successor receives his possession from his predecesor by operation of law as well as by the act of the predecessor, provided there is such continuity of possession as will prevent even the constructive intervention of the true owner.

6. After hearing the learned counsel for the parties, we are of the considered opinion that in order to find out the cultivating possession of the persons at the commencement of the 1933 Act under section 4(3)(ii) of the Act, the earlier possession of their predecessors-in-interest, if any, can also be taken into consideration while calculating the period of 12 years, provided it has been continuous and without any interruption. This will be in consonance with the purpose of the Act under which the exemption has been granted to those persons who were in cultivating possession at the commencement of the Act, and are generally either non-proprietors or small landowners. Moreover, under the common law as well, even a trespasser is entitled to tack the possession of his predecessor-in-interest to perfect his title by adverse possession, provided it has been continuous and uninterrupted, as held in *Johan Uraon's case* (supra) and *Rajagopala Naidu's case* (supra). Reference to Halsbury's Laws of England and the Corpus Juris Secundum, as mentioned above, is also quite relevant in this behalf.

7. In this view of the matter, the view expressed in *Atma Ram's case* (supra), is held to be erroneous.

8. For the reasons recorded above, this writ petition succeeds and the orders of the Assistant Collector and the Collector, Annexures P. 1 and P. 2 are hereby quashed. However, the parties will bear their own costs.

B. S. Dhillon, J.—I agree.

S. C. K.

Before S. S. Sandhawalia, C. J.

MAHANT SWARAN DASS,—*Petitioner.*

versus

SHIROMANI GURDWARA PARBANDHAK COMMITTEE,—*Respondent.*

First Appeal From Order No. 315 *of* 1971.

February 24, 1981.

Sikh Gurdwaras Act (VIII of 1925)—*Section* 8—*Petitioner claiming hereditary office of a Mahant by succession as chela—No plea*

regarding custom of succession by a Gurbhai—Such claim—Whether covers usage of succession by a Gurbhai.

Held, that in a petition under section 8 of the Sikh Gurdwaras Act, 1925 the petitioner has to aver specific custom of the institution by which the petitioner and his predecessors came to hold office either by way of hereditary right or by nomination.—Specific custom has to be pleaded so as to aver as to whether the eldest chela succeeded or whether the appointment was made by the predecessor in his life time. Where the only averment made is that a chela succeeded to Guru, this bare averment alone is not adequate for covering the alleged usage of succession by a Gurbhai. (Para 14).

First Appeal from order of the court of the Sikh Gurdwaras Tribunal, Punjab, Chandigarh dated 5th August, 1971 dismissing the petition under section 8 of the Sikh Gurdwaras Act, 1925, with costs and ordering that the claim of the petitioner will now be separately registered and proceeded with under section 10 of the aforesaid Act.

Tehal Singh Mangat, Advocate, *for the appellant.*

Narinder Singh, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the bare pleading that succession to the office of a Mahant was from Guru to Chela, is adequate for covering the alleged usage of succession by a Gurbhai, in order to establish the claim of being a hereditary office-holder for sustaining a petition under Section 8 of the Sikh Gurdwaras Act, 1925 — is the primary issue which has engendered this difference of opinion amongst the learned Judges composing the Division Bench, which now calls for determination under Clause 26 of the Letters Patent.

2. The case discloses yet again the occasional and unfortunate tardiness of the Legal process. Wayback in, 1961, a petition under Section 7(1) of the Sikh Gurdwaras Act, 1925 (hereinafter called the Act), was preferred to the State Government seeking that the institution described as Gurdwara Sahib Siri Guru Granth Sahib in village Payal, Tehsil Sirhind, District Patiala, he declared as a Sikh Gurdwara. Under Section 7 clause (3) of the Act, the Government published the petition along with requisite documents in the Punjab

Government Gazette notification No. 2768. G.P., dated December 9, 1960. It was in response to the said notification that a petition under Section 8 was submitted to the State Government by one Mast Ram an Udasi Sadh claiming that the institution in fact was that of Udasi Sect and not a Sikh Gurdwara. Inevitably this petition was forwarded for decision to the Sikh Gurdwaras Tribunal under Section 14(1) of the Act, where the respondent Shiromani Gurdwara Parbhandak Committee, Amritsar, was later impleaded as a respondent thereto.

3. The Shiromani Gurdwara Parbhandak Committee, Amritsar, (hereinafter called the Committee), in contesting the petition controverted all the assertions of the petition and further raised a preliminary objection that the petitioner had claimed the Gurdwara and the land attached thereto, as his personal property, therefore, he could not maintain the petition under Section 8 of the Act. On merits, it was firmly pleaded that the institution in question was a Sikh Gurdwara. On the pleadings of the parties following issues were framed on November 15, 1962:—

(1) Does the petition lie under Section 8 of the Sikh Gurdwaras Act?

(2) Whether the Gurdwara in dispute is a Sikh Gurdwara?

It calls for notice that after the conclusion of the parties' argument in the first instance in 1964, the case was adjourned to April 27, 1964 for orders. However, before these could be pronounced, on April 21, 1964, the Committee moved an application under Order 6, Rule 17 of the Code of Civil Procedure seeking an amendment to the written statement in order to enable it to raise an objection regarding the status of the petitioner as a hereditary office-holder. This having been allowed, an amended written statement was filed on behalf of the respondent-Committee on July 15, 1964 and the case was adjourned to August 18, 1964 for framing of the issues. On the said date, the petitioner then filed an application under Order 6 Rule 17 of the Code for [illegible]

4. On the aforesaid amended pleadings, the following issues were struck:—

(1) Whether the petition as framed is maintainable?

(2) Whether the petitioner is a hereditary office holder?

The Tribunal further directed that the aforesaid issues be treated as issues Nos. (1) and (2) while the issue already framed earlier as issue No. (2) be treated as issue No. (3). It was also ordered that the first issue would be treated as a preliminary one and apparently the parties agreed that no evidence therefor was necessary. The Tribunal decided the preliminary issue in favour of the petitioner and held that the petition, as framed, was maintainable. The case was then adjourned for recording the evidence on issue No. (2). During the proceedings that followed, Mast Ram petitioner died on July 3, 1965 and consequently Swarn Dass was impleaded as his legal representative by order dated September 19, 1966. The existing Tribunal was then dissolved on October 26, 1966 and was not re-constituted till five years later in 1971.

5. The remaining evidence both oral and documentary was adduced before the reconstituted Tribunal. On issue No. (1), the Tribunal found that this issue had already been decided in favour of the petitioner by a detailed order of November 23, 1964 by virtue of which the petition as framed was held to be maintainable. However, on issue No. (2), the Tribunal came to the conclusion that the petitioner had failed to prove himself to be the hereditary office holder of the institution in dispute and therefore, he had no *locus standi* to maintain the same. Consequently, no finding was given on issue No. (3), namely; whether the Gurdwara in dispute is a Sikh Gurdwara?

6. Aggrieved, the appellant Mahant Swarn Dass then preferred this appeal which first came up for hearing before a Division Bench consisting of B. S. Dhillon and J. V. Gupta, JJ. Both the learned Judges recorded separate exhaustive and erudite judgments. After a full and detailed discussion, both of them have come to the conclusion that issue No. (1) with regard to the maintainability of the petition, as framed, had been correctly decided by the Tribunal. Consequently the finding on this issue was affirmed.

7. On the point whether the petitioner was a hereditary office holder covered by issue No. (2), Gupta, J., arrived at the finding that it had been fully proved that the petitioner was the hereditary office holder of the institution and therefore, reversed the finding of the Tribunal thereon and allowed the appeal and remanded the case back for decision on issue No. (3) to the Tribunal. However, on this very issue No. (2), Dhillon, J., came to the conclusion that the pleading with regard to the claim of being a hereditary office holder was woefully inadequate and no precise or consistent rule of descent had at all been pleaded to cover the deviation of a succession from 'Gurbhai' to 'Gurbhai' and therefore, no evidence on this point could be looked into beyond the pleadings. On merits and evidence also he held that the petitioner was not a hereditary office holder and consequently affirmed the findings of the Tribunal on issue No. (2). Holding further that there being no competent petition before the Tribunal, it was right in holding that no findings on issue No. (3) was necessary, he dismissed the appeal. In view of the aforementioned difference of opinion, the case was referred under Clause 26 of the Letters Patent for decision to a third Judge and that is how the matter is before me.

8. At the outset it may be noticed that on issue No. (1), namely, whether the petition, as framed, is maintainable, both the learned Judges have concurred and affirmed the finding of the Tribunal. Apart from the fact that this matter would perhaps be concluded, neither of the learned counsel for the parties, has even remotely attempted to challenge the view and the findings arrived at on this issue. Agreeing with the unanimous view on issue No. (1), I affirm the finding thereon.

9. Adverting now to issue No. (2) with regard to the factum of the petitioner being a hereditary office-holder, the matrix of facts giving rise thereto has been noticed in detail by my learned brother Gupta, J., and it would be wasteful to repeat the same over again. It suffices to highlight those, which give rise to the salient legal issue. The specific pleading of the petitioner in the amended petition was in the following terms in para No. 3 thereof:—

> "That the petitioner is a hereditary office-holder of this Udasi Dera at Payal and Maksudra and the lands belong to the

> Dera. The petitioner is Chela of Gopal Dass and Gopal Dass was Chela of Khazan Dass ; Khazan Dass was Chela of Atma Ram; Atma Ram was Chela of Brahm Sura and Brahm Sura was the Chela of Brahm Billas; Brahm Billas was Chela of Rati Ram. The land has always gone from Guru to Chela from the respective Gurus from the times of King Akbar. The entire land was declared 'Muafi' from the British Government times and Maharaja of Patiala, of which the evidence will be produced."

To this amended petition, a preliminary objection was specifically raised in the following terms in the written statement:—

> "The petitioner has not given the custom governing the devolution of Mahantship in this Gurdwara with all its incidents and details. He is not a hereditary office-holder. No mention of worship carried on by the petitioner is given. The petition merits summary dismissal."

It would be manifest from the above that the parties were specifically at issue with regard to the particular custom and the specific rule of descent for establishing the crucial issue of the petitioner being the hereditary office-holder or not. The solitary and the bare pleading of the petitioner on this focal point was merely that succession to the office was from Guru to Chela.

10. On the admitted facts and indeed the petitioner's own case on the point was that succession was strictly from Guru to Chela upto Mahant Gopal Dass. It then decended to his eldest Chela Sunder Dass. It is the common case that Sunder Dass had no Chela of his own and indeed even in his life time a Committee had been appointed by Sardar Sahib Deori Mahalla, apparently to manage the affairs of the institution. When Sunder Dass died, as already noticed, there was no Chela and one Mast Ram, who was not the Chela of Sunder Dass, but claimed to be the Chela of Gopal Dass and therefore, a Gurbhai of the last incumbent to the office of Mahant claimed succession. His character was verified as good and on the death of Sunder Dass Mahant, the mutation was sanctioned in favour of Mast Ram apparently on the basis of his being the Gurbhai.

11. It is from the aforesaid admitted position that the crucial issue arises whether in face of the bare pleading of succession to the office being from Guru to Chela, the deviation of succession by a Gurbhai would be covered by the aforesaid pleading so that evidence with regard thereto may be weighed or appraised. It is axiomatic that no amount of evidence whatsoever can even be looked at in the absence of a specific pleading.

12. Mr. Mangat, learned counsel for the appellant, had attempted to argue on principle and first impression that succession by a Gurbhai may well be implicit in the plea of succession from Guru to Chela under the broad canvas of Hindu Law and the accepted devolution of succession to charitable institutions thereunder.

13. It appears to me that it is too late in the day to consider the matter as if it was one of first impression or being **res integre** in the specific context of sustaining the petition under Section 8 of the Sikh Gurdwaras Act, 1925, on the basis of being the hereditary office-holder of the institution. The matter is so replete with binding precedents and concluded thereby that it does not admit of re-examination on principle afresh.

14. Now the core of the argument on behalf of the appellant logically was that the succession to the office of a Mahant was on the analogy of a spiritual family closely akin to the natural family. Therefore, it was sought to be argued that the hereditary succession from Guru to Chela included within it the succession from a Gurbhai to Gurbhai or to a Bhatija-Chela from a Chacha-Guru. It was not seriously disputed that these two forms of succession to the spiritual office, by a Gurbhai or by a Bhatija-Chela, were identical on principle. The question before us, therefore, boils down to this whether these modes of succession are within a bare pleading claiming succession from Guru to Chela only?

15. Now the answer to the aforesaid question is so categorically provided by a number of binding precedents that it would not now be possible to deviate therefrom. This very issue first arose directly before the Division Bench in (*Sajan Dass* v. *The S.G.P.C.*, Amritsar (1), and was answered in no uncertain terms as follows:—

> "The petition under section 8 of the Act can be made by a hereditary office holder or any twenty or more worshippers of the Gurdwara. The petition was made by the

(1) FAO 2 of 1965 decided on 23rd October, 1969.

appellant in the capacity of being a hereditary office-holder and it was, therefore, incumbent upon him to prove that the office devolved according to hereditary right or by nomination by the office-holder for the time being. It has not been proved that Kishan Dass ever nominated Braham Parkash as his Chela. The mutation shows that Braham Parkash succeeded Kishan Dass as Bhateeja Chela. The rule of hereditary right to the office has also not been established to the effect that Bhateeja Chela is entitled to succeed."

The aforesaid view was then specifically approved and affirmed by the Full Bench in *Hari Kishan Chela Daya Singh* v. *Shiromani Gurdwara Parbhandak Committee, Amritsar and others* (2), with the following observations:—

"From the averment in the petition, it is clear that the management of the institution was alleged to be from Guru to his Chela who is nominated by the deceased Guru. There is no averment in the petition alleging any rule of descent from Chacha Guru to Bhatija-Chela. Similarly, no rule of descent in the absence of a Chela of any incumbent was even remotely suggested nor was any averment made as to what would happen in a case in which there are more than one Chela living at the time of the death of the Guru who manages the institution.

From the facts which emerge from the evidence and which have been stated above, it is clear that after the death of Partap Singh, even though his Chelas were in existence, Lal Singh, who was the Chacha-Guru succeeded. Similarly, it is clear from Exhibit P/4 that Guru-Bhais of Lal Singh were alive but it is not understood as to how Lal Singh succeeded in their presence and on what authority. It appears that he succeeded because he came into possession of the properties. Lal Singh admittedly was not the Chela of Partap Singh. Similarly, Lal Singh

(2) A.I.R. 1976 Pb. & Hary. 130.

during his life-time gifted away the Mahantship to Daya Singh, who admittedly was not his Chela. There is nothing on the record to show whether the Guru of Daya Singh, namely, Malook Singh, was alive at the time or whether he had even died earlier when Lal Singh took possession of the properties. The contention that the devolution from Lal Singh to Daya Singh was in accordance with the general custom of succession by Bhatija-Chela from Chacha Guru and the contention that the succession from Partap Singh to Lal Singh was by Chacha-Guru from Bhatija-Chela and in accordance with the general custom of succession, is really without any merit. As has been observed earlier, each shrine's custom has to be pleaded and proved. It is nowhere pleaded that this institution followed the General Custom of succession. In any case, the assertion that the succession by Chacha-Guru from Bhatija-Chela and *vice versa* is within the rule of succession from Guru to Chela, has been authoritatively negatived by a Division Bench of this Court in *Mahant Sajjan Dass's case* (supra)....".

Following the above said view, a Division Bench in (*Kartar Singh Chela Bishan Singh etc.* v. *Shiromani Gurdwara Parbhandak Committee, etc.*) (3) made even more categoric observations in these terms:—

"From a perusal of the petition, it is evident that the only averment made in the petition was that the management of the institution was from Guru to Chela who was nominated by the deceased Guru and that the petitioner was appointed Chela of his Guru. There is no averment in the petition alleging any custom or usage of succession concerning this institution. It has now been authoritatively held by a Full Bench of this Court in *Mahant Hari Kishan* v. *The Shiromani Gurdwara Parbhandak Committee, Amritsar* (4), that it was essential for the maintenance of petition under section 8 of the Act to clearly

(3) FAO. 77 of 1965 decided on 25th September, 1975.

(4) PAO 102 of 1965 decided on 21st April, 1975.

plead the custom and usage of succession and to prove the descent of the office consistent with the said usage without any deviation therefrom. As observed earlier, no custom or usage of succession with respect to the institution in dispute has been at all pleaded by the appellant. Mr. Mehta, the learned counsel for the appellant, however, contends that from the evidence on the record he has been able to prove that the succession was from Guru to Chela and usage or custom in this respect has been impliedly pleaded in paragraph 3 of the petition. We are unable to agree with this contention of the learned counsel. As stated above, the usage or the custom of succession has to be pleaded in clear and unequivocal terms and no amount of evidence in the absence of such a pleading can be of any help or looked into."

Even more specific is the view taken by the Division Bench in *Amar Dass Chela Jai Ram Dass of Nabha* v. *The Shiromani Gurdwara Parbhandak Committee, Amritsar* (5), in the following words:—

".. As far as this Court is concerned, it is finally settled by more than one Full Bench judgment that in a petition under S. 8 of the Act the petitioner has to aver specific custom of the institution by which the petitioner and his successor came to hold office either by way of hereditary right or by nomination. Even in the amended petition, the petitioner has not alleged the special or general custom concerning the development either according to the hereditary right or by nomination. *The only averment made is that Chela succeeded to the Guru. This averment alone is not sufficient.* Specific custom has to be pleaded so as to aver as to whether the eldest chela succeeded or whether the appointment was made by the predecessor in his life time, or whether the appointment was made by Bhek etc., had to be averred...."

Without multiplying authorities and quoting extensively therefrom, it calls for pointed notice that the judgment in *Mahant Hari*

(5) A.I.R. 1978 Pb. & Hy. 273.

Kishan's case (F.B. Supra), stands affirmed even by a larger Bench of five Judges in *Mahant Tehal Dass* v. *Shiromani Gurdwara Parbhandak Committee* (6).

16. It would appear from the above that the position in law, on this point, within this Court, stands fully crystilized by a host of authorities. In the theory of precedent, it is well settled that once a point has been authoritatively decided by a Full Bench, then any passing observations by smaller Benches, whether earlier or later, would cease to be of any significance. It is, therefore, unnecessary and indeed would be wasteful to advert to authorities of smaller Benches on the point.

17. In the wake of what appears to me as settled precedent, I would agree with the legal conclusion arrived at by Dhillon, J., on issue No. (2).

Consequently it is held that the petitioner was not a hereditary office-holder and affirming the finding of the Tribunal, it is held that the petition was incompetent. In that view of the matter, it is obviously unnecessary to advert to issue No. (3). The appeal must necessarily fail and is hereby dismissed with no order as to costs.

N.K.S.

Before S. P. Goyal and J. V. Gupta, JJ.

MUNICIPAL CORPORATION,—*Petitioner.*

versus

UNION OF INDIA and others,—*Respondents.*

Civil Writ Petition No. 5152 of 1978.

February 25, 1981.

Constitution of India 1950—*Articles* 14, 245, 246, 248 *and* 252, *Seventh Schedule List I, Entry* 97, *List II Entries* 5, 6, 17 *and* 66—*Water (Prevention and Control of Pollution) Cess Act* (XXXVI *of* 1977)—*Sections* 2(c), 3 *and* 16—*The Cess Act—Whether within the legislative competence of Parliament—Section* 2(c)—*Whether arbitrary and therefore violative of Article* 14.

(6) I. L. R. 1979 (II) Pb. 131.