Akhara is at Hardwar, but they also have foundations at Amritsar and elsewhere."

(C) "UDASI.--Syn. Nanakputra: the principal religious order of the Sikhs. The Udasis are almost certainly the oldest of the Sikhi orders, and trace their foundation to Sri Chand, the elder son of Guru Nanak. The term udasi means "sorrow" or sadness from Sanskrit udas, "sad" and their separation, which has sometimes been wrongly termed excommunication, by the 3rd Guru, Amar Das, is described in Vol. I under Sikhism. This separation is sometimes ascribed to Guru Arjan.

The Udasis are celibate, at least in theory, and when so in practice are called Udasi Nanga or "naked". But MacLagan gives a different explanation of this term as will be seen from the following extract from his account of the order:-

"The Udasis are recruited from all castes and will eat food from any Hindu. They are almost always celibates, and are sometimes, though not usually, congregated in monasteries."

(D) "GOSAIN, a term even more vaguely used than "Sanniasi Bairagi" and very difficult to define in the Punjab. Roughly speaking, it denotes an ascetic of any order, but it further connotes that he is of some standing and influence. Strictly speaking, however, the Gosains form a distinct order, which differs both from the Bairagis and the Sanniasis, though they are often entitled Gosains, and often the Brahmans alone are considered privileged to be so styled.

In the theory the Gosains are celibate, and recruit by adopting chelas from pure castes who may be willing to dedicate their sons to them, but in practice, marriage is usual. Those who marry are styled gharbari. Natural sons do not succeed unless adopted as chelas. Widows are merely entitled to maintenance. Secular Gosains will not plough, but they do not wear any janeo, retain the choti and yet wear a pagri dyed with red ochre. The religious or matdari Gosains form fraternities and, though they do not marry, keep women. They are divided into akharas or small colleges each under a mahant who has supreme control of all its property, the disciples being dependent on his bounty. A mahant designates his successor, and his selection is rarely disputed, but if he die without having named a successor the fraternity meets together and with the aid of other Gosains elects a new mahant. After his installation the late mahant's property is distributed by him as he thinks fit, and this distribution, or bhandara as it is called, is rarely impugned."

(emphasis applied)

103. Mr. Tushar Sharma then contended that even if Farman-i-Shahi were to be a law, yet it cannot survive for it offends Article 14 of the Constitution. He argued that Farman-i-Shahi interferes with the right to manage the property and affairs of those deras and religious institutions only which are situated within the area of erstwhile State of Pepsu. On the other hand, the deras-cum-religious institutions located in several other districts throughout the State of Punjab are not gagged with such unreasonable restrictions. He urged that there are several deras of the same sect or Sampradaya situated within the State of Punjab but outside the area of erstwhile State of PEPSU but the impugned law does not govern those deras. The subject "law", therefore, is per se discriminatory. Learned counsel in this regard relied upon (i) The State of Rajasthan Vs. Rao Manohar Singhji, AIR 1954 SC 297 : (1954) 1 SCR 996 ; (ii) Jia Lal Vs. The Delhi Administration, AIR 1962 SC 1781 : (1963) 2 SCR 864 ; (iii) H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious and Charitable Endowments Department and Others, AIR 1980 SC 1 : (1979) 4 SCC 642 : (1980) 1 SCR 368 . In the later decision, it was tentatively opined that the continuation of the applicability of Improvement Trust Act, 1951 to the District of South Kanara alone would result into inequality and would involve the violation of Article 14 if the Karnataka Legislature does not act promptly and remove that inequality.

CONTENTIONS ON BEHALF OF STATE OF PUNJAB ETC.

104. Learned Additional AG Punjab, on the other hand, cited State of Rajasthan and Others Vs. Shri Sajjanlal Panjawat and Others, AIR 1993 SC 706 : AIR 1975 SC 706 : (1974) 1 SCC 500 : (1974) 2 SCR 741 to urge that Farman-i-Shahi is a valid law within the meaning of Article 13(1) and 13(2)(a) of the Constitution, for as such like Farmans were not even assailable prior to the enforcement of Constitution. He maintained that Farman-i-Shahi remained and still is an enforceable law firstly in the successor State of PEPSU and then in Punjab State. He relied upon Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, AIR 1953 SC 91 : (1953) 4 SCR 404 to highlight the breadth of powers exercisable by erstwhile Rulers and the extent of protection given to the King-made laws under the post-Constitution regime.

105. Learned Additional AG Punjab sought to draw parity with the provisions of Sikh Gurdwara Act, 1925 whereunder management and affairs of various Sikh shrines were taken over by the statutory body. The Hon"ble Supreme Court in Mahant Dharam Das and Others Vs. The State of Punjab and Others, AIR 1975 SC 1069 : (1975) 1 SCC 343 : (1975) 3 SCR 160 upheld Section 3(4) of that Act rejecting the plea of violation of fundamental rights under Article 19(1)(f) and Article 26 of the Constitution. There the question was as to whether the Gurdwara Pinjore Padshahi was a "Sikh Gurdwara" or a "Udasi Gurdwara" and the Farman issued by the erstwhile Maharaja in this regard was approved laying down as follows:-

"It is, therefore, clear that the question whether Gurdwara Pinjore Padhshahi Pehli was a Sikh Gurdwara or was an Udasi Gurdwara had been determined as early as 1946 by the Firman of the Maharaja of Patiala. The fact that the appellant alleges that he was in possession of the Gurdwara is of little moment because if the law vested the management in the Interim Gurdwara Board the possession of the appellant could either be permissible or hostile. In either case the status of the Gurdwara as a Sikh Gurdwara had been determined before the Constitution and since it was a pre-Constitution law which declared so the appellant cannot challenge it on the ground of violation of his fundamental rights. Even if the appellant continued to be in possession he has not acquired a right of management when once that right was vested in another body. That Firman of an erstwhile Ruler of a Princely State was law and continued to be law till repealed or substituted by a competent Legislature has been concluded by the decisions of this Court in Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, AIR 1953 SC 91 : (1953) 4 SCR 404 and State of Rajasthan and Others Vs. Shri Sajjanlal Panjawat and Others, AIR 1993 SC 706 : AIR 1975 SC 706 : (1974) 1 SCC 500 : (1974) 2 SCR 741 . In view of the legal position an attempt was made to describe the Firman of the Maharaja of Patiala referred to above as an administrative order not having the force of law. With this submission we are unable to agree. A glance at the Firman leaves no manner of doubt that it vested the management and possession of the Gurdwaras in a body created by it, with a Constitution and Membership quorum etc. It could only be administrative if the Gurdwaras in respect of which the management was vested were already vested in the State but that will be fatal to the case of the appellants. The very fact that pending a comprehensive law the Maharaja was issuing the Firman itself shows that it is a law."

(emphasis applied)

106. The other contention raised on behalf of the official respondents was that Article 26 does not create a new fundamental right to acquire property in the name of religious denomination and what it protects is the existing rights only. It was maintained that no religious institution including those who are the subject matters of these cases, have been deprived of the right to establish, maintain or manage the affairs of their respective institutions. Similarly, the right to own or administer the movable and immovable properties possessed by the religious institutions immediate before January 26, 1950, have not been affected.

ISSUES FOR CONSIDERATION

107. The brief recapitulation of facts or the contentions raised in different appeals and writ petitions, broadly give rise to the following issues of common nature:-

(i) Whether Farman-i-Shahi is a "law" duly protected under Article 13 read with Article 372 of the Constitution?

(ii) If so, does it govern the appointment or removal of Mohtmim or Mahant of

Deras and other religious institutions of non-Sikh Sampradayas?

(iii) If question No. (ii) is answered in the affirmative, to what extent and in what manner, the Farman-i-Shahi applies in the matter of appointment or removal of the Mahant or Mohtim?

(iv) Whether the religious institutions of non-Sikh Sampradaya fall under the administrative control of Dharmarth Board and if not, whether the erstwhile Princely State of Patiala or successor States of PEPSU and Punjab are vested with any such power?

(v) Whether the action taken by the State of Punjab against one or the other Mahant-cum-Mohtim in these cases amounts to interference in their religious affairs within the meaning of Articles 25 and 26 of the Constitution of India?

(vi) Whether Farman-i-Shahi can be enforced only against that Mahant or Mohtim who seeks Dastar, Doshala, Bandhan or Muafi from State Government?

(vii) Whether Mahant-cum-Mohtim of a religious institution can alienate the property of Dera in the interest of Dera or otherwise?

(viii) What is the legal effect or status of instruments of sale, lease, exchange or mortgage executed by Mahants-cum-Mohtims of different Deras which are subject-matter of these cases?

108. The core issue which incontestably has a direct bearing on the fate of all these appeals or writ petitions is whether the Farman-i-Shahi is a valid "law" not hit by Article 13(1) of the Constitution, and if so, does it apply in the matter of appointment of Mahant or Mohtim of non-Sikh religious institutions also? The conclusion, once drawn, shall ipso facto answer questions No. (i) to (vii) formulated in the preceding paragraph.

ARTICLE 13(1) OF THE CONSTITUTION

109. Article 13 of the Constitution declares that all "laws" in force in the territory of India immediately before the commencement of this Constitution which are inconsistent with the provisions of Part-III of the Constitution, shall be void to the extent of such inconsistency. The "law" within the meaning of Article 13 includes any Ordinance, Order, Bye-law, Rule, Regulation, Notification, Custom or Usage having in the territory of India the force of law. It is mandatory that the pre-Constitutional laws must conform to the Fundamental Rights. A pre-Constitutional law shall be void if it runs contrary to the Fundamental Rights guaranteed under Part-III of the Constitution though only to the extent of such inconsistency. The complete Code therefore will not be rendered void and if the inconsistent part is also amended subsequently, so as to remove the repugnancy, then the entire law shall become free from all blemishes. *Bhikaji Narain Dhakras and Others Vs. The State of Madhya Pradesh and Another*, AIR 1955 SC 781 : (1955) 2 SCR 589 ; *Behram Khurshed Pesikaka Vs. The State of Bombay*, AIR 1955 SC 123 : (1955) CriLJ 215 : (1955) 1 SCR 613 . The Supreme Court has

clarified that the effect of Article 13(1) is not to obliterate the inconsistent law from the Statute Book for all times or for all purposes or for all people. The effect is that the inconsistent law cannot stand in the way of exercise of Fundamental Rights by persons who are entitled to those rights on the commencement of this Constitution. But such law remains good even after the Constitution has come into force as regards persons who have not been given Fundamental Rights, namely, the aliens.

110. Article 13(1) though is couched with negative phrases to reinforce the supremacy of Part-III of the Constitution above any other law, nonetheless, this provision by implication, protects the enforceability of all such laws in force in the territory of India immediately before the commencement of this Constitution provided they are not derogatory to Part-III of the Constitution. Article 372(1) sets at rest the doubt, if any, when it declares that "subject to other provisions of this Constitution", all the "law" in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. Thus, if a law in force in the territory of India immediately before the commencement of the Constitution is not inconsistent with its Part-III within the meaning of Article 13(1), such law shall continue in force under Article 372(1) subject to its alteration, repeal or amendment by a competent Legislature or other competent authority. Further, Part-III of the Constitution has no retrospective effect and any action taken under any law which was valid at the time when such action was taken, namely, prior to the enforcement of the Constitution, cannot after the commencement of this Constitution, be challenged as unconstitutional on the score of its infringing any of the Fundamental Rights. *Deep Chand Vs. The State of Uttar Pradesh and Others*, AIR 1959 SC 648 ;

111. It stands crystallized that to attract Article 13(1) of the Constitution, it is necessary to find out that (i) there was a law in force in the territory of India immediately before the commencement of this Constitution; and (ii) such law or a part thereof is inconsistent with the Fundamental Rights guaranteed under Part-III of the Constitution.

112. The crucial question therefore is whether Farman-i-Shahi was a "law" within the meaning of Article 13(1) and (3) of the Constitution, and if so, does it offend Part-III of the Constitution?

WHAT IS THE LEGAL STATUS OF FARMAN-I-SHAHI?

113. "Sardar Sahib Deodhi Mualla", the expression in Gurmukhi language, means the Revenue Department of the Princely State of Patiala. All decisions, commands or dictates of the Ruler were invariably issued by Deodhi Mualla which was inferior to the Ijlas-i-Khas. The supreme authority obviously vested in the Ruler only. The Ruler of Patiala State had constituted Ijlas-i-Khas to run the day-to-day affairs of the State. The word "Ijlas" means "Sabha" or "Court". "Khas" means "special" or "a core group". Ijlas-i-Khas thus comprised a core group of

functionaries of the Ruler, namely, the Prime Minister, other Ministers and Executive Authorities.

114. Ijlas-i-Khas in its meeting held on 18.04.1921 AD approved the Farman-i-Shahi duly signed by the Prime Minister, three Ministers, Revenue Secretary and Chief Engineer of the Ruler and its translated version reads as follows:-

"Approved. Directions should be given heretofore that unless and until and unless any Mahant is appointed through Deodhi Mualla duly approved by Ijlas-i-Khas till then no land on Muafi should be entered in the name of any Mahant, who is entitled to receive Dastar (Turban), Doshalla or any usage or Maufi etc., for the Darbarwala.

And it should also be entered that land concerning to any Dera should not be considered as ownership of any Mahant and the ownership of any Mahant should not be entered in Govt. record, instead it should be entered as ownership of Dera under the management of Mahant. The Mahants shall not be entitled to sell or mortgage the land belonging to Dera.

Revenue Department should also be informed accordingly and this order should be published in Gazette.

Dated: 18.04.1921 AD

Sd/- Daya Krishan Kaul Prime Minister

Sd/- Nihal Singh Judicial Minister

Sd/- Raghunath Singh Home Minister

Sd/- Gokal Chand Foreign Minister

Sd/- Dalip Singh Revenue Secretary

Sd/- Rala Singh Chief Engineer"

115. Since there is a grave dispute over the contextual meaning and import of the words, phrases and expressions of Farman-i-Shahi, it would be beneficial to segregate the document in the following descending order:-

(i). Farman-i-Shahi opens up with a direction that hitherto unless and until Mahant is appointed through Deodhi Mualla duly approved by Ijlas-i-Khas...;

(ii). no land or muafi (freehold) be entered in the name of any Mahant who is entitled to receive Dastar (turban or headgear); Doshala (Robe of Honour); or any Bandhan (fixed stipend) or Muafi (freehold) i.e. land exempted from revenue charges;

(iii). the lands given to a Dera be not considered as property of Mahant nor shall it be entered in the official record as the property of the Mahant;

(iv). such property shall not be entered in the name of Govt. also;

(v). instead, the land/property shall be entered in the name of the Dera under the management of Mahant;

(vi). Mahant shall not be competent to sell or mortgage the land of Dera and the Revenue Department be intimated in this regard (so as to make such an entry in the record);

116. On 26.10.1943 AD, Sardar Sahib Deodhi Mualla after taking notice of the fact that Mohtmims of various Gurdwaras, Mahants of Deras, Pujaries of temples and Mutawalies of Masjid etc. were leasing out the land and other immovable properties of such religious institutions in their own personal interest at a very low rental and for long durations like 10 to 20 years, issued another order that in future it shall be compulsory for each one of them to obtain/get pre-sanction/permission for giving such lands on "contract/lease" or such shops on rent as also rate of rent from Sardar Sahib Deodhi Mualla.

117. Subsequently, Deodhi Mualla issued Circular No. 2 dated 13.02.2006 BK (i.e. the year 1949) whereby two Departments of (i) Deodhi Mualla; and (ii) Karor (Finance) Department were merged to be known as Deodhi Mualla Department only. Vide this very order, Dharmarth Board comprising 25 religious leaders was constituted for the management of religious institutions such as Gurdwaras, Deras, Dharmshalas etc.

118. There arose a confusion whether Dharmarth Board would manage the affairs of Sikh religious institutions only or it will regulate the affairs of non-Sikh religious institutions also. The Secretary of the Ruler thus issued another Circular No. 11 dated 19.07.1949 AD which, on translation, reads as follows:-

"Deodhi Mualla Department Patiala Circular No. 11 dated 19.7.1949/4.4.2006

It has been noticed that in certain there is some mis-understanding regarding the working of the newly constituted Dharmarth Board. In clarification of this office Circular No. 2 dated 13.2.2006 BK, it is hereby circulated for the information of all concerned that the Dharam Arth Board has been formed under Roznamcha Commands for controlling the property and Administration of controlling the property and Administration of the Sikh Sampardais only, it has no control over the religious institutions of non-Sikh Sampardais.

Sd/- Pritam Singh Sardar Sahib Deodhi Mualla Patiala." (emphasis by us)

119. We may at this stage deal with one of the most contentious issue raised on behalf of writ-petitioners (Mahants etc.) which has been, in a way, decided in their favour by the learned Single Judge. It was contended that even if Farman-i-Shahi carries the force of law, yet it was not enforceable qua religious institutions managed by non-Sikhs Sects as stood clarified by the Ruler that Dharmarth Board was constituted to manage and run the affairs of religious institutions of Sikh Sampradayas only. The contention acquires significance for the reason that the Financial Commissioner, Revenue or the Deputy Commissioner, Patiala have in their respective impugned orders intermittently referred to as if the Deras in

question are accountable to Dharmarth Board.

120. We have no reason to doubt that Circular No. 2 dated 13.02.2006 BK notified by Sardar Sahib Deodhi Mualla or its subsequent clarification on 19.07.1949 have neither superseded nor amended the Farman-i-Shahi dated 18.04.1921 AD. We say so for the reasons that Circular No. 2 of 2006 BK though refers to the Pujaries and "Deras" also but it nowhere recites that it was issued in supersession or modification of the Farman-i-Shahi dated 18.04.1921 AD. Its contents by no stretch of imagination run counter to those of Farman-i-Shahi therefore, no implied amendment or modification in the Farman-i-Shahi dated 18.04.1921 AD can be inferred. It is a matter of common knowledge that besides several Deras like the one in these cases run by the non-Sikh religious sects, there were innumerable Deras run by the believers of Sikh religion also. Farman-i-Shahi dated 18.04.1921 AD, therefore, continued to be operative and unaffected even after the Ruler had issued another Dictate for the better management of religious institutions manned by the Sikhs.

121. Equally apt would be to deal with another objection of the writ-petitioners that Farman-i-Shahi is not a "law" for want of the seal or signature of the Ruler of Patiala State. We are, however, not impressed by this contention for more than one reason. Firstly, it is indisputable that Ijlas-i-Khas was a body of Ministers and other functionaries constituted by the Ruler to run the affairs of his State. The subject Farman-i-Shahi was approved and notified by Ijlas-i-Khas which acted for and on behalf of the Ruler only. Secondly, the Ruler never annulled or set aside the Farman-i-Shahi and it continued to operate before and after the integration of Princely State of Patiala into PEPSU. Thirdly, Ijlas-i-Khas itself was equated with the status of State Government in post-Constitutional era. It was thus a decision taken by the State Government and it carried the force of "law" within the meaning of Article 13(3)(a) of the Constitution.

122. As regards the legal status of Farman-i-Shahi on attainment of Independence by India, it may be mentioned here that the erstwhile Rulers of Faridkot, Jind, Kapurthala, Malerkotla, Nabha, Patiala, Kalsia and Nalagarh entered into a Covenant on 05.05.1948 followed by the Supplementary Covenant dated 09.04.1949 AD to merge and establish as a "State" of independent India to which they had "already acceded to". All these territories were integrated by the name of "Patiala and East Punjab States Union", namely, the PEPSU State. The Rulers of each Covenanting State handed over the administration of his respective State to the Raj Pramukh (Article VI of the Covenant).

123. Immediate thereupon the PEPSU State issued Ordinance No.XVI of 2005 BK (notified on 15th February, 1949) as amended by Patiala and East Punjab States Union General Provisions (Administration) Amendment Ordinance No.XVIII of 2006 BK (notified on 31st July, 1949), the salient features whereof are as follows:-

2. In this Ordinance, unless there is anything repugnant in the subject or context:

(a) "appointed day" means the fifth day of Bhadon, 2005;

(b) xxx xxx xxx

3.(1) As from the appointed day, all laws and rules, regulations, bye-laws and notifications made thereunder, and all other provisions having the force of law, in Patiala State on the said day shall apply, mutatis mutandis, to the territories of the (State) and all laws in force in the other Covenanting States immediately before that day shall cease to have effect:

Provided that all suits, appeals, revisions, applications, reviews, executions and other proceedings, or any of them, whether civil or criminal or revenue pending in the Courts and before authorities of any Covenanting State shall, notwithstanding anything contained in this Ordinance, be disposed of in accordance with the laws governing such proceedings in force in any such Covenanting State immediately before the appointed day.

(2) xxx xxx xxx

4. xxx xxx xxx

5. (1) Except where the context otherwise requires, any reference in any law, order, rule, regulation, bye-law, notification, Hidayat or Farman-i-Shahi referred to in Section 3, and other instrument shall, where the reference is to the officers, authorities, documents or territories mentioned in column one of the following table, be construed as a reference to the officers, authorities, documents or territories respectively mentioned in the second column of the said table:-

124. Reference may, at this stage, be made to PEPSU Repealing Act of 2008 BK notified on 09.09.1951. Its Section 2 repealed the enactments specified in the Schedule of the Act without affecting the validity, consequences or anything already done or any past act or thing. The Schedule also included the Patiala and East Punjab States Union General Provisions (Administration) Amendment Ordinance No. XVIII of 2006. The only amendment made in the Ordinance No. XVI of 2005 BK vide PEPSU Ordinance No. XVIII of 2006 was the insertion of sub-Section (3) in Section 10 so as to enable the Raj Pramukh to make Rules for the more convenient transaction of the business of Government, and for allocation of the said business among the Ministers. Section 14 of the Ordinance of 2005 was also amended to confer powers upon the Raj Pramukh to regulate the recruitment and conditions of service of a persons appointed to public services etc.

125. The brief legislative history as narrated above manifests that Farman-i-Shahi dated 18.04.1921 AD was formulated by Ijlas-i-Khas, who was equivalent in status with the present day State Government. The Farman-i-Shahi was issued under the command of the Ruler, who too enjoyed the status and rank of Raj Pramukh or Governor of a State in the post-Constitution regime.

126. Farman-i-Shahi was neither amended or repealed nor superseded by any

subsequent dictate of equal or superior legal force till the Princely State of Patiala along with other Princely States integrated into the post-Independent State of PEPSU in May 1948.

127. PEPSU State then issued Patiala and East Punjab States Union General Provisions (Administration) Ordinance No.XVI of 2005 (BK) (notified on 15.02.1949) as was amended by PEPSU Ordinance No.XVIII of 2006 (notified on 31.07.1949) (for convenience and in short, referred to as "the 1949 Ordinance"). The Ordinance was promulgated by the Raj Pramukh and as per its Section 3(1), all laws, rules, regulations, bye-laws, notifications made thereunder and all other provisions having the force of law in Patiala State stood applied, *mutatis mutandis*, to the territories of PEPSU State and all laws in force in the other Covenantee States immediately before that day ceased to have effect.

128. Section 3(2) and Section 4 of the 1949 Ordinance contained saving clauses with which we are not concerned here. Its Section 5(1) determines corresponding status of the officers, authorities or documents of the Patiala State under the independent India.

129. The 1949 Ordinance explicitly provides the status of the Ruler equivalent to that of the Raj Pramukh of the State (i.e. Governor, at present); and of Darbar or Ijlas-i-Khas equivalent to the Government of State. The word "Patiala State" was to be construed as the PEPSU State.

130. It is pertinent to point out that the Princely State of Patiala had also its own codified Patiala General Clauses Act, 2002 BK (Act No. XII of 2002 BK), which was sanctioned by Ijlas-i-Khas vide Order No. 4107/383-AR-2002 BK dated 05.02.1946. According to Section 3-A of this Act, "When any enactment in force in British India is enforced in the Patiala State, by an order of Ijlas-i-Khas, in the absence of any specific provision to the contrary, the following expressions will be deemed to have been substituted for the corresponding expressions in the British Indian enactment...". We have purposefully cited this provision to point out that the power to adopt or enforce a law was expressly vested in Ijlas-i-Khas only.

131. Vide PEPSU Repealing Act, 2005 BK which came into force on 09.09.1951, only the PEPSU Ordinance No.XVIII of 2006 BK was repealed and not the Ordinance No.XVI of 2005 BK. The legal effect of the repeal of Ordinance No. XVIII of 2006 is that it remained no more on the Statute Book, for the amendments brought into force through this Ordinance had already been subsumed in Ordinance No.XVI of 2005 BK and those amended provisions remained unaffected, notwithstanding the repeal of Ordinance No. XVIII of 2006 BK.

132. Section 4-A read with Section 6 of the Punjab General Clauses Act, 1898, which remained in force till it was repealed by the Punjab General Clauses Act, 1956, used to provide that where any "Punjab Act" repeals any amendment by which the text of any Punjab Act was amended by the express omission,

insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

133. Section 2(46) of the above-mentioned 1898 General Clauses Act, as amended from time to time till the year 1951, used to define the expression "Punjab Act" to mean "...an Act made by the Lieutenant Governor of the Punjab in Council under the Indian Councils Act, 1861 to 1909, or any of those Acts, or the Government of India Act, 1915, or by the Local Legislature or the Governor of the Punjab under the Government of India Act, or by the Provincial Legislature or the Governor of the Punjab [or by the Provincial Legislature or the Governor of East Punjab under the Government of India Act, 1935, or by the Legislature of Punjab under the Constitution]".

134. The amended definition of Punjab Act(s) under the Punjab General Clauses Act, 1898 was thus so wide that it included all the PEPSU laws within its sweep. The provisions of the amended Ordinance of 2005, therefore, remained unaffected notwithstanding the repeal of Ordinance of 2006.

135. When the Constitution of India, as the fountain-head of all Statutes, came into force on 26.01.1950, the Farman-i-Shahi dated 18.04.1921 AD read with Sections 3(1) and 5(1) of PEPSU Ordinance No.XVI of 2005 BK unequivocally fell in the category of "laws" as defined under Article 13(3)(a)&(b) of the Constitution and was in force within the territory of India.

WHETHER FARMAN-I-SHAHI IS A VOID LAW WITHIN THE MEANING OF ARTICLE 13(1) OF THE CONSTITUTION?

136. As has been discussed above, a law shall be void within the meaning of Article 13(1) only if it is inconsistent with the provisions of Part-III of the Constitution comprising the Fundamental Rights. The writ-petitioners while questioning the vires of Farman-i-Shahi have failed miserably to demonstrate as to which provision or part of Farman-i-Shahi runs parallel to Part-III of the Constitution.

137. Mr. ML Sarin learned senior counsel vehemently urged that since Farman-i-Shahi impedes the free enjoyment of perfected title of immovable properties owned by Deras, it does violence to Article 300A of the Constitution. Such a contention, in our considered view, would not render the Farman-i-Shahi void, for the "right to property" is no longer a fundamental right after the amendment in Article 31 and corresponding insertion of Article 300A w.e.f. 20.06.1979 by the Forty Fourth Amendment of the Constitution whereby the aforesaid right stood downgraded from fundamental right to a Constitutional right.

138. Similarly, Mahants-cum-Mohtmims or their allies cannot complain violation of Article 26 of the Constitution which guarantees certain rights to every religious denomination subject to the conditions mentioned therein. Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others,

(1997) 4 JT 124 : (1997) 3 SCALE 1 : (1997) 4 SCC 606 : (1997) 2 SCR 1086 ; and M.P. Gopalakrishnan Nair and Another Vs. State of Kerala and Others, AIR 2005 SC 2053 : (2005) 3 CTC 428 : (2005) 4 JT 436 : (2005) 11 SCC 45 : (2005) 3 SCR 712 have laid down that Article 26 does not create rights in any denomination which it never had. The aforesaid provision merely safeguards and guarantees the power of continuance of a right which such denomination, namely, the religious sect or body possessed at the time when the Constitution came into force. Viewed in this manner, it may be seen that immediately before the Constitution came into force, the affairs of various religious deras/bodies situated in the Princely State of Patiala and then PEPSU, were governed and regulated by Farman-i-Shahi. The extent of rights given to them under the Farman-i-Shahi are undoubtedly protected under Article 26 of the Constitution and nothing beyond that. The writ-petitioners could have perhaps some legitimate grievance if there were an amendment by the PEPSU or the successor State of Punjab in the Farman-i-Shahi to take away any of the rights conferred on them by the Rulers of the Patiala or other Princely States. We, thus, unhesitatingly hold that since Farman-i-Shahi does not violate any of the Fundamental Rights guaranteed under Part-III of the Constitution, it is not a void law and continues in force until altered, repealed or amended by the competent Legislature.

WHETHER FARMAN-I-SHAHI APPLIES TO THOSE MAHANTS OR MOHTMIMS ONLY WHO SEEK DASTAR, DOSHALA, BANDHAN OR MUAFI FROM STATE?

139. The State counsel strenuously urged that learned Single Judge has misconstrued and misunderstood the contents of Farman-i-Shahi while limiting its applicability in those cases only where a Mahant-cum-Mohtmim clamours for the grant of Dastar (turban or headgear); Doshala (Robe of Honour); or any Bandhan (fixed stipend) or Muafi (freehold) from the State and wherever a Mahant does not wish to be honoured like this, then Farman-i-Shahi would be inapplicable. In contrast, counsel for the writ-petitioners supported the viewpoint of learned Single Judge, for once the lands were given/gifted to Deras and other religious institutions unconditionally and free from all encumbrances, the Ruler of erstwhile State of Patiala could not have later on imposed restrictions on the enjoyment of such properties unless Mahant/Mohtmim sought any additional favours.

140. On a deeper analysis of the words, phrases and expressions contained in the Farman-i-Shahi, the English translation of which, as notified by the State Government or made available by the writ-petitioners is discrepant, we are of the considered view that once it is broken into parts as has been done in para-115 of this order, the true import, meaning, sense and purport of Farman-i-Shahi can be effectively discovered.

141. The writ-petitioners themselves have stated that the land and immovable properties were gifted to the Deras by one or the other Ruler of State of Patiala in the service of Sadhus (religious saints), preachers etc. and for their

sustenance so that they could teach and preach religious values, morality and also could establish educational or religious institutions. There is no material on record that such lands were given to individual Mahants as their private properties with unrestricted rights. The Rulers had direct stakes in such like religious institutions already in existence or to be established in future. The Rulers had on occasions shown their concern against misappropriation or misuse of properties given to Deras/religious institutions by Mahants for their personal vested interests. Hence the Ruler(s) decided to create a clog on the utilization of dera properties.

142. Farman-i-Shahi refers to Mahant-cum-Mohtmim as a general class, without reference to any particular Dera or religious institution. It applies to the existing Deras or their Mahants as well as to those who were to be appointed henceforth i.e. future appointments. When it refers to a Mahant who receives a turban, robe of honour, fixed stipend or muafi from the Government, it widens the scope of its applicability qua every type of Mahant as there might be one receiving the fixed stipend only without freehold land or the other who got a "turban" or "robe of honour" on appointment. To say it differently, Farman-i-Shahi governs all Mahants irrespective of the fact whether he had received or would receive only a "turban" or "robe of honour" or who has got or would receive a "fixed stipend" "without any freehold" or the one who has got land and properties on "freehold basis". Further, different modes of honour illustrated in Farman-i-Shahi are in fact the means to attach sanctity to the office of Mahant/Mohtmim so as to avoid any inter-se dispute over succession.

143. Leave aside everything else, if the applicability of Farman-i-Shahi depended upon the receipt of any of the Ruler's four acknowledgements by a Mahant-cum-Mohtmim at the time of his appointment before or after the Farman-i-Shahi came into force, then no dera/religious institution in question can seek exemption from the effects of Farman-i-Shahi as each one of them had admittedly received at least one of the honours, namely, "muafi" i.e. exemption from payment of land revenue from the erstwhile Rulers. Having received one of the most beneficial favours which every Dera continued to enjoy even in the post-Independence era, they cannot be permitted to give an outcry that the Farman-i-Shahi could be enforced against them. To say it differently, since every Dera/religious institution had received the honour of Dastar (turban or headgear); Doshala (Robe of Honour); or Bandhan (fixed stipend) surely along with Muafi (freehold) from the erstwhile Rulers of Princely State of Patiala, we hold that Farman-i-Shahi indeed applies qua all such deras or religious institutions to whom immovable properties were gifted/given by the Rulers of erstwhile State of Patiala.

144. The contention that non-Sikh religious institutions set up within the area of PEPSU alone have been singled out for imposing the State's right to appoint or remove a Mahant-cum-Mohtmim whereas no such fetter applies to the similarly placed dera-cum-religious institutions located in other parts of Punjab State or that there is a denial of equality before law, though appears attractive but has no

legal substance. It is a historical fact that eight Princely States integrated into one post-Independent State of India, known as PEPSU. Punjab continued to be a separate province even before and after Independence. As noticed earlier, by virtue of Ordinance No.XVI of 2005 BK, the PEPSU State decided to enforce and apply the laws, orders, notifications and decisions taken by erstwhile Patiala State in the entire territory of PEPSU State.

145. The laws enacted by Rulers of the merged Princely States ceased to operate with immediate effect and by virtue of their adaptation, the laws of Patiala State became operative in the entire territory of PEPSU State (but not in Punjab). PEPSU merged into Punjab in 1956 and that status continued till the reorganisation of Punjab State under the Re-organisation Act, 1966 whereby new State of Haryana was established and a part of the Punjab area was transferred to Himachal Pradesh.

146. The area of erstwhile PEPSU State which had merged with Punjab is now staggered and falls within all the three States, namely, Punjab, Haryana and Himachal Pradesh after their 1966 re-organisation. For example, while Sangrur, Nabha, Patiala, Kapurthala etc. still form part of the Punjab State, area of Jind State has gone to Haryana and that of Nalagarh falls in Himachal Pradesh.

147. It is worth noticeable that Article 372(1) clearly provides that "all law in force in the territory of India immediately before the commencement of this Constitution shall continue in force "therein" until altered or repealed or amended...". Thus, if a law which was in force in the territory of India immediately before the commencement of this Constitution and is not inconsistent with Part-III of the Constitution, shall continue in force in that area only until it is amended or repealed etc. The legislative exercise undertaken by Parliament under Article 3 of the Constitution in varying the boundaries of a State or affecting their area or name etc. shall have no bearing on the applicability of such law within that old area. Farman-i-Shahi as a valid law, it being consistent with Part-III of the Constitution, continues to operate within the area of its original jurisdiction, namely, the area of erstwhile PEPSU State.

148. There is yet another reason to not to attract Article 14 of the Constitution. Farman-i-Shahi was issued by erstwhile Ruler of Patiala State who had also given all the lands and immovable properties to deras and other religious institutions. There is no material on record to draw any finding of fact that (i) lands or properties were ever given in the same manner by the Provincial Government of erstwhile Punjab State also; or (ii) any other Ruler who did not amalgamate into PEPSU State but became part of Punjab State after independence gave any such land or property; (iii) there was any convention, custom or practice to appoint Mahant-cum-Mohtmim by the Ruler or to honour such appointee by way of Dastar, Doshala, Bandha or Muafi; (iv) there are no pleadings, proof or averments to this effect; and (v) whether there was any misuse of endowed properties by Mahants for their personal interest, and if so, whether it was only a stray or isolated instance or it had become a customary evil hurting the

sentiments of followers and believers of that sect or faith, is also a question of fact.

149. In the absence of comparison of such relevant facts, it appears that the doctrine of equality cannot be invoked in abstract more-so, when the distinct and distinguishable facts and circumstances justify the imposition of reasonable restrictions to prevent the misappropriation of institutional assets and properties. The differential treatment does not per se constitute inequality. The denial of equal protection can be successfully alleged only if there is no reasonable basis for such differentiation.

WHETHER PUNJAB LAWS (APPLICATION) ACT, 1957 OR THE PUNJAB LAWS (EXTENSION Nos. 1 to 11) ACTS, 1957 to 1962 ARE APPLICABLE IN THE INSTANT CASE?

150. The Statement of Objects and Reasons of the Punjab (Application) Act, 1957 delineates that the Act was enacted to enforce certain laws in the "new State of Punjab" which were applicable in the "Punjab State" before 01.11.1956. Its Section 2(b) defines "new State" to mean the State of Punjab as formed under Section 11 of the States Reorganisation Act, 1956. Section 2(c) defines "Punjab State" to mean the territories which, immediately, before the 1st November, 1956, comprised the State of Punjab. Section 3(1) of the Act then declares that the Acts specified in the Schedule together with all rules, orders and notifications made thereunder pertaining to the Punjab State, shall apply and shall always be deemed to have applied in regard to similar institutions, authorities and dignitaries of the "new State". The Schedule of the Act enlists eight enactments all pertaining to salaries, allowances and other perks admissible to the Speaker, Deputy Speaker, Ministers, Chairman/Deputy Chairman of the Legislative Council, Deputy Ministers and MLAs etc.

151. The only purpose to legislate the aforesaid Act was to extend the benefits and perks admissible to the institutions, authorities and dignitaries of erstwhile "Punjab State", to those as well who represented and/or belonged to the area which was added to the "State of Punjab" w.e.f. 01.11.1956 under the States Reorganisation Act, 1956.

152. Similarly, the Statement of Objects and Reasons of the Punjab Laws (Extension No. 1) Act, 1957 and The Punjab Laws (Extension No. 2) Act, 1957; The Punjab Laws (Extension No. 3) Act, 1957; The Punjab Laws (Extension No. 4) Act, 1958; The Punjab Laws (Extension No. 5) Act, 1958; The Punjab Laws (Extension No. 6) Act, 1959; The Punjab Laws (Extension No. 7) Act, 1960; The Punjab Laws (Extension No. 8) Act, 1960; The Punjab Laws (Extension No. 9) Act, 1960; The Punjab Laws (Extension No. 10) Act, 1961; The Punjab Laws (Extension No. 11) Act, 1962 unveil that the legislative object behind all these Statutes was to extend certain laws to the territories, which immediately, before November 1, 1956, were comprised in the State of Patiala and East Punjab States Union i.e. PEPSU State and were transferred to and became part of "State

of Punjab". Section 2(b) of these Acts define "transferred territories" to mean the territories, which, immediately before November 1, 1956, were comprised in the State of Patiala and East Punjab States Union i.e. PEPSU State. Section 4(1) of the (Extension No. 1) Act declares that all the enactments, specified in Schedule-I and so much of any of the enactments, specified in Schedule-II as extended to the territories which, immediately before November 1, 1956 were comprised in the "State of Punjab", are hereby extended to, and shall be in force in, the "transferred territories".

153. To be more specific, the legislative object of all the Punjab Extension Laws was to extend the laws enacted by the erstwhile State of Punjab, to those territories of PEPSU State which were transferred and hitherto became part of State of Punjab on the appointed day of November 1, 1956 and not vice versa.

154. The Punjab Extension Laws, in fact successfully counter the petitioners' assertion that Farman-i-Shahi or a decision taken by Ijlas-i-Khas cannot be termed as "law" within the Constitutional framework. For example, Section 6 of the Punjab Laws (Extension No. 1) Act, 1957 says that the laws, rules, regulations, notifications, byelaws etc. "including the enactments specified in Schedule-III, shall on the commencement of this Act, stand repealed". Schedule-III specifically refers to (i) Farman-i-Shahi No. 19 dated 16.07.1931 AD; and (ii) the order of Ijlas-i-Khas No. 57 dated 22.01.1940 AD amongst those enactments which were repealed. The post-Independent Legislature of State of Punjab has, therefore, treated Farman-i-Shahi and orders of Ijlas-i-Khas at par with the legislative enactments deriving their force under the Constitution. Reference to the above-mentioned Statutes, in no way, advances the claim of writ-petitioners.

WHETHER SECTION 22 OF THE RELIGIOUS ENDOWMENTS ACT, 1863 IS APPLICABLE IN THE INSTANT CASE, AND IF SO, TO WHAT EFFECT?

155. Mr. DD Gupta counsel for some of the Mahant-cum-Mohtmims, besides assisting Mr. ML Sarin senior counsel, also urged that the Religious Endowments Act, 1863 is a Central legislation and in the event of any repugnancy, the State laws including Farman-i-Shahi (if found to be a law) must surrender their authority under Section 22 of the Central Act which says that except as provided in the Act, it shall not be lawful for the Central Government or any State Government or for any officer "to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other religious establishment...".

156. If one reads Section 22 of the 1863 Act in isolation without reference to other provisions or the Objects and Reasons of the Act, the argument of Mr. Gupta catches attention. The historical background behind enactment of 1863 Act, however, cannot be overlooked. The Statement of Objects and Reasons unfolds that there existed laws in the Presidencies of Bengal and Madras

whereunder the Officers were obligated to manage religious endowments. The Government decided as a policy to divest itself of any kind of direct concern with the management of religious endowments and decided to hand over the general superintendence of these institutions to statutory bodies or trustees etc. instead of performance of those duties by State Revenue Officers. The 1863 Act was thus enacted with two objects, namely, (i) to enable the Government to divest itself of the management of religious endowments and to relieve the Board of Revenue and the Local Agents from the duties imposed on them by Regulation No.XIX of 1810 of the Bengal Code and Regulation VII of 1817 of the Madras Code; and (ii) to constitute statutory bodies under Section 7 of the Act to perform all duties imposed on the Boards and Local Agents. Section 3 of the Act enabled the State Government to exercise the power of nominating Trustee, Manager or Superintendent of the religious establishments, to whom the Revenue Board entrusted the trust property as per Section 4 of the Act. Similarly, Section 7 empowered the State Government to appoint one or more Committees in every Division or District to exercise the powers of Board of Revenue or the Local Agents. Section 12 of the Act provides that immediate on appointment of Committee for the superintendence or management of a religious establishment, the Board of Revenue or the Local Agents shall transfer to such Committee "all landed or other property" which was under their control at the time of constitution of the Committee and which belonged to the religious establishment. Section 13 requires the Trustees, Manager or Superintendent of a mosque, temple or religious establishment to keep regular accounts of receipts and disbursements in respect of the endowments and expenses of such religious establishments. It imposed the duty on the Committee of management, appointed under the Act to verify the accounts of receipts and disbursements at least once in a year. The Act further provides resolution of the disputes thereunder by a Civil Court.

157. Thereafter comes the turn of Section 22 of the 1863 Act relied upon by the Mahant-cum-Mohtmims. Seen from this angle, there is no gainsaying that the legislative object of the Act is entirely different. It is only after creating an alternative statutory mechanism to regulate the affairs of religious establishments, including the maintenance of accounts, that Section 22 of the Act prohibited the State or Central Government(s) or their officers from taking over the management and control of those religious establishments. The 1863 Act is thus totally alien to the issues involved in the instant case.

WHO IS COMPETENT TO APPOINT MAHANT OR MOHTMIM OF A DERA OR RELIGIOUS INSTITUTION?

158. Having held that Farman-i-Shahi is a "law" and it continues to be the "law" in force as per its adaptation, our conclusion still falls short of answering yet another contentious issue as to how and by whom a Mahant or Mohtmim of a religious institution/dera regulated by Farman-i-Shahi is to be appointed? It is an admitted fact that all the religious institutions in question belong to Bairagi,

Nirmali, Udasi and Gosain sects. All these sects are non-Sikh Sampradayas. The question of appointment of Mahants or Mohtmims by the Dharmarth Board which came to be constituted by the order dated 13.02.2006 BK, therefore, does not arise at all, for the Author of the Command (Ruler of Patiala State) later on himself clarified that Dharmarth Board was not constituted to have control over the religious institutions of non-Sikh Sampradayas.

159. The State Government as well as the Deputy Commissioner, Patiala fell in error in overlooking the Circular dated 13.02.2006 BK and 04.04.2006 BK. The unambiguous legal effect of these subsequent decisions was that the Creator of the Trust, namely, the Ruler of Patiala State didn't want Dharmarth Board to take over or interfere with the non-Sikh Sampradayas/religious institutions.

160. As far as the Farman-i-Shahi dated 18.04.1921 AD is concerned, the same does not provide any procedure to be followed for appointment of a Mahant/Mohtmim. On minute dissection, the Farman-i-Shahi dated 18.04.1921 AD unravels that instead of starting from the stage of "selection" or "selection process" of a Mahant-cum-Mohtmim, it opens up at the stage of "appointment" only. It then refers to different honours to be given to such appointed Mahant-cum-Mohtmim. We are, therefore, sure on a harmonious construction of the Farman-i-Shahi that the absence of a mode of selection signifies the solemn decision taken by the Ruler of Patiala State of not interfering in the prevailing customs, rituals or practices of the non-Sikh religious denominations, for appointment of the Mahant-cum-Mohtmims. Farman-i-Shahi comes into sight immediately at the stage when a Mahant-cum-Mohtmim is to be installed or appointed. The expression "appointed through Deodhi Mualla" refers to the post selection event, namely, the official acceptance or recognition of the selected Mahant/Mohtmim by Deodhi Mualla with the approval of Ijlas-i-Khas.

161. The religious customs, tenets, conventions, practices, rituals, ethics or moral discipline developed by a sect in due course of time, uniformly apply to all its members, followers, disciples and managers irrespective of the source of the estate of a Dera or the religious institution. It goes without saying that the tenets, customs, conventions, practices, rituals etc. are in essence not only the invisible soul of a religious sect but are also its visible unique characteristic. These distinct features get descended from the Guru to the Chela and from one generation to the other amongst the followers or disciples irrespective of the varied geographical locations of the institutions of such Sect. For example, the followers and disciples of Udasin Sect may have their establishment located at Haridwar (Uttarakhand) or at Patiala (Punjab) but the same set of principles, values, rituals, customs and conventions shall continue to prevail to preserve their distinct peculiarity and any deviation therefrom would lead to the ouster of the defiant from the sect.

162. The custom or practices for appointment of a Mahant of a religious Dera must therefore be kept intact and shall continue in force whether the landed property of such dera was gifted by the Rulers or donated by its followers or is

self-acquired by spending the donations etc. Any interference by the State or its Agency in the matter of tenets, rituals, conventions or customs to be mandatorily observed for the selection of a Mahant of any religious denomination, shall amount to foul-play and has to be knocked down in view of the guarantee flowing from Article 26(a) and (b) of the Constitution.

163. Learned Single Judge rightly held that a Mahant-cum-Mohtmim has to be "selected" as per the religious customs or practices prevailing in their sect but fell short of further opining as to whether or not such selectee could be appointed without the prior approval of the Deodhi Mualla through Ijlas-i-Khas.

164. One cannot lose sight of the fact that the last part of Farman-i-Shahi essentially serves the cause of public interest. It commands to protect and preserve the properties in favour of religious institution. After all, such institutions were set up by the Creator of Trust(s) for the laudable objects of preaching moral and social values and for the performance of religious and spiritual activities. If the properties were allowed to be plundered one after the other by the Mahants, how could the deras rise to achieve the objects for which such public trusts were created?

165. We thus hold that while a Mahant-cum-Mohtmim shall be chosen only in a congregation (Bhek) of the followers and disciples of the religious Sect by election or otherwise, strictly as per their custom, convention and practices and under the direct supervision of the Deputy Commissioner, the State Government on receipt of report in this regard from the Deputy Commissioner, shall appoint the Mahant-cum-Mohtmim of the Dera to which land or immovable property was gifted by the Ruler of Patiala or other Princely States. The Mahant-cum-Mohtmim shall abide by the terms and conditions as prescribed in Farman-i-Shahi. In this manner, there shall neither be any uncertainty on the issue of succession nor the self-styled and self-acclaimed Mahants would be able to intrude into the deras-cum-religious institutions.

166. In a given case, a Mahant-cum-Mohtmim can be appointed on the basis of the "Will" executed by the incumbent Mahant, if such mode of appointment is recognized beyond any doubt under the customs, conventions or past practices of the religious Sect. Henceforth if a claim for appointment as Mahant-cum-Mohtmim is staked on the basis of a "Will", the Deputy Commissioner shall certify that the will is not shrouded by any suspicious circumstances and there is no rival claim. On receipt of such report, the Competent Authority shall appoint the successor. The claim of appointment on the basis of a Will, nevertheless shall be entertained very cautiously and in the event of any doubt, the claimant shall have to approach the Civil Court under Section 92 CPC and establish his claim. Till such time, the Deputy Commissioner shall take over the management and control of Dera properties as a temporary measure only.

167. We need to lay emphasis at the cost of repetition that there can never be a fair mode of shortlisting a Mahant-cum-Mohtmim of a Dera unless the identity of

the "followers", "disciples" or other bona fide "stake-holders" is firstly determined through an exercise akin to the finalization of a "valid voter list" to conduct fair and just election to a public office. We are not forgetful of the fact that under the customs and practices relied upon by most of the writ-petitioners, a Mahant is expected to be elected in the Congregation, yet most of the self-styled Mahants before us are those who claim to have been chosen by the previous Mahants during their lifetime as per the custom of Guru to Chela. There lies therefore, a heavy and onerous duty on the district administration, to undertake such an exercise and bring fairness and transparency in the matter of selection and consequential appointment of a Mahant.

168. What would be the customs, conventions, rituals, practices or precedents for selecting a Mahant, may vary, slightly or substantially, from one religious denomination to another. Though relevant extracts of some books, scriptures or research papers do throw light on this aspect but we decline to give any firm opinion on these issues in respect of any of the non-Sikh Sampardaya. The alternative and equally effective mechanism referred to in the later part of this order will be able to resolve such like factual issues as and when need be.

169. The approval of the State Government/competent authority for appointment of the Mahant-cum-Mohtmim of a religious institution run by a non-Sikh religious Sect in the area of erstwhile PEPSU State in terms of Farman-i-Shahi is necessitated in public interest for the reason that despite singing in chorus that they have not misused the dera properties, the facts and figures disclosed by the Deputy Commissioner in his affidavit dated 12.12.2014 shockingly reveal as to how the property worth hundreds of crores of rupees has been plundered and siphoned off from the Deras to private entities by the self-styled Mahant-cum-Mohtmims. The affidavit reveals the following details:-

170. It is axiomatic from the bare facts as already noticed above, that hundreds of acres of dera lands have been "leased out", "exchanged" or "transferred" to individuals or the so-called societies etc. Such transactions have been executed or allowed to take place even though none of the Mahant-cum-Mohtmim acquired proprietary rights in respect of dera properties in his individual capacity. It is not understandable as to how a Mahant-cum-Mohtmim could transfer the title or right in an immovable property better than what was possessed by him? Every such transaction was per se fraudulent, without any authority of law and detrimental to the interest of Religious Institutions. In all fairness, the counter-affidavit filed by Mahant Depinder Dass in CWP-9690-2008 may also be noticed, as according to him:-

"3. That neither the present Mahant Deepinder Dass nor the previous Mahant Jagat Ram has not sold any land belonging to Dera to any person.

4. That most of the above said land of the Dera Shahi Samadha Patiala is in occupation of unauthorized persons and litigations are pending in various courts between the dera and unauthorized occupants."

(emphasis applied)

171. Assuming the Mahant to be correct, still the fact remains that due to inefficient management, vested interests, dishonest intentions and unethical activities, the dera properties have been either sold/leased out/exchanged or the same have landed in the hands of tenants without any income to the Deras.

172. Equally alarming is the fact that hundreds of local residents most of whom are not even the believers of these Non-Sikh Sampardayas have masqueraded themselves as Bairagies, Nirmali Sadhus, Udasi Panthis or Gosains etc. They have, through well-knitted and meticulously executed schemes, started suffixing words like "Dass" in place of their original surnames. They disguise themselves in such robes which simply command reverence from the general public and pose as if they are the ardent followers or disciples of these religious denominations. Each one of them has an apparent vested interest to grab the highly valuable properties somehow. It is because of these complicated issues where the extraction of the grain from the chaff is needed and the black-sheep who have intruded into the flock are required to be identified and thrown out to save the sanctity of the Deras, that there is a dire need to set up an effective mechanism. The roots and origin of each and every follower disciple is needed to be identified to determine their actual religious leanings/denominations. It is very important to trace out whether these followers or disciples are there in the Dera for the love of the religion or have entered the Dera through deceitful means and motivated intentions, keeping a vulture's eye on the assets and properties of the Dera.

173. It is imperative upon the State keeping in view the intendment behind Farman-i-Shahi or otherwise, to prevent pilferage of the dera assets and properties. It is equally obligatory upon all the stakeholders to bring the religious institutions on the right track for achieving the object and purpose for which such Public Trusts were created. Though with the fast changing scenario and passage of time, the principle of Cy-pres deserves to be justifiably invoked following the parameters embodied in sub-section (3) of Section 92 CPC, but while doing so the original character of the religious institution or the purpose of its setting up should not be deviated from.

174. The religious institutions in hand cannot be brought back to their original pristine glory unless they are freed from the conmen who have invaded these institutions and keeping them hostages. It is an arduous task and the cleaning up exercise shall involve a marathon exercise of determining the multifarious factual issues including the following:-

(i) the determination of the actual living population of religious denominations like Bairagis, Nirmalis, Udasis and Gosains in the State of Punjab;

(ii) identification of their religious headquarters within or outside the State of Punjab;

- (iii) the tenets, customs, conventions, practices, rituals, ethical or moral discipline of each religious denomination which they broadly follow;
- (iv) identification of the followers, disciples, members or office bearer of each religious denomination in the State of Punjab, especially in and around the area where the Deras in dispute are located;
- (v) identification of the roots of origin/descent of such follower, disciple, manager or the so-called Mahant etc. and whether they belong to the religious sect through generations and/or are recent converts/initiates;
- (vi) to determine whether lineage within the religious denomination is recognized by birth or is permissible by conversion also;
- (vii) if permissible by conversion, whether such neo-followers of Bairagi, Nirmali, Udasis and Gosain sects in the State of Punjab practise/preach such customs, rituals, values and principles in their house or families or these are meant only to strengthen their commercial interests in dera properties;
- (viii) determination and identification of the original movable and immovable properties given to each religious institutions by Rulers of Patiala or other Princely States;
- (ix) identification of the transactions or execution of any instrument by one or the other mahant detrimental to the interest of the dera;
- (x) restoration of all immovable properties to the deras which have been transferred to various persons through dubious and doubtful means and/or unauthorized occupation including tenancy without payment of rent;
- (xi) to summon the congregation of genuine and bona fide followers or disciples and to evolve a fair and impartial process of selection of Mahant-cum-Mohtmims and take up his case for approval of the State Government for appointment;
- (xii) terms and conditions applicable on a Mahant on his new appointment;
- (xiii) to evolve effective mechanism for monitoring the affairs of the subject deras and activities of their respective Mahants.

175. The vast ranging issues, some of which have been illustrated above, are of judicial or quasi-judicial nature. Such like questions can be determined by a judicially-trained mind only, who is well equipped with the knowledge of customary law and possess sufficient experience in judicial dispensation. At any rate, the administrative authorities cannot be expected to adjudicate the civil rights like "right to hold a property". Only a judicial forum can be entrusted with such a gigantic task, keeping in view the public faith and trust in Judiciary as well as in conformity with the doctrine of separation of power envisioned under our Constitution.

WHETHER WRIT PETITIONS CHALLENGING THE VIRES OF THE FARMAN-I-SHAHI ARE MAINTAINABLE?

176. It is vehemently urged by the State counsel that the writ-petitioners (Mahant-cum-Mohtmims), if they were so aggrieved, could challenge the vires of Farman-i-Shahi in the very first opportunity through their writ petitions which have since been allowed by the learned Single Judge though on other grounds. No such challenge was laid by them, rather they impliedly admitted the Farman-i-Shahi as a "law" which is in force without being affected by Article 13 of the Constitution. It was maintained that the previous writ petitions as well as the ones filed belatedly, have the same cause of action and are between the same parties. The institution of two writ petitions for the same cause of action amounts to splitting the claims and the remedies both. Learned State counsel urged that the writ-petitioners be taken to have relinquished their claim to challenge the Farman-i-Shahi. The principles explained in Commissioner of Income Tax, Bombay Vs. T.P. Kumaran, (1996) 6 AD 620 : (1996) 2 CTC 699 : (1996) 74 FLR 2522 : (1996) 8 JT 98 : (1997) 1 LLJ 117 : (1996) 6 SCALE 403 : (1996) 10 SCC 561 : (1996) 4 SCR 732 Supp : (1996) 3 SLJ 101 : (1996) 88 TAXMAN 206 were relied upon to strengthen their plea.

177. On the other hand, learned senior counsel for the writ-petitioners contended that there is no limitation for questioning the vires of an Act and the same can be challenged at any stage. They argued that the concession given by a party on the question of validity of a Statute which is otherwise unconstitutional, would not cure the defect nor can it fill up the lacuna in the defective law.

178. The above noticed contention, as we view, need not be gone into any further in a case where validity of a Statute is doubted on the premise that it violates Part-III or other constitutional provisions. The judicial review would be inevitable as the fundamental or constitutional rights of people are of greater importance once mirrored against the procedural technicalities invoked for the outright rejection of these petitions. Secondly, once learned counsel for the parties have been heard at length on the sustainability of Farman-i-Shahi, we deem it appropriate to express the views on merits.

WHO IS THE COMPETENT AUTHORITY IN THE STATE GOVERNMENT TO TAKE DECISION UNDER FARMAN-I-SHAHI?

179. There is a lot of misconception in the mind of State authorities in respect of the powers exercisable by Financial Commissioner, Revenue by virtue of Rule 4 read with Sr.No. 10(c) of the Allocation of Business Rules, 1994 re: allocation of the subject of "Jagirs and Muafis" to the Department of Revenue and Rehabilitation. The Financial Commissioner, Revenue, being the Secretary of aforesaid Department, is assumed to be the sole possessory of power to appoint a Mahant-cum-Mohtmim of Deras/religious institutions to whom "muafi land" has been given by Rulers of Patiala State. It has to be borne in mind that as per Rule 2 of these Rules, the Government Business is to be transacted in the Departments specified in the Schedule. Rule 3 further provides that "the Governor shall, on the advice of the Chief Minister, allot among the Ministers the business of the Government by assigning one or more Departments to the

charge of a Minister".

180. The Competent Authority to take a decision and dispose of the "business" pertaining to a Department is the Minister-in-charge of that Department as provided under Rule 6 of the "Rules of Business of the Government of Punjab, 1992" which says that "without prejudice to the provisions of Rule 4, the Minister-in-Charge of a Department shall be primarily responsible for the disposal of the business pertaining to that Department". Only those matters which are required to be put up before the Council of Ministers or those to be disposed of by the Chief Minister, would not be disposed of at the level of Minister-in-charge.

181. In addition to the explicit description of "competent authority" given in the Rules of Business of the Government of Punjab, 1992, the Farman-i-Shahi also prescribes "Deodhi Mualla" through Ijlas-i-Khas as the final authority to accord approval for appointment of a Mahant, i.e. the Revenue Head of the Princely State with the concurrence of the Council of Ministers of the Ruler. The State Legislature under the Constitution has also, while enacting the Adaptation Laws, equated Ijlas-i-Khas with the State Government. The Financial Commissioner, Revenue is a pivotal authority who "represents" the State as its Secretary but still in official hierarchy he is not and does not act as the "State Government". The Competent Authority under the Rules of Business being the Minister-in-charge, no decision can be taken under the Farman-i-Shahi at the end of Financial Commissioner, Revenue alone. Similarly, the Deputy Commissioner, Patiala is the local Administrator-cum-Representative of the State Government who implements the Government decisions and policies. Since the Princely States including that of Patiala gave immovable properties to Deras-cum-religious institutions on conditional basis, the District Administration is obligated to prevent pilferage, misuse and misappropriation of such properties.

SECTION 92 OF THE CODE OF CIVIL PROCEDURE

182. Both sides have accused each other of their failure to approach the Civil Court under Section 92 CPC. Section 92 is very exhaustive and gives ample powers to Civil Court to interfere with a public trust of charitable or religious nature. Sub-Section (1) of Section 92 has been designed to prevent undesirable and unnecessary harassment that may be caused by instituting malicious suits against public trust of a charitable or religious nature. Under this sub-Section, the Civil Suit seeking remedy of alleged breach of any express or constructive trust is maintainable only if such suit is filed by the Advocate General of the State or two or more persons having an interest in the Trust and who have obtained the leave of Court for such institution. The suit may seek a decree for the (i) removal of any Trustee; (ii) appointment of new Trustee; (iii) vesting any property in a trust; (iv) recovery of possession of trust property; (v) directions for accounts and enquiries and also the authorization for the sale, mortgage or exchange of the trust property.

183. Sub-Section (3) of Section 92 is founded upon the doctrine of Cy-pres and it

empowers the Civil Court to alter the original purpose of any express or constructive Trust created for public purpose of a charitable or religious nature and allow the property and income of such Trust to be applied Cy-pres provided that (i) the original purpose of the Trust has been substantially fulfilled or (ii) such original purpose cannot be carried out at all etc. etc.

184. The contention that the parties could be relegated before the Civil Court under Section 92 CPC, appears to be futile and an academic exercise only, so far as the legal issues are concerned. The State of Punjab may be right in contending that the Mahant-cum-Mohtmim or other writ-petitioners ought to have approached the Civil Court under Section 92 CPC as all the reliefs which they sought in the writ petitions could have been granted by the Civil Court also. Similarly, there may be some merit in the plea taken by Mahant-cum-Mohtmims or other writ-petitioners that even the State authorities could approach the Civil Court for the removal or appointment of Mahants. Since the writ petitions were entertained way back in the year 1989 and the learned Single Judge has expressed the views on merits, nothing remains now for the Civil Court to opine on pure legal issues. Further, some of the writ-petitioners have meanwhile assailed the validity of Farman-i-Shahi as according to them it is a "void" law within the meaning of Article 13 read with Article 372 of the Constitution. These related issues essentially fall within the ambit of a Constitutional Court only.

185. As regards the mixed questions of law and facts or the seriously disputed question of facts, some of which have been formulated in para-174 of this order, the most efficacious recourse is to get such issues decided from the Civil Court, be it may a Special Court-cum-Tribunal. Ordinarily, the parties could be relegated to Civil Court for the resolution of their unresolved issues. However, the exceptional facts and circumstances like (a) the disputes re: management of deras in question are pending in Courts for the last 3-4 decades; (b) the principal issue pertains to entrustment of the management and affairs of religious institutions; (c) there is a continuous attempt to misappropriate and misuse valuable dera properties; (d) the immovable properties in question are worth, may be, hundreds of crores; (e) there is a complete uncertainty and chaos regarding the day to day affairs of these institutions; (f) each day's delay is a bonanza for unlawful intruders and masqueraders; and (g) lest it is too late that the doctrine of Cy-pres also becomes helpless to save the rich religious heritage of the subject deras, we are of the firm view that instead of putting the left out lis in a queue before the ordinary Civil Court, let such issues be put on fast track by entrusting the same to a Special Civil Court comprising one Presiding Officer and one or two members, as the case may be, who can segregate and take up simultaneously the different stages of the dispute for its early disposal in a time bound manner. Such a Special Civil Court-cum-Tribunal shall act as the Principal Civil Court of Original Jurisdiction within the meaning of Section 92 CPC.

CONCLUSIONS

186. In the light of the above discussion, we sum up our conclusions as follows:-

(i) Farman-i-Shahi dated 18.04.1921 AD is held to be a valid law duly saved under Article 13 read with Article 372 of the Constitution and it continues to be a valid law until altered, repealed or amended by a competent Legislature or other competent authority. It is further held that Farman-i-Shahi is not hit by Articles 13(1), 14 or 300-A of the Constitution.

(ii) Farman-i-Shahi is applicable and continues to regulate the appointment of a Mahant or Mohtmim of such a Religious Institution of Non-Sikh Sampardaya to whom land or any other immovable property was given by the erstwhile Rulers of Patiala State or any other Princely State which later merged into PEPSU.

(iii) Farman-i-Shahi neither prescribes the mode of selection of a Mahant or Mohtmim nor is it attracted till the stage of approval for appointment of a chosen Mahant or Mohtmim reaches. The Mahant-cum-Mohtmim of a Non-Sikh Religious denomination shall be chosen only as per the customs, practices and conventions followed by such Sect, continuously and consistently.

(iv) Dharmarth Board does not have any administrative control in the matter of regulating the affairs of Deras or other Religious Institutions of Non-Sikh Sampardaya.

(v) State of Punjab or its authorities are not empowered to select Mahant-cum-Mohtmim of a Religious Sect-cum-Dera of Non-Sikh Sampardaya at their own but the approval of the Competent Authority in the State Government shall be required for such appointment.

(vi) A Mahant-cum-Mohtmim has no authority or power to alienate the property of the Religious Institution in any manner whatsoever and such property vests exclusively in the Religious Institution only.

(vii) Any transaction in relation to the immovable properties of the Dera-cum-Religious Institutions of Non-Sikh Sampardaya which are subject-matter of these cases, entered into so far by the Mahant-cum-Mohtmims are prima facie declared to be acts of fraud and collusion, without any authority and are held to be detrimental to the interest of the respective Dera-cum-Religious Institution. Consequently, all such transactions are hereby declared null and void, having no binding effect on the concerned Dera-cum-Religious Institution subject to however, the right of the affected person to approach the Special Civil Court constituted hereinafter and to establish that the transaction in question was free from the above illustrated or any other fatal legal infirmity and further that such transaction was beneficial for the dera-cum-religious institution. The onus to prove that any of the transactions deserves to be validated, shall lie on the person who claims any right, interest or title through such transaction. Until such onus is discharged, the subject property shall stand mutated and continue to be owned by the dera-cum-religious institution free from all encumbrances.

187. Having held so, we are also of the considered view that the above summarized conclusions are inapplicable to the facts and issues involved in

LPA-797-1994 (State of Punjab and Ors. vs. Mandir Thakar Dwara Bihari Dass Wala and Ors.) and LPA-1306-1994 (Mahant Madan Mohan Dass vs. State of Punjab and Ors.). The religious institution in these cases is located at Rajpura town in District Patiala. The writ-petitioners (respondents in appeals) have very successfully established on the basis of old Revenue and other authenticated record that the institution in question is at the site from the time immemorial and was very much in existence at the time when Raja Todarmal founded Rajpura town during the regime of Mughal Emperor Akbar. The old record has revealed that none of the properties were given/donated to the temple by the erstwhile Ruler of Patiala State or any other Princely State. Some of the properties have been donated to the temple after Independence also. It is thus manifest that Farman-i-Shahi though a valid law, cannot be invoked to regulate the affairs of the religious institution in question. The State of Punjab as well as their beneficiary, namely, the private respondents both have failed miserably to produce any material whatsoever showing that not even an inch of land was ever given by the Rulers of the Patiala State. The State Government has no authority, therefore, to interfere with the affairs of the Thakurdawara Bihari Dass Wala in Rajpura Town. The over-anxiety shown by the then Deputy Commissioner, Patiala to hoodwink the law and take forcible possession of the property has rightly prompted the learned Single Judge to infer mala fide exercise of power. Those findings do not call for any interference by us. Both these appeals are thus ordered to be dismissed.

188. The remaining Letters Patent Appeals and the writ petitions shall stand decided in the following terms and directions:-

(i). LPA Nos. 541, 542, 543, 793 and 794 of 1994 filed by the State of Punjab against the judgment dated 14.01.1994 of the learned Single Judge in Dera Sullar's case as also the short orders dated 01.02.1994 passed by the learned Single Judge in other connected cases following his judgment in Dera Sullar's case are allowed in part and the judgment(s) of the learned Single Judge is/are modified.

(ii). Resultantly, the writ petitions filed by Mahant-cum-Mohtmims, their followers or beneficiaries as well as cross-writ petitions filed by the opponent groups, out of which the Letters Patent Appeals mentioned in direction No. (i) had arisen, are, hereby, dismissed except to the extent of the directions issued hereinafter.

(iii). The subsequent writ petitions challenging the validity of Farman-i-Shahi dated 18.04.1921 AD, i.e. CWP No. 18313 of 2006 (lead case); 11136 of 2007 and 9690 of 2008 and other connected cases i.e. CWP Nos. 4575 of 1991; 3762, 3586, 14844, 14532 and 14529 of 1996; 5885 and 13515 of 1997; 15892 of 2004; 11537 of 2005; 3174, 6988, 10064, 2712; 10438 of 2009; 1428 of 2010 are hereby dismissed.

(iv). All those sale deeds, exchange deeds, lease deeds or any other Instrument of transfer of immovable property executed by the Mahant-cum-Mohtmims of the

deras in transgression of their powers and authority, are hereby declared null and void having no binding effect on the Dera-cum-Religious Institution(s) subject to, however, the conditions mentioned in para-186(vii) of this order read with direction No. (viii) below;

(v). The State of Punjab and the District Administration at Patiala or the other Districts where the subject Deras-cum-Religious Institutions are located, are directed to restore forthwith the mutation of all immovable properties in favour of the Religious Institutions, irrespective of any decree passed by the Civil Court or any Instrument of Alienation duly executed and registered in accordance with law but subject to the final determination of the validity of such transaction by the Special Civil Court-cum-Tribunal constituted hereinafter.

(vi). The State of Punjab and the District Administration is further directed to restore possession of the immovable properties which are still owned by a dera-cum-religious institution but are not in its possession due to the lease, mortgage or any other similar kind of instrument executed by the Mahant-cum-Mohtmim, within a period of three months from the date of receipt of a copy of this order. If the Deputy Commissioner is satisfied, owing to the past conduct of the alleged Mahant-cum-Mohtmim, that the possession of the property is likely to again exchange hands to the detriment of the Religious Institution's interest, the Deputy Commissioner shall appoint the Tehsildar of the area concerned as a Receiver of such property in accordance with law and then he shall manage such property till the final orders are passed by the Special Civil Court.

(vii). Wherever there is an inter se dispute on the appointment of a Mahant-cum-Mohtmim of a dera, the immovable property and assets of such Dera-cum-Religious Institutions shall be taken over by the Deputy Commissioner concerned as a Receiver until the dispute regarding such appointment is resolved by the Special Civil Court-cum-Tribunal in accordance with the directions laid down in this order.

(viii). Any person, company, society or a juristic body who is affected by the declaration given in para 186(vii) and/or the directions numbered at (iv) to (vii) above, shall be at liberty to establish the validity of his/its right, title or interest in the property once owned by a dera-cum-religious institution, by lodging a claim to that effect before the Special Civil Court-cum-Tribunal constituted hereinafter. Such aggrieved person, company or society etc. shall submit his/its claim in the Court of the District Judge, having territorial jurisdiction within a period of three months which shall commence from the date the property in dispute is restored back to the Dera-cum-Religious Institution by the district administration or the prescribed authority.

(ix). There shall be a Special Civil Court-cum-Tribunal presided over by a Member of Punjab Superior Judicial Service, to be nominated by the District and Sessions Judges, Patiala, Barnala and/or other places within whose territorial jurisdiction, the disputed property of a Dera-cum-Religious Institution is located. Depending

upon the volume of claims that may be lodged, the learned District and Sessions Judge concerned shall assign one or two members of Punjab Subordinate Judicial Services for the simultaneous recording of evidence and completion of record and paper-books of each claim-case so as to enable the Presiding Judge of the Special Civil Court to decide the questions like those illustratively raised in para-174 of this order or other related, relevant and allied issues raised in a claim-case.

(x). The Special Civil Court-cum-Tribunal shall be constituted initially for a period of one year. The Special Civil Court-cum-Tribunal shall be competent to hold the Court proceedings at a place other than the Sessions headquarters, if need be, for expeditious disposal of the claim-cases preferably within a period of one year from the date of filing of such claims;

(xi). The District and Sessions Judges concerned shall ensure that the Presiding Judge of the Special Civil Court or the Member of the Punjab Subordinate Judicial Services associated with him are not assigned any other judicial work until the claim cases arising out of this order are decided;

(xii). The State of Punjab is directed to sanction the requisite temporary posts in the cadre of Punjab Superior Judicial Services as well as in the Punjab Subordinate Judicial Services equal to the strength of the officers to whom exclusive work of Special Civil Court-cum-Tribunal will be assigned, as directed above. The Presiding Judge or the associate Member(s) of the Special Civil Court-cum-Tribunal shall not be entitled to any Special Pay or Deputation Allowance but they shall continue to have full facilities and the complete infrastructure to which they are entitled to. They shall be further provided full strategic assistance by the Government of Punjab, as may be required by them for effective performance of the special duties assigned under this order;

(xiii). The State of Punjab as well as the Deputy Commissioners of the concerned Revenue districts are further directed to - (a) appoint a team of senior Law Officers, to be headed by a District or Deputy District Attorney to assist the Special Civil Court; (b) to produce all the original and relevant records for the Court's scrutiny in respect of the immovable property of every dera-cum-religious institution; (c) take physical control of the dera properties, if need be, and/or lease out such properties on yearly basis subject to the prior approval of the Special Civil Court; (d) constitute a team of Officers including an Accounts Officer to scrutinize the record of every dera in respect of utilization of the income or other assets of such deras; and (e) to provide any other assistance as may be asked for by the Special Civil Court.

(xiv). The Special Civil Court-cum-Tribunal is directed not to entertain any claim of a Gram Panchayat, Municipality or any local body or of the village proprietary body, in respect of their so-called entitlement to the dera properties as shamlat deh or in any other form. The title or ownership rights of the Dera-cum-Religious Institution to the extent of land or immovable properties given to it by erstwhile

Rulers or which came otherwise, shall not be allowed to be questioned by anyone. The Special Civil Court, however, shall be required to determine and identify the land and immovable property of every Dera-cum-Religious Institution on the basis of original records to be produced by the District Administration.

(xv). The Special Civil Court-cum-Tribunal shall act and adjudicate every claim by exercising the powers under Section 92 of the Code of Civil Procedure and shall follow the principles and broad parameters laid down in this order while deciding the individual claims.

(xvi). CWP-4575-1991 (Bhai Waryam Singh vs. State of Punjab etc.), the brief facts whereof are noticed in para-53 of this order and which was simply tagged with the Letters Patent Appeals without any interim order, is hereby disposed of relegating the petitioner to approach the Civil Court of competent jurisdiction under Section 92 CPC and his claim shall be decided by such Court in the light of the principles laid down above.

189. We further direct that till the Special Civil Court decides the disputes referred to it for adjudication, Mahants-cum-Mohtmims of the dera/religious sects who are party to these proceedings, their followers, disciples, successors, vendees and/or any other direct or indirect beneficiary, as well as State of Punjab and its authorities shall maintain status quo re: possession, alienation and/or creating any encumbrance on the movable or immovable properties of the Dera-cum-Religious Institutions except the land or immovable properties required to be restored in favour of Dera-cum-Religious Institution along with possession in terms of Direction No. (vi) and (vii) contained in para-188.