A SHIROMANI GURUDWARA PRABHANDHAK COMMITTEE, AMRITSAR

v.

B MAHANT KIRPA RAM & ORS.

March 29, 1984

[D.A. DESAI, A.P. SEN AND V. BALAKIRSHNA ERADI, JJ.]

C *Sikh Gurdwaras Act, 1925 Section 16(2)(iii)—Gurdwara—Tests for determination of—To be shown institution established for use by Sikhs for public worship.*

Sikhs and Udasis—Distinctions—What are.

A group of persons residing in a village and professing the Sikh religion made an application to the State Government requesting the Government to declare the religious and charitable institution described in the application as a D Sikh Gurdwara. This application was published in the Official Gazette and respondent No. 1 filed objections under section 8 of the Sikh Gurdwaras Act, 1925 contending that the institution was not a Sikh Gurdwara and that he was entitled to raise the said contention because he was the holder of the hereditary office of mahant of the institution.

E The application was forwarded by the State Government under section 14 to the Sikh Gurdwara Tribunal which held that the respondent was the hereditary holder of the office of mahant of the institution and that the institution was a Sikh Gurdwara and was governed by the Act.

The respondent, thereupon filed an appeal in the High Court which held F that the institution was set up by a mahant for commemorating the memory of his Guru and that the land on which the institution was set up with the grant of Muafi had been donated by a Muslim ruler. After considering of the entries in the land records, the High Court further held that institution was not only serving as a Gurdwara for the worship of Granth Saheb but was also used as a Dera or lodging house or Sadhus or Faqirs of the Udasi Sect and that there was a duality of faiths in the institution. The High Court concluded that G the institution was catering to the religious views and beliefs of both the sects amongst the local population and that the Tribunal was in error in declaring that the institution was a Sikh Gudrwara, which would permit one of the communities to appropriate the institution to its exclusive use and to deprive the other community or sect from the dual use to which the institution has been put ever since it was founded or established. The High Court, consequently allowed the appeal and set aside the declaration made by the Tribunal.

H Dismissing the further appeals to this Court ,

HELD : 1. The appraisal of the evidence by the High Court is correct and unexceptional. The evidence discloses that the institution in question was not shown to have been established for use by Sikhs for the purpose of public worship and therefore one of the material conditions for attracting section 16(2)(iii) of the Sikh Gurdwara Act, 1925 was not established. It is immaterial that at the time of presentation of the petition it was along with the followers of Udasi Sect used for worship of Granth Sahib by the Sikhs. [382E-F]

2. In order to bring a case under section 16(2)(iii) of the Act it must not only be established that the institution was established by Sikhs for the purpose of public worship but was used for such worship by Sikhs before and at the time of the presentation of the petition. The use of the conjunctive 'and' clearly imports that in order to attract Section 16(2)(iii) both the conditions must be cumulatively satisfied. [380A-B]

Gurmukh Singh v. *Risaldar Deva Singh & Ors.*, AIR 1937 Lahore 577, allowed.

3. Udasis form an independent sect : They do venerate Sikh Scriptures. Therefore, in an institution of Udasis sect, one can visualise reading of Granth Sahib or veneration of Sikh scriptures. That itself is not decisive of the character of the institution. If the succession was from Guru to Chela and those Gurus were followers of Udasi faith and the institution was known as Dera of Udasi Bhekh and they followed some of the practices of Hindu traditional religion that would be completely destructive of the character of the institution as Sikh Gurdwara. [381E-F]

Mahant Daram Dass etc. v. *The State of Punjab & Ors.* [1975] 3 SCR 160 *Hem Singh & Ors.* v. *Basant Das and Anr.*, AIR 1936 PC 93 at 100 and *Pritam Dass Mahant* v. *Shiromani Gurdwara Prabhandak Committee*, C.A. No. 1983 of 1970 dated 16.2.84 referred to.

In the instant case, there is no evidence to show that the institution was established for use by Sikhs for the purpose of public worship. Though the institution may be established by anyone may be a Sikh or follower of any other faith, but it must be established for use by Sikhs for the purpose of public worship. The original grantor was a Muslim ruler but there is nothing to show that when Gulab Das Faqir of Udasi Sect established the institution, he did it for use by Sikhs for the purpose of public worship. Later on as the majority of the population of the village were followers of Sikh religion and as Udasis also venerate Granth Sahib, reading of Granth Sahib may have commenced and therefore, generally speaking people may describe, and revenue record may show it to be Gurdwara, but that would neither be decisive of the character of the institution nor sufficient to bring the institution within Section 16(2)(iii) of the Act. [380D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1685-1686 of 1971

Appeals by Special leave from the Judgment and Order dated 8.1.1971 & 14.11.1969 of the Punjab and Haryana High Court

in S.C. Appeal No. 96 of 1970 & First Appeal No.59 of 1964.

M.N. Phadke and *Harbans Singh* for the Appellant.

Harbans Lal, Urmila Kapoor, Kamini Jaiswal, Nishi Puri, Shahsi Kiran and *Tehal Singh Mangal* for the Respondents.

The Judgment of the Court was delivered by

DESAI, J. Whether a religious and/or charitable institution situated in village Mahal Khurd, Tehsil Barnala of Sangrur District is a Sikh Gurdwara within the meaning of the expression in the Sikh Gurdwaras Act, 1925 ('Act' for short) is the subject matter of controversy between the parties in this appeal by special leave.

About 56 persons residing in village Mahal Khurd and professing Sikh religion made an application to the Government of Punjab on December 23, 1960 requesting the Government to declare the institution more particularly described in the application as a Sikh Gurdwara. This application was published in the Official Gazette whereupon Mahant Kirpa Ram, respondent No. 1 ('respondent' for short) filed objections under Sec. 8 of the Act contending that the institution was not a Sikh Gurdwara and that he was entitled to raise that contention because he was the holder of hereditary office of mahant of the institution.

The application was forwarded under Sec. 14 to the Sikh Gurdwara Tribunal set up under the Act. Upon rival contentions the Tribunal framed two issues as under:

"1. Is the petitioner a hereditary office holder of the Gurdwara?

2. Is the Gurdwara in dispute a Sikh Gurdwara?"

The Tribunal by its judgment dated January 21, 1964 answered Issue No. 1 in favour of the respondent holding that he was a hereditary holder of the office of mahant of the institution. On Issue No. 2, the Tribunal held that the institution is a Sikh Gurdwara and is governed by the Act.

The respondent preferred F.A.O. No. 59 of 1964 in the High Court of Punjab and Haryana at Chandigrah. A Division Bench of the High Court held that the institution upset was by Gulabdas for commemorating the memory of his Guru named Jad Guru. The

High Court further held that the land on which the institution was set up with the grant of Muafi had been donated by a Muslim ruler named Rai Kala of Rai Kot in favour of Mahant Gulabdas. It was also held that the succession to the office of mahant is from Guru to Chela. After referring to various entries in the land records, it was held that way back in 1861, the institution was not only serving as a Gurdwara for the worship of Granth Saheb but was also used as a Dera or lodging house for Sadhus or Faqirs of the Udasi Sect and that there was a duality of faiths in the institution. After taking all the aspects into consideration, the High Court concluded that the institution in question was catering to the religious views and beliefs of both the sects amongst the local population and that therefore, the Tribunal was in error in declaring that it was a Sikh Gurdwara which would permit one of the communities to appropriate the institution to its exclusive use and to deprive the other community or sect from the dual use to which the institution has been put ever since it was founded or established. Accordingly, the High Court allowed the appeal and set aside the declaration made by the Tribunal.

Original applicants moved the High Court for a certificate under Art. 133(1) (a) and (c) of the Constitution which was numbered as S.C.A. No. 96 of 1970. The High Court on receipt of a report as a result of enquiry directed by it, by its order dated January 8, 1971 rejected the application for certificate both under Art. 133 (1) (a) and (c). Thereupon the original applicants filed these two appeals by special leave; one against the decision of the High Court reversing the decision of the Tribunal and another against the order of the High Court rejecting the application for certificate.

Mr. M.N. Phadke, learned counsel who appeared for the appellant urged that if on evidence the appellants (original petitioners) are in a position to show that the institution was established for use by Sikhs for the purpose of public worship and was used for such worship by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of Sec. 7, the institution would be a Sikh Gurdwara as contemplated in Sec. 16(2) (iii) of the Act. Proceeding along it was urged that there is evidence to show and even the High Court has not found to the contrary that the institution was established for use by Sikhs for the purpose of public worship and was used for such worship by Sikhs, before and at the time of the presentation of the petition under sub-section (1) of Sec. 7

and therefore, notwithstanding the fact that some other members belonging to some other faith or sect also venerate the institution, it would not detract from the character of the institution nor would it be destructive of the character of the institution as Sikh Gurdwara.

Sec. 16(2) (iii) of the Act provides that 'if the tribunal finds that the gurdwara was established for use by Sikhs for the purpose of public worship and was used for such worship by Sikhs, before and at the time of the presentation of the petition under sub-sec. (1) of Sec. 7, the tribunal shall decide that it should be declared to be a Sikh Gurdwara, and record an order accordingly.' 'Sikh' is defined in Sec. 2(9) of the Act to mean 'a person who professes the Sikh religion, or was known to be a Sikh during his lifetime.' If a dispute arises as to whether any particular person is or is not a Sikh, the outcome will depend upon his willingness to subscribe to a declaration as prescribed in the Act. Amongst Sikhs, there can be Amritdhari Sikhs and Sahjdhari Sikhs. One can be said to be a Patit if he being a Keshdhari Sikh trims or shaves his beard or keshas or who after taking amrit commits any one or more of the four kurahits.

The first question is: whether it has been satisfactorily established that the institution was set up by Sikhs for the purpose of public worship and was used for such worship by Sikhs. The Tribunal found that the institution is an old one and no direct oral or documentary evidence regarding the purpose for which it was founded is available. Reliance was placed on the copies of the revenue records, to show how the institution was described in Government land records. On appraisal of the entries, it has been concurrently found that the institution was set up by Mahant Gulabdas upon a grant of land made to him. It appears a Sanad was issued but it was lost when the Mahrattas over ran this part of the country. The High Court then traced the origin of village Mahal Khurd and recorded a finding that the first settlers came to that area in the beginning of the 18th Century and amongst them were Bir Pal, Garib Dass and Bhoja. They cleared the forest land and started cultivating the land. The High Court then examined what area of land can be cultivated with the help of one pair of bullocks. After asserting the probative value of *Kafiat Dehi* or *Wajah Tasmias*, Ext. P-21 and P-22, the High Court concluded that the muafi i.e. exemption from payment of land revenue had been granted to the institution from the time village had first been founded about 200 years before the records were prepared, but these records

do not help in asserting the purpose for which muafi was granted or the purpose for which the institution was established. This conclusion was not commented upon and deserves to be accepted as reasonable inference from the evidence.

Mr. Phadke however invited as to examine jamabandi entries and on the strength of them attempted to urge that since remote past the entries describe the institution as gurdwara.

Ex. P-1 is a will dated May 10, 1958—executed by Mahant Rashi Ram by which the respondent was appointed as his chela with a right to succeed to the office of mahant of this institution. This is a document of recent origin and is not of much assistance. We may next turn to Ext. P-2 dated the 25th Baisakh, 1927 corresponding to 1871 A.D. It is a decision recorded in a muafi enquiry proceeding in respect of land admeasuring 206 Bighas and 16 Biswas then found to be in possession of the institution. It recites that the land was given to Gulab Dass Faqir by Rai Kalha of Rai Kot real donee being his Guru known as Jad Guru who is the muafidar. It was also found that entries in Inam register show that the land admeasuring 120 Bighas has been entered in the name of muafidar and that area of land remained muafi to the muafidar with the approval of Rai Nizam Sahib and the remaining land measuring 86 Bighas and 16 Biswas which was in excess of grant should be resumed to the Government after obtaining the approval of the Diwan Saheb. Two things emerge from Ext. P-2, that the original muafi grant was made by a Muslim ruler in favour of Mahant Gulab Dass Faquir of Udasi sect who appears to have set up the institution to commemorate the memory of his Guru, Jad Guru. These earlier entries do not support the claim advanced on behalf of the appellants that the institution was set up by Sikhs for the purpose of public worship. On the contrary, the institution appears to have been set up by Gulab Dass, a follower of Udasi sect and succession to the office of Mahant is by Guru to Chela.

Reference was next made to Exts. P-7 and P-8 which appear to be statements of Lambardars and Patwaris in question answer form which show that they heard from their ancestors that the muafi had been granted by Rai Kalha to Baba Gulab Dass by way of *Punarth* for meeting the expenses of the Dera and Bal Bhog Parshad Granth Sahib. Relying on these statements it was urged that at the time of recording the statements on April 19, 1872 Granth Sahib was being

venerated in the institution and the grant was for Bal Bhog Parsad of Granth Sahib. There statements suffer from the vice of hearsay evidence in as much as the reference to the Granth Sahib for the first time appears in these statements not based on any personal knowledge but of what they had heard from their ancestors. Ext. P-8 purports to be a statement of the then Mahant Ram Dass Muafidar Faqir Udasi of the year 1873. It shows that the muafi land was granted by Rai Kalha of Rai Kot to Bawa Gulab Dass his great grand Guru for Bhog of Granth Sahib and for the expenses of the Dera and Faqirs. Mr. Phadke urged that the Mahant himself has admitted that the grant was for Bal Bhog of Granth Sahib and that this admission concludes the point. The High Court declined to treat this admission as conclusive on the ground that the admission was made more than a century after the original grant and establishment of the institution and three or four generations had intervened and the Mahant was talking about facts which had happend long before his birth. These, in our opinion, are relevant considerations for not treating the admission as conclusive more so because the earlier entries do not either refer to the institution as Gurdwara or make any mention of the worship of Granth Sahib therein.

Mr. Phadke then invited our attention to Ex. P-18 being on order of Ijlas-I-Khas Committee of the State of Patiala at the relevant time, according approval to the succession to the office of Mahant of the institution. In this order dated June 10, 1937 the instutition was described as:

> "Prem Das Mahant of Dera of Udasi Bhekh (Gurdwara Sahib) situate at Mahal Khurd Tehsil Barnala having died on 18.10.1982, the Administrative Committee recommends appointment of Rikhi Ram Chela of Narain Dass as Mahant on the condition set out in the order."

This order was signed by Her Highness Maharani of Patiala, the then Prime Minister and Revenue Minister amongst others. Mr. Phadke emphasised that the institution apart from being described as Dera of Udasi Bhekh is also described as Gurdwara Sahib and therefore, it would show that way back in 1937 the State authorities had accepted the institution to be a Gurdwara. We are not impressed by the submission for the obvious reason that the expression 'Gurdwara' is in the bracket and primarily the institution is described as Dera of Udasi Bhekh. Conceding that the use of the expression

'Dera' does not militate against the institution being a Sikh Gurdwara as held by this Court in the decision in Civil Appeal No. 446 of 1962 rendered on November 9, 1984 wherein, Sarkar, J. speaking for the Court observed that 'Dera' in many cases was synonymous with a 'Gurdwara', a description of the institution as Dera of Udasi Bhekh would certainly have a distinct connotation showing that it was an Udasi institution as recognised by the highest State authorities. The expression 'Gurdwara Sahib' in the bracket may at best indicate that the Granth Sahib was also venerated in the institution.

Mr. Phadke never drew our attention to Ext. P-23 being an extract from the register of mutations relating to Mauza Mahal Khurd dated September 27, 1984. The entry under the column 'name of owner' with description reads: "Shri Guru Granth Sahib situate in the Gurdwara of the village under the management of Rikhi Ram chela Partap Dass Faqir Udasi". In fact, these entries appear to have been made in implementation of the order of the Ijlas-I-Khas and has no independent probative value. Ext. P-24 is a similar extract dated October 1, 1959 and does not advance the case of the appellants any further.

Not much reliance was placed on the oral evidence led by the parties and therefore we refrain from referring to it.

On the evidence as herein discussed, the question is: whether the view taken by the High Court that the institution catered to worship by people belonging to two different faiths, namely, Udasis and Sikhs is reasonable and proper or calls, for interference?

In our opinion, the view of the High Court is reasonable, proper and just on the evidence placed on record. There is evidence to show that Gulab Dass who founded the institution was an Udasi Faqir. It is satisfactorily established that the succession to the office of Mahant is from Guru to Chela. It appears that the expression 'Gurdwara' qualifying the Dera of Udasis Bhekh in the Government records at a much later date. It is established that the original grant was by a Muslim ruler in favaur of a Faqir and Sadhu of Udasi sect. On this evidence atleast a negative conclusion would satisfactorily emerge that the appellants have failed to prove that it was an institution set up for use by Sikhs for the purpose of public worship.

It must be conceded that nearly a century after the setting up of the institution, Granth Sahib was venerated and read in this

institution. Does it provide conclusive evidence that the institution was set up and used for public worship by Sikhs? In order to bring the case under Sec. 16(2) (iii) it must not only be established that the institution was established for use by Sikhs for the purpose of public worship but was used for such worship by the Sikhs before and at the time of the presentation of the petition. The use of the conjuctive 'and' clearly imports that in order to attract Sec. 16(2) (iii), both the conditions must be cumulatively satisfied. Not was only that it must satisfactorily established that the institution was established for use by Sikhs for the purpose of public worship but was used for such worship by the Sikhs before and at the time of the presentation of the petition. It was so held in *Gurmukh Singh* v. *Risaldar Deva Singh & Ors.*(1) and it our opinion that represents the correct interpretation of Sec. 16(2) (iii). In this case there is no evidence to show that the institution was established for use by Sikhs for the purpose of public worship. It must be conceded that the institution may be established by anyone, may be a Sikh or follower of any other faith, but it must be established for use by Sikhs for the purpose of worship. One can therefore, ignore the fact that the original grantor was a Muslim ruler Rai Kalha but there is nothing to show that when Gulab Dass Faquir of Udasi sect established the institution, he did it for use by Sikhs for the purpose of public worship. Later on as the majority of the population of the village was follower of Shikh religion and as Udasis also Venerate Granth Sahib, reading of Granth Sahib may have commenced and therefore, generally speaking people may describe and revenue record may show it to be Gurdwara but that would neither be decisive of the character of the institution nor sufficient to bring the institution within Sec. 16(2)(iii) of the Act.

It is at this stage necessary to point out the distinction between Sikhs and Udasis. In the past it was attempted to be urged that Udasis are a mere order of Shikh preachers and that there is no difference between two faiths. In fact it was urged that they are not two separate faiths but two seperate interpretations of the same faith. Repelling this contention way back in *Hem Singh & Ors.* v. *Basant Das and Anr.*(2) It was observed as under ;

(1) AIR 1937 Lahore 577.
(2) AIR 1936 PC 93 at 100.

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

At another stage it was observed that since the time of Siri Chand, the founder of Udasi sect there came into existence a sect of Udasis who, while using the same sacred writings as the Sikhs, kept up much more of the old Hindu practices, followed asceticism, were given to the veneration of Samadhs and tombs, and continued the Hindu rites concerning birth, marriage and Shradh. It was also observed that the Udasis so far as the matter can be decided by beliefs and practices, are, from the point of view of Sikhs, schismatics who separated in the earliest days of the movement and never merged thereafter. It would thus appear that Udasis form an independent sect. They do venerate Sikh scriptures. Therefore, in an institution of Udasis sect, one can visualise reading of Granth Sahib or veneration of Sikh scriptures. That itself is not decisive of the character of the institution. On the contrary, if the succession was from Guru to Chela and these Gurus were followers of Udasis faith and the institution was known as Dera of Udasi Bhekh and they followed some of the practices of Hindu traditional religion that would be completely destructive of the character of the institution as Sikh Gurdwara. In a very recent decision of this Court in *Pritam Dass Mahant* v. *Shiromani Gurdwara Prabhandhak Committee*[1] it has been held that mere reading of Granth Sahib or veneration of Sikh scriptures is not decisive of the character of the institution because Udasis are midway between Sikhs on the one hand and Hindus on the other and that the Udasis also venerate Granth Sahib. Earlier also this view has been consistently taken by this Court as will appear from the decision of this Court in *Mahant Dharam Dass etc.* v. *The State of Punjab and Ors* :[2]

(1) C.A. Eo. 1983 of 1960 dated 16.2.84
(2) [1975] 3 S.C.R. 160 at 168

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

It thus clearly appears that the appraisal of the evidence by the High Court is correct and unexceptional and weight of the evidence discloses that the institution in question was not shown to have been established for use by Sikhs for the purpose of public worship and therefore one of the material conditions for attracting Sec. 16(2)(iii) of the Act is not established. It is immaterial that at the time of presentation of the petition it was, along with the follower of Udasi sect used for worship of Granth Sahib by the Sikhs. We broadly agree with the view taken by the High Court Therefore these appeals fail and are dismissed with costs. Hearing fee in one set.

N.V.K. *Appeals dismissed.*