Consequently, I find that the learned Single Judge was right in allowing the appeal of the vendees in view of the coming into force of the Repealing Act.

(7) It may be observed that I have no quarrel with the proposition enunciated in the judicial pronouncements referred to above, on which reliance was placed by Mr. Bahl, but all those decisions are distinguishable and do not apply to the facts of the case in hand. In this situation, no useful purpose would be served in burdening the judgment by discussing those decisions individually.

(8) For the reasons recorded above, this appeal fails and is dismissed, but in the circumstances of the case I make no order as to costs.

(9) Civil Miscellaneous application No. 973 of 1977, filed by Thana Singh respondent, was not pressed during the course of arguments. Accordingly, the same is also dismised.

R. S. Narula, C.J.—I agree.

Bhopinder Singh Dhillon, J.—I agree.

N. K. S.

FULL BENCH

APPELLATE CIVIL

Before Bhopinder Singh Dhillon, Harbans Lal and S. P. Goyal, JJ.

MAHANT BUDH DASS and another,—*Appellants.*

versus

THE SHIROMANI GURDWARA PARBANDHAK COMMITTEE, AMRITSAR,—*Respondent.*

First Appeal From Order No. 52 of 1966

June 3, 1977.

Sikh Gurdwaras Act (VIII of 1925)—Sections 2(4) (i) and (iv) 7, 8, 10, 12 and 14—Code of Civil Procedure (V of 1908)—Order 6—

Rule 17—Petition under section 8—Averments to show locus standi—*Whether necessary to be made in such a petiiton—Nature of pleadings necessary to make such petition competent—Tribunal—Whether competent to allow amendment under Order 6 rule 17—Scope of such power.*

Held, that a person claiming himself to be a 'hereditary office holder' must allege and prove the consistent rule of descent by which he or his predecessors had come to hold the office on the prescribed date. Unless the petitioner makes the necessary averments in his petition regarding his *locus standi* and competence to file the petition as envisaged under section 8 of the Sikh Gurdwaras Act 1925, the petition cannot be heard on merits. If it were not so, then the petition under section 8 will be competent by even a stranger though he may have nothing to do with the institution as an office holder. The petitioner under section 8 will not be entitled to lead evidence to prove that he is a hereditary office holder of the institution concerned unless he has laid the foundation in the petition by pleading the necessary facts. The law is well settled that a party cannot be allowed to go beyond his pleadings and that evidence though adduced and brought on the record outside the pleadings cannot be looked into for any purpose. (Paras 5 and 7).

Held that under section 8 of the Act, a petition can be made by a hereditary office holder. The ingredients of the same are given in the two definitions of 'office' and 'hereditary office holder' as contained in clauses (i) and (iv) of sub-section (4) to section 2 of the Act. If a petitioner instead of describing himself merely that he is a hereditary office holder makes averments in the petition in such a manner which warrant the conclusion that he holds in the institution concerned, office of such a nature which entitled him to manage the institution or perform rituals in the institution, that such an office was hereditary in nature as envisaged in those definitions, this will be a sufficient compliance with the provisions of section 8 of the Act. It is not reasonable to restrict the pleadings in a petition to a particular and rigid expression. So long as the pleadings in a petition can warrant the conclusion that the petitioner was a hereditary office holder, the petition is competent and maintainable.

(Para 8).

Held, that the intention of the Legislature that the provisions of the Code of Civil Procedure 1908 are clearly applicable to the proceedings before the Tribunal under the Act normally

and generally so long as there is no conflict with the other provisions of the Act and the applicability of provisions of the Code does not result in making other provisions of the Act in any way nugatory, is clearly discernible from sub-sections (9) and (11) of section 12 of the Act. If there are absolutely no averments in a particular petition in relation to the hereditary office which may be proved by the petitioner in evidence, such a petition will be incompetent in its inception and amendment may not be allowed. However, if foundation is laid in the petition, but some lacuna is left inadvertently or due to any reason, the Tribunal will certainly have the jurisdiction to allow the petitioner to make a better statement and to make good the lacuna. It cannot be said that the Tribunal does not have the jurisdiction at all to allow amendment under any circumstances. In fact the Tribunal has the jurisdiction to allow amendment under Order 6 rule 17 of the Code, but the discretion should be exercised in a judicial manner keeping in view the peculiar facts and circumstances of each case. The power of amendment under Order 6 rule 17 of the Code has indeed been conferred in order to determine all matters in controversy in the interest of justice. Unless any provision of the Code is in conflict with any specific and express provision of the Art, the same cannot be held to be inapplicable. (Para 9).

Case referred by the Division Bench consisting of Hon'ble Mr. Justice Bhopinder Singh Dhillon and Hon'ble Mr. Justice S. P. Goyal to a larger Bench on 22nd April, 1976, for decision of the important question of law involved in the cahe. The Full Bench consisting of Hon'ble Mr. Justice Bhopinder Singh Dhillon, Hon'ble Mr. Justice Harbans Lal and Hon'ble Mr. Justice S. P. Goyal finally decided the case on 3rd June, 1977.

First Appeal from the order of the Sikh Gurdwara Tribunal Chandigarh (consisting of Hon'ble Mr. Justice Shamsher Bahadur, President and Sarvshri Sarup Singh and Gurcharan Singh Dhaliwal, ... Members) dated the 30th day of November, 1965 dismissing the petition of the appellant and granting the respondent a declaration that this institution notified as Gurdwara Sahib Dharmsala Bhai Ki in the revenue Estate of Dirba Tehsil and District Sangrur is a Sikh Gurdwara, without any order as to costs.

P. K. Palli, Advocate with Amarjit Markan, Advocate, *for the appellants.*

Narinder Singh, Advocate, *for the Respondent.*

JUDGMENT

Harbans Lal, J.—

(1) This first appeal by Mahant Budh Dass and Mahant Purna Nand against the judgment of the Sikh Gurdwara Tribunal Punjab, (hereinafter called the Tribunal), dated November 20, 1965, has been referred to the Full Bench in the following circumstances.

(2) A notification No. 1598-CP, dated August 11, 1961, was published, by the Punjab Government, under section 7(3) of the Sikh Gurdwaras Act, 1925, (hereinafter called the Act), concerning Gurdwara Sahib Dharamsala Bhai Ki, situated in the revenue estate of Dirbha, Tehsil and District Sangrur, and the rights, title and interest in the property included in the accompanying list, on August 11, 1961. Mahant Jiwan Mukta Nand filed a composite petition under sections 8 and 10 of the Act, before the Punjab Government claiming that the said institution was not a Sikh Gurdwara, but an Udasi Dera, that he was its Mahant and that the succession regarding the same was from Guru to Chela. This petition was forwarded by the Government to the Tribunal along with their letter dated January 8, 1963, under section 14 of the Act. Notice was issued by the Tribunal to the said Jiwan Mukta Nand for February 25, 1963. The said Mahant had died in the meantime. An application was made on behalf of Mahant Purna Nand, minor, through Shrimati Vidya Wanti as his guardian, that he was the legal representative of Mahant Jiwan Mukta Nand being his Chela. Another application was submitted by Mahant Budh Dass who also claimed to be the Chela of Mahant Jiwan Mukta Nand. Notice of both these applications was issued to the Shiromani Gurdwara Parbandhak Committee (hereinafter referred to as the Committee), for April 3, 1963. The Committee in their written statement contested the averments in the main petition. *Inter alia*, it was contended that Mahant Jiwan Mukta Nand was not the hereditary office-holder and had no **locus standi** to file the petition. It was also averred that the institution was a Sikh Gurdwara and was established by Sikhs for worship. It was further averred that the property included in the list belonged to the Sikh Gurdwara. The two applications filed by the alleged legal representatives were also contested. An issue was framed as to

who out of the two applicants was the legal representative of Mahant Jiwan Mukta Nand, deceased. On this issue, evidence was led by both the rival claimants as well as the Committee. The Tribunal,—**vide** its order dated March 9, 1964, came to the conclusion that it was not necessary to adjudicate upon the claims of these two applicants to the Mahantship of the institution at that stage and consequently both the applications were allowed subject to all first exceptions and both the claimants were left free to press their respective claims at the time of the final hearing of the main petition. In the main petition, on the pleadings of the parties, the following two issues were framed :

1. Whether the deceased Mahant Jiwan Mukta Nand was a hereditary office-holder ?

2. Whether the institution, in dispute, is a Sikh Gurdwara ?

On May 26, 1964, Mahant Purna Nand filed an application under Order VI rule 17, Code of Civil Procedure (hereinafter called the Code) for amendment of the main petition filed by Mahant Jiwan Mukta Nand, deceased. By this application, amendment was sought in paragraph 5 of the petition so as to incorporate that Mahant Jiwan Mukta Nand was a hereditary office-holder and as such was entitled to put in the claim under sections 8 and 10 of the Act. In this application, it was also averred that though the necessary averments required under section 8 of the petition had already been made, yet inadvertently, it could not be specifically pleaded that Mahant Jiwant Mukta Nand was a hereditary office-holder. This application was contested by the Committee and on the pleadings of the parties, the following two preliminary issues were framed :

1. Is the petition maintainable ?

2. Was Mahant Jiwan Mukta Nand who filed the original petition a hereditary office-holder ?

The Tribunal, by its order dated May 26, 1964, allowed the amendment subject to payment of Rs. 50 as costs. The costs having

been paid, the amended petition was filed. In the written statement to the amended petition, a preliminary objection was taken that the amendment petition, had set up a new case and that the amended petition was not maintainable. The Tribunal, by majority on March 30, 1965, decided preliminary issue No. 1 in favour of the appellants and held that the petition was maintainable. In respect of preliminary issue No. 2, it was held that Mahant Jiwan Mukta Nand was proved to be the hereditary office-holder. However, on the other issue, on merits, it was held that the institution was a Sikh Gurdwara and consequently, the petition was dismissed. Against this final decision of the Tribunal, the present appeal was filed. It was heard by the Division Bench comprising of Dhillon and Goyal, JJ. There was a difference of opinion regarding the questions as to whether the Tribunal had the jurisdiction to allow amendment of the petition, the petition originally filed contained necessary pleadings as required under section 8 of the Act and lastly whether the institution was a Sikh Gurdwara or not. It is in view of these circumstances that the appeal is being decided by the Full Bench.

(3) It has been strenuously contended by the learned counsel for the appellants that it is not necessary to specifically allege and plead in the petition under section 8 of the Act by the objector in reply to the notification under section 7(3) of the Act that the petitioner was a hereditary office-holder and that succession to the institution was by inheritance under custom and also as to what the custom was. It was further stressed that in the present case, necessary averments as required under section 8 of the Act had been made in the petition. It was also urged that even if some lacuna or defect had been left, the same had been made good by amending the petition under Order VI rule 17 of the Code, that the provisions of the Code including Order VI rule 17, were applicable to the proceedings before the Tribunal and that the learned Tribunal was fully competent and had the jurisdiction to allow the amendment. Consequently, the order allowing the amendment of the present petition was perfectly in accordance with law. All these contentions were stoutly challenged by the learned counsel for the Committee. It was stressed with equal force that the petition under section 8 of the Act could be filed only by one of the two categories of persons, namely, either any hereditary office-holder or any

twenty or more worshippers of Gurdwara each of whom is more than 21 years of age and was at the commencement of this Act, a resident of a Police Station area in which the Gurdwara is situated. If the petitioner or the petitioners do not belong to either of these two categories, the petition will be incompetent and will be no petition in the eye of law. It was also stressed that the Tribunal has the jurisdiction to decide the petition which is competent and valid under section 8 of the Act and as such, the Tribunal has no jurisdiction to allow any amendment of the petition as originally submitted under section 8 of the Act. It was further argued that though under sub-sections (9) and (11) of section 12 of the Act, the provisions of the Code were applicable, yet the same were subject to the provisions of the Act. A combined reading of sections 8 and 12 of the Act clearly leads to the conclusion that the provision regarding amendment of the petition was not available to the Tribunal and thus the order of the Tribunal allowing amendment of the petition in the present case cannot be sustained. On facts, it was contended that necessary averments had not been made in the original petition and the same was incompetent and should have been thrown out on this ground alone and this being the position, the Tribunal could not go into the remaining question as to whether it was a Sikh Gurdwara or not.

(4) To appreciate properly the respective contentions of both the sides, it is necessary to have an insight into the scheme of the Act so far as the matter in controversy is concerned. Under sub-section (1) to section 7 of the Act, any fifty or more Sikh worshippers of a Gurdwara of twenty-one years or more of age on the commencement of the Act and residing in a Police Station area in which the said Gurdwara is situated have a right to make a representation to the Government with the request that a particular Gurdwara may be declared as a Sikh Gurdwara. Sub-section (2) lays down the details to be furnished in the said representation regarding the Gurdwara and the properties attached with the said Gurdwara. Under sub-section (3), such a petition along with the lists regarding the property is to be notified in the prescribed manner at the headquarters of the district, the tehsil and in the revenue estate in which the Gurdwara and the properties are situated. Under sub-section (4), separate notices are required to

be sent to all persons who may be in possession of the properties so mentioned in the list. On such publication, the right to challenge the petition made under section 7 of the Act is conferred on the following two categories of persons under section 8 of the Act :

1. Hereditary office-holders; and
2. Any twenty or more worshippers of the Gurdwara concerned. Such worshippers must be more than twenty-one years of age and must be residents of the Police Station of the area in which the Gurdwara is situated.

In the petition so filed, it has to be claimed that the Gurdwara is not a Sikh Gurdwara. It may be further claimed that any hereditary office-holder or any person who would have succeeded as such office-holder may be restored the office. If no petition has been filed in accordance with the provisions of section 8 within 90 days, the Government is to issue a notification in the Gazette under section 9 of the Act, declaring that the Gurdwara concerned is a Sikh Gurdwara. "Office" and "hereditary office" have been defined in clauses (i) and (iv) to sub-section (4) of section 2 of the Act, as follows :

> "4 (i) 'Office' means any office by virtue of which the holder thereof participates in the management or performance of public worship in a Gurdwara or in the management or performance of any rituals or ceremonies observed therein and 'office-holder' means any person who holds an office."
>
> "4 (iv) 'Hereditary office' means an office the succession to which before the first day of January, 1920, or in the case of the extended territories, before the 1st day of November, 1956, as the case may be, devolved according to hereditary right or by nomination by the office-holder for the time being, and 'hereditary office-holder' means the holder of a hereditary office."

A conbined perusal of these two definitions makes it clear that any hereditary office-holder who is competent to file the petition under section 8, must fulfil the following conditions that :

1. he occupied an office in the exercise of which he was taking part in the management of the Gurdwara or the

rituals and the ceremonies which were observed in the Gurdwara;

2. he participated in the performance of public worship or in rituals or ceremonies; and

3. he occupied such office, the succession to which before the first day of January, 1920 or before the first day of November, 1956, in case the Gurdwara was situated in the extended territories, as the case may be, was regulated on the basis of some hereditary right or by nomination by the incumbent who was holding the office for the time being.

Whereas objections in respect of the Gurdwara can be made under section 8, the claim in respect of the properties as notified can be preferred under section 10. If no such petition as envisaged under section 8 has been presented within 90 days, the Government is required to publish a notification under section 9 declaring the Gurdwara to be a Sikh Gurdwara. The constitution of the Tribunal which is empowered to decide the petitions filed under section 8 or section 10 is provided under sub-sections (1) to (7) of section 12. Sub-sections (9) and (11) provide that the proceedings of the Tribunal shall be conducted in accordance with the provisions of the Code. According to section 14(2) of the Act, in case the petition under section 8 has been presented by the worshippers and the same is forwarded by the Government to the Tribunal, no further enquiry can be held by the Tribunal and it may be presumed conclusively that the provisions of section 8 of the Act had been complied with. However, no such conclusive presumption is laid down in case of a petition under section 8 by the hereditary office-holders. Consequently, the Tribunal while deciding the petition, on merits, has the jurisdiction and competence to decide the questions as to whether the petition had been properly made by the hereditary office-holder or that the petitioners were, in fact, hereditary office-holders or not. Though it has not been provided specifically in any provision of the Act as to what averments should be made in the petition under section 8 of the Act, yet as the provisions of the Code have been made applicable specifically under

sub-sections (9) and (11) of section 12, the petition must have the pleadings, the allegations and averments as envisaged in the various provisions of the Code. Order VI of the Code specifically deals with the pleadings. According to Order VI rule 2, every pleading which means a plaint or a written statement must contain the statement in a concise form and the material facts on which the party pleading relies for his claim or defence, as the case may be. Even otherwise, it is well settled by now that a plaint or a petition must contain all the allegations and the facts which constitute the cause of action for the plaintiff or the petitioner and he must plead the necessary averments before his claim can be enquired into by the Tribunal or the Court. He must also lay the foundation in the plaint or the petition for his claim and his **locus standi** to file the same. However, in what form or in what manner such allegations and averments have to be made in the plaint or the petition depends on the circumstances and facts of each case and it is not possible to lay down any rigid formula as to in what precise words the allegations or the averments should be pleaded. The plaint or the petition is the foundation on which the edifice of the case of the plaintiff or the petitioner is to be built.

(5) So far as the petition under section 8 of the Act by the hereditary office-holder is concerned, it has been the consistent view of the Lahore High Court and this Court that the necessary allegations and averments which may constitute the cause of action or may be relevant for establishing the **locus standi** of the petitioner have to be pleaded in the petition. In **Sunder Singh and others** v. **Mahant Narain Das and others,** (1), it was held,—

> "Before anything else is done, the question of *locus standi* of the petitioner must be decided; for, if there is no competent petitioner, there is no petition to be disposed of. I have already shown that the question of **locus standi** of a petitioner under section 8, who claims as a hereditary office-holder is left open under the provisions of section 14(2)."

(1) AIR 1934 Lahore 920.

In Arjan Singh and another v. *Harbhajan Das and others,* (2), it was held that the petitioner under section 8 of the Act has to show that he is the holder of a hereditary office. In *Basant Singh* v. *Kartar Singh and others*, (3), it was held that the petitioner in order to claim the benefit under section 8 must expressly assert that the place is a Gurdwara and that he holds a hereditary office attached to it. It was further held that in the absence of such assertion the petitioner had no competence to lodge the petition . In *Ram Bhan* v. *The Shiromani Gurdwara Prabandhak Committee, Amritsar* (4), it was clearly held that the petitioner has to allege himself to be the hereditary office-holder of the Gurdwara in order to have the *locus standi* to present the petition. Again, this question was considered by a Full Bench of this Court in *Hari Kishan* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others*, (5), in greater detail in paragraph 23, as follows:

> "It is thus apparent that both on principle and authority, the contention of Shri Tewari, that merely by showing that on the prescribed date the petitioner held the office and, therefore, he was entitled to be declared to be a 'hereditary office-holder' must fail. It is, therefore, to be held that the person claiming himself to be a 'hereditary office-holder' must allege and prove the consistent rule of descent by which he or his predecessors had come to hold the office on the prescribed date".

In our considered opinion, this is the correct position of law. Unless the petitioner makes the necessary averments in his petition regarding his *locus standi* and competence to file the petition as envisaged under section 8, the petition cannot be heard on merits.

(6) The learned counsel for the appellants has placed strong reliance on the decision in *Shiromani Gurdwara Parbandhak Committee* v. *Dharam Dass* (6), by Mahajan and Sandhawalia, JJ., wherein it was held,—

> "We are afraid that we cannot agree to the hyper-technical contention raised by the learned counsel. No provision of

(2) A.I.R. 1937 Lahore 280.
(3) A.I.R. 1936 Lahore 213.
(4) F.A.O. 27/63 decided on 23rd October, 1969.
(5) A.I.R. 1976 Pb. and Haryana 130.
(6) F.A.O. 177 of 1963 decided on 8th January, 1970.

> the statute or any rule has been brought to our notice which in categorical terms states that the petition under section 8 must in terms allege that the petitioner is a hereditary office-holder. Nor are we prepared to hold that any such lapse would necessarily be fatal."

In the aforesaid case, the Tribunal had allowed the petition under section 8 of the Act holding that the institution was not proved to be a Sikh Gurdwara. In appeal by the Committee, the only contention raised was that the respondent petitioner had not alleged himself to be the hereditary office-holder in the petition and, therefore, the petition was not competent. The Committee had relied upon the decision in *Ram Bhaj's case* (supra), for the proposition that the petition under section 8 must contain the averments showing that the petitioner was a hereditary office-holder. The learned Judges, after perusing the judgment in the said case came to the following conclusion :

> "It is nowhere laid down in the said case that it must expressly be pleaded in the petition under section 8 of the Act, that the person presenting the same is a hereditary office-holder or that the failure to so plead this fact is incurable which could neither be remedied by way of amendment. In our view the said authority is entirely inapplicable to the facts of the present case".

The learned counsel for the respondent has urged that a close perusal of the judgment in *Ram Bhaj's case* (supra), does lead to the positive conclusion that it is necessary to make averments in the petition that the petitioner was a hereditary office-holder. In this case, the Tribunal dismissed the petition under section 8 on the ground that the allegation within the meaning and scope of section 8 of the Act that the petitioner is a hereditary office-holder had not been made in the petition. During the pendency of the petition, an application had been made by the petitioner-appellant for amendment of the petition under Order VI rule 17 of the Code, in which it had been admitted that in the original petition the petitioner-appellant had failed to claim himself as a hereditary office-holder of the Gurdwara, in question. That application was not decided by the Tribunal. One of the grounds taken in appeal was that it was incumbent upon the Tribunal to give a final decision

on this application for amendment one way or the other. The Division Bench deciding the appeal came to the following conclusion:

> "There is no manner of doubt that in his petition under section 8 of the Act the appellant had nowhere said how he is the hereditary office-holder of the particular Gurdwara, in question ..... So, on the date on which the petition was made by the appellant under section 8, it was a petition not at all competent and not within the scope of section 8. In the circumstances, the question of amendment of an incompetent petition could hardly arise. Any such attempt at amendment would in substance be nothing more than really a new petition by a person entitled to make such a petition under section 8 of the Act and it will be taken to have been made on the date of the amendment which in this case would be some two years after the notification under section 7(3) of the Act, when a petition under section 8 can only be made within ninety days from the date of the notification."

Regarding the contention that it was the duty of the Tribunal to decide the application for amendment, it was held,—

> "When the preliminary issue in the case was settled on November 8, 1962, whether the petition of the appellant was or was not maintainable because the appellant had not claimed himself to be a 'hereditary office-holder' of the Gurdwara concerned according to section 8 of the Act, it was then the duty of the appellant to urge before the Tribunal that no such question could possibly arise unless and until his application under Order VI rule 17 had been disposed of. No such objection was taken by the appellant. No evidence was led with regard to the only issue in the case. The case was adjourned to the next date of hearing for arguments and the appellant at any stage had no objection to that course".

It was also further held that the appellant had not urged for the decision of his application under Order VI rule 17 of the Code, before the Tribunal. In our considered opinion, a close perusal of the decision in *Ram Bhaj's case* (supra), does not warrant the conclusion that it was not decided therein that it was essential to allege

and plead that the petitioner was a hereditary office-holder. Therein, the Tribunal had thrown out the petition under section 8 on the ground that the petition did not contain the necessary pleadings as required under section 8 and that decision was affirmed by the Division Bench. It was rather held that in the absence of the pleadings, it was not a competent petition. However, on the question whether the amendment of the petition should have been allowed or not, the Bench appears to have come to the conclusion that the application for amendment was not pressed by the petitioner and the latter allowed the preliminary issue regarding the maintainability of the petition to be decided on merits.

(7) In our opinion, the decision sn *Dharam Dass's case* (supra), inasmuch as it has held that it is not necessary to allege in the petition the facts to show that the petitioner was a hereditary office-holder does not lay down good law. If it were held otherwise, then the petition under section 8 will be competent by even a stranger though he may have nothing to do with the institution as an office-holder. We fail to understand as to how the petitioner under section 8 will be entitled to lead evidence to prove that he is a hereditary office-holder of the institution concerned unless he has laid the foundation in the petition by pleading the necessary facts. The law is well settled that a party cannot be allowed to go beyond his pleadings and that evidence though adduced and brought on the record outside the pleadings cannot be looked into for any purpose. After having held above that the petition under section 8 must show the *locus standi* of the petitioner and must have the necessary pleadings, two further questions call for decision :

1. What kind of pleadings or averments can be treated as necessary to make the petition under section 8 of the Act competent; and
2. If the Tribunal comes to the conclusion that necessary averments and pleadings have not been made in the original petition, is it competent for the Tribunal to allow amendment under order VI rule 17 of the Code, under any circumstances and what is the ambit of the jurisdiction of the Tribunal in this regard ?

(8) The learned counsel for the respondent has contended that the petitioner must allege in his petition specifically and in so many

words that he is a hereditary office-holder. On the other hand, the case of the learned counsel for the appellants is that if the petitioner has made his claim in the petition in such a manner from which inference can be clearly or substantially drawn that the petitioner has claimed to be a hereditary office-holder, there will be a substantial compliance with the provisions of section 8 and it is not absolutely necessary to use the expression that he is a hereditary office-holder. The contention of the learned counsel for the appellants appears to be more convincing and in consonance with the settled principles of pleadings. Under section 8. a petition can be made by a hereditary office-holder. The ingredients of the same are given in the two definitions of 'office' and 'hereditary office-holder' as contained in clauses (i) and (iv) of sub-section (4) to section 2 of the Act. If a petitioner instead of describing himself merely that he is a hereditary office-holder makes averments in the petition in such a manner which warrant the conclusion that he holds, in the institution concerned, office of such a nature which entitled him to manage the institution or perform the rituals in the institution since the first day of January, 1920 or the first day of November, 1956, as the case may be. that such an office was hereditary in nature as envisaged in those definitions, this will be a sufficient compliance with the provisions of section 8 of the Act. It is not reasonable to restrict the pleadings in a petition to a particular and rigid expression. So long the pleadings in a petition can warrant the conclusion that the petitioner was a hereditary office-holder, the petition will have to be held to be competent and maintainable.

(9) So far as the question regarding the amendment of the main petition is concerned, intention of the legislature is clearly discernible from sub-sections (9) and (11) of section 12, that the provisions of the Code are clearly applicable to the proceedings before the Tribunal under the Act normally and generally so long thre is no conflict with the other provisions of the Act and the applicability of the provisions of the Code does not result in making other provisions of the Act in any way nugatory. In *Dial Singh* v. *Gurdwara Sri Akal Takht* (7), it was clearly held that the provisions of Order VI rule 17 of the Code are applicable to the trial of the case before the Tribunal. In *Ram Bhaj's case* (supra), application for amendment of the main petition was not decided by the Tribunal and it was urged in appeal

(7) A.I.R. 1928, Lahore 325.

before the Division Bench of this Court that it was imperative for the Tribunal to decide the application and to allow the amendment before deciding the main petition. The Division Bench did not hold that the Tribunal had no jurisdiction to allow amendment under Order VI rule 17 of the Code, but on facts, in that case, held that the application for amendment had been made two years after the filing of the main petition and that the petitioner had not insisted on the decision of the application and had allowed the preliminary issue to be decided on merits. Thus, it can be reasonably concluded that the learned Judges comprising the Division Bench were also in favour of the proposition that the Tribunal had the jurisdiction to allow amendment under Order VI rule 17 of the Code in appropriate cases. No decision to the contrary has been brought to our notice in support of the proposition that the Tribunal has no jurisdiction to allow amendment of the petition under any circumstances. In fact, the argument of the learned counsel for the respondent is that if a petition as orginally submitted to the Government under section 8 does not fulfil the requirements of the provisions, it is not a competent petition and the Tribunal is called upon to adjudicate only the petition which is forwarded to them by the Government. By allowing an amendment, the original petition will stand substituted by the amended petition which cannot be made under the scheme of the Act. This proposition of law cannot be accepted in its extreme form. If there are absolutely no averments in a particular petition in relation to the hereditary office which may be proved by the petitioner in evidence, such a petition will be incompetent in its inception and amendment may not be allowed. However, if foundation is laid in the petition, but some lacuna is left in advertently or due to any reason, the Tribunal will cerainly have the jurisdiction to allow the petitioner to make a better statement and to make good the lacuna. It is one thing to say that the Tribunal does not have the jurisdiction at all to allow amendment under any circumstances but quite another to say that the Tribunal has the jurisdiction to allow amendment under Order VI, rule 17 of the Code, but the discretion should be exercised in a judicial manner keeping in view the peculiar facts and circumstances of each case. Reliance by the learned counsel for the respondent on the Full Bench judgment of this Court in *Mahant Lachhman Dass* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar* (8) is misconceived. In the said case, a petition under section 8, forwarded by the Government was being tried by the

(8) I.L.R. (1976) 1 Pb. & Hary. 594.

Tribunal and the petitioner was to produce his evidence. He, however, did not produce any evidence and later on did not put in his apperance. The Tribunal instead of dismissing the petition for default under Order IX rule 8 of the Code, dismissed the petition on merits. In appeal, the question involved was whether such a petition could be dismissed under Order IX rule 8 or disposed of under Order XVII rules 2 and 3 of the Code. There being a conflict of opinion between the Hon'ble Judges comprising the Division Bench, the matter was referred to the Full Bench. The Full Bench held,—

> "The Tribunal is not bound to follow the procedure which ousts the jurisdiction of the Tribunal for deciding all the claims made in accordance with the provisions of the Act. If a petition under section 8 of the Act is dismissed for non-appearance, the jurisdiction of the Tribunal to adjudicate the question whether the institution, in question, is a Sikh Gurdwara or not and also regarding the claim made under section 10 of the Act about the property is ousted ..... A bare reading of the provisions of sub-sections (1) and (2) of section 12 and section 14, read with section 25-A of the Act would make it clear that the Tribunal has been constituted to decide finally all claims made in accordance with the provisions of the Act in a speedy manner with a view to reduce the chance or protracted litigation. Disposal of all claims for or against the Gurdwaras with a view to reduce the chances or protracted litigation in a matter involving religious sentiments of a large section of a sensitive people proud of their heritage will become redundant by the applicability of the procedure of dismissal in default under the Code. Hence the provisions of Order IX, rule 8 and Order XVII rules 2 and 3 of the Code in so far as these relate to dismissal of causes in default are not applicable to the proceedings before the Tribunals constituted under the Act".

We fail to understand as to how the *ratio* of the aforesaid decision is applicable to the question as to whether the provisions of Order VI, rule 17 of the Code are applicable or not. The Full Bench held that the provisions of Order IX, rule 8 and Order XVII, rules 2 and 3 of the Code, were not applicable to proceedings before the Tribunal under the Act because their applicability will oust the jurisdiction

of the Tribunal in deciding the petitions on merits which duty has been cast clearly and specifically by the Act. This consideration has no application so far as the question of the applicability of Order VI rule 17 of the Code is concerned. The Tribunal by allowing amendment in a petition under some circumstances is not ousted of the jurisdiction to decide the petition on merit. The power of amendment under Order VI, rule 17 of the Code has been conferred, as its perusal shows, in order to determine al matters in controversy in the interest of justice. Unless any provision of the Code is in conflict with any specific and express provision of the Act, the same cannot be held to be inapplicable. The decision in *A. K. Chandra* v. *Municipal Corporation of Delhi and another* (9), relied upon by the learned counsel for the respondent has absolutely no bearing on the question under consideration. In the aforesaid case, it was held that where a period of limitation is provided by a specific statute, the provisions of the Limitation Act will not apply. There can be no dispute with the principle of law that in case of a conflict between a special Act and the general Act, the special Act will override the general Act. As observed earlier, there is absolutely no conflict between the provisions of the Act and Order VI, rule 17 of the Code.

(10) After giving our thoughtful consideration to the three questions of law, as discussed above, stage is now reached for considering the controversy in the present case. According to the learned counsel for the respondent, petition under section 8, filed by the appellants, was incompetent as the requisite averments regarding the claim of the petitioner being hereditary office-holder were not made in the petition. A perusal of the petition shows that in paragraph 4 of the petition, the following averments were made :

> "A free *Langar* is being run by the Mahant under the terms of the grant."

In paragraph 5, the averment is as follows :

> "The landed property belonged personally to the ancestors of the present petitioner Mahant. The mutation stood in their personal names and the petitioner Mahant inherited

(9) 1976 P.L.R. (Delhi Section) 238.

the property given in the Schedule from his Guru. The succession devolves from Guru to Chela according to the custom of this institution and the Udasi Bekh."

In the prayer clause, besides other reliefs claimed, the following prayer is made :

"It may be declared that the institution, in question, is a Hindu Udasi Bekh institution and the petitioner is the Mahant, Mohtamin and owner of the Dera building and the property given in the Schedule. The institution is not a Sikh Gurdwara and, therefore, the provisions of the Sikh Gurdwaras Act, do not apply."

The averments reproduced above from the petition clearly show that the petitioner claimed that he was incharge of the institution or the Gurdwara as a Mahant which expression obviously means the manager. It was also claimed that this office of Mahantship had descended from Guru to Chela and that this mode of succession was the custom of the Gurdwara. During the pendency of the petition, the original petitioner, Mahant Jiwan Mukta Nand died. An application was made by Mahant Purna Nand for being impleaded as his legal representative which was allowed. Another application was made on May 25, 1964, for amendment of the petition so as to incorporate that Mahant Jiwan Mukta Nand was the hereditary office-holder and as such was entitled to put in a claim under sections 8 and 10 of the Act. It was also averred in paragraph 6 of this application that even in the original petition, Mahant Jiwan Mukta Nand had described himself to be the Chela and successor of his Guru and the mode of successor to be that of Guru to Chela to the institution of Mahantship. Thus the application for amendment was made in order to meet the objection of the respondent that the original petitioner had not alleged in the petition specifically that he was a hereditary office-holder. We have already held that it is not absolutely necessary for the petitioner to allege in his petition that he is a "hereditary office-holder", and if essential ingredients of 'office' and 'hereditary office', as defined in the Act are brought out in the various averments in the petition, the same will be a substantial compliance. In our opinion, the averments in

the petition were quite sufficient compliance with the requirements of law and the petition, as originally framed, cannot be held to be an incompetent petition under section 8 or that the petitioner had not alleged regarding his *locus standi* to make the petition. Even otherwise if there was any lacuna, the same was made good by making an application for amendment of the original petition which was allowed and thereafter amended petition was filed. The order of the Tribunal, in these circumstances, allowing the petition for amendment, cannot be held to be without jurisdiction or that the discretion conferred on the Tribunal under Order VI rule 17 of the Code was not properly exercised. Besides, the application for amendment was allowed on payment of Rs. 50 as costs which was accepted by the learned counsel for the respondent. In these circumstances, the respondent is estopped from challenging the order of the Tribunal allowing the amendment.

(11) It was further contended by the learned counsel for the respondent that the application for amendment had been made by the legal representative of the original petitioner, Mahant Jiwan Mukta Nand and as such, amendment could not be allowed as the proposed amendment was relating to the original petitioner in his personal capacity and was thus not available to the legal representative. In support of this proposition, reliance has been placed on *Raghpat Rai and others* v. *Shrimati Gurdev Kaur and others* (10) and *Jagdish Chander Chatterjee and others* v. *Shri Sri Kishan and another* (11). This contention has no substance. Firstly neither of the two decisions relied upon supports the contention of the learned counsel. It has been clearly held in the former case that the legal representatives can urge all contentions which could be urged by the deceased and that this does not prevent the legal representatives from setting up their own independent title in which case there could be no objection to the Court impleading them not merely as the legal representatives of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on independent title. In the present case, even this contingency had not arisen. In the application for amendment, the only amendment proposed was that Mahant Jiwan Mukta Nand, the original

(10) 1977 P.L.R. 298.
(11) (1972)2 S.C.C. 461.

petitioner, was the hereditary office-holder and that the legal representative was his successor. On facts, it was held by the Tribunal on the basis of the evidence on the record, that the original petitioner, Mahant Jiwan Mukta Nand, was proved to be a hereditary office-holder. This finding was not challenged by the learned counsel for the respondent in appeal. We are also in agreement with the finding of the Tribunal and hold that the original petitioner was a hererditary office-holder of the institution, in dispute.

(12) Regarding issue No. 2, the Tribunal after going through the voluminous documentary evidence produced by both sides came to the conclusion that the Gurdwara described as Gurdwara Sahib Dharamsala Bhai Ki in the notification under section 7, was a Sikh Gurdwara. According to the learned counsel for the appellants, this finding is based on gross misreading and misinterpretation of the documents on record. It is not disputed that the onus to prove that the Gurdwara, in question, was a Sikh Gurdwara was on the respondent. According to the learned counsel for the respondent, the Committee has successfully proved the ingredients of clause (iii) of sub-section (2) to section 16 of the Act, to discharge its onus. Clause (iii) of sub-section (2) to section 16, is reproduced below :

> "6(1) Notwithstanding anything contained in any other law in force, if in any proceeding before a tribunal it is disputed that a Gurdwara should or should not be declared to be a Sikh Gurdwara, the tribunal shall, before enquiring into any other matter in dispute relating to the said Gurdwara, decide whether it should or should not be declared a Sikh Gurdwara in accordance with the provisions of sub-section (2).
>
> (2) If the tribunal finds that the Gurdwara—
>
> (i) **** **** **
>
> to
>
> (ii) " * * *
>
> (iii) was established for use by Sikhs for the purpose of public worship and was used for such worship by Sikhs

before and at the time of the presentation of the petition under sub-section (1) of section 7;

(iv) * * * *

to

(v) * * * *

Its perusal shows that the Committee was required to prove the following essential ingredients :

(1) that the Gurdwara was established for use by Sikhs for public worship;

(2) that it was being actually used for worship by Sikhs ; and

(3) that it was being used by Sikhs for publsc worship both before the presentation of the petition and at time of the presentation of the petition.

It is admitted that there is no direct evidence to establish that the Gurdwara was established in the above-mentioned circumstances and was being used as such so as to satisfy the ingredients of the above provision. We are, thus, left to draw inference from the documentary and oral evidence on the record. The pedigree-table relating to Mahants of the institution, in dispute. as given in Exhibit R. 3 and Exhibit R. 8 (also Exhibit P. 8), is not disputed. According to Exhibit R. 3, the first Mahant of the institution was Baba Garib Dass. After him, Mahantship devolved upon Sangat Dass, Mangi Ram, Kaul Dass and Harsaran Dass. According to Exhibit R. 8, the office devolved from Harsaran Dass onwards on Bishan Dass and Mahant Jiwan Mukta Nand. It is also clear from these two documents that the devolution was from Guru to Chela. In these two documents, the name of the institution is also mentioned as Dera Udasi. The earliest document which throws light on the nature of the institution is Exhibit P. 22, which is Nakal Khatauni Malguzari of village Dirbha for the year 1944 Bk. corresponding to 1887-88 A.D. This is for the period from Kharif 1944 Bk. to Rabi 1945 Bk. In the column of ownership, the land is entered in the name of Harsaran Dass, Chela

Kaul Dass, Fakir Udasi. In the column of Kafiat is reproduced the order of the Revenue Department dated Magh 24, 1945 Bk. which shows that the land mentioned therein was in the name of the Dera Udasian and Harsaran Dass was its Mahant, that some land out of this pertained to Dharamsala and according to the statement of Harsaran Dass, the Dera and the Dharamsala were one and the same thing. This order also shows that this stand of the Mahant was also endorsed by the **lambardars** of the village. Exhibit P. 9 is Sanad Muafi issued by the then Government of Patiala on Savan 11, 1963, Bk. under the orders of the Commissioner, Settlement, dated July 26, 1906 A.D. In the column of Muafidaran, Muafi is entered in the name of Dharamsala under the management of Harsaran Dass, Chela Kaul Dass, Fakir Udasi. In column No. 6 is given the summary of the order of the Commissioner, dated July 26, 1906 A.D. According to that order, the Muafi in the name of Dharamsala was granted till the existence of the 'Makan' and so long as the conditions regarding the service were complied with. It may be mentioned here that in this summary of the order, the conditions of the service are not specified. Exhibit R. 15, is the order of Sardar Hari Krishan Kaul, Revenue Minister, Patiala, dated Har 22, 1995 Bk. That order is to the effect that the Muafi amounting to Rs 210 was sanctioned in the name of Dharamsala under the management of the Mohtamin subject to the fulfilment of the conditions of service. It is also specified therein that this Muafi was being restored in accordance with the report of the officers. Exhibit R. 14, is the report of the Tahsildar, Bhawanigarh, dated 10th Phalgun, 1994 Bk. according to which the Muafi amounting to Rs. 210 was for the travellers and wayfarers and that Mahant was feeding the Fakirs and those staying there. It was further stated that the Makan was kept in good condition. It was also mentioned that Guru Granth Sahib is kept therein and Dhoop-Deep is performed. The report of the Naib-Tehsildar, dated Jeth 19, 1994 Bk. was also accepted therein. Exhibit R. 16, is the recommendation by the Nazim (Collector), Sunam, dated Phalguna 1996 Bk. to the effect that according to the report of the Tehsildar Muafi amounting to Rs. 210 be restored in favour of the Dharamsala under the management of Mahant Mukta Nand, Chela, Mahant Bishan Dass. Exhibit R. 28, is the order of the Sardar Sahib Deorhi Muallah, Patiala, dated 9.11.1995 Bk. addressed to Nazim, Sunam. According to

that order, direction was issued to remove Mahant Jiwan Mukta Nand from the Dera after making temporary arrangement for Dhoop-Deep. In the said order, the reference is to the management of Dera Udasian, village Dirbha, Tahsil Bhawanigarh. The learned counsel for the respondent has emphatically relied upon three documents, namely, Exhibits R. 1, R. 2 and R. 3. Exhibit R. 1, is the statement of Harsaran Dass, Chela Mahant Kaul Dass, Fakir Udasi, in the case regarding enquiry into the question of the Muafi. This is dated 1962 Bk., corresponding to 1905 A.D. According to this statement, Harsaran Dass claimed to be the Chela in the fifth degree from Guru Garib Dass. It was stated therein that the Muafi had been given by Maharaja Ala Singh to his Guru, Mahant Garib Dass, for the purpose of feeding the Fakirs and Sadhus and that it was till the existence of Mandir, Dharamsala and Guru Granth Sahib. It was further stated that the land belonged to him and only the land revenue was exempted. Exhibit R. 2, is a joint statement by the **lambardars** of the village in the same file and is dated 1st Phalguna, 1962 Bk. corresponding to 1905 A.D. This statement is also on the same lines as Exhibit R. 1. Exhibit R.3, refers to the orders by the various authorities in the same file and it is described as Khulasa Tehkikat Muafi. In the column of donor, the name of Maharaja Ala Singh is entered. In the column of Muafidars is entered the name of Baba Hari Dass. According to the learned counsel for the appellants, this name is, in fact, Harsaran Dass because there was no such person with the name of Hari Dass, pertaining to this Muafi or Dera. This is not disputed by the other side. According to the report dated Har 28, 1963 Bk. which was accepted by the Commissioner, Settlement, Muafi was in the name of the Dharamsala. Guru Granth Sahib was also there and that the Muafi was till the existence of the Dharamsala and subject to the condition of service as specified. According to the recommendation by the Superintendent, Settlement, the Muafi was till the existence of the Dharamsala and till the time Guru Granth Sahib was recited and also for the purpose of feeding the Sadhus and

(13) According to the learned counsel for the respondent, the case of the respondent was fully established from the document, Exhibit R. 3, as according to it, the Muafi was till the existence of the Dharamsala as well as subject to the condition that Guru Granth

Sahib was recited. If this document alone were on the record and were to be read in isolation, the contention of the learned counsel may have some substance. As referred to above, the earliest document relating to the Gurdwara is Exhibit P. 22, Nakal Khatauni according to which the land was owned by Mahant Garib Dass who was managing the Dera known as Dera Udasian and that the said Dera and the Dharamsala were one and the same. From this documentary evidence, it has to be concluded that in point of time, at its inception the institution was known as Dera Udasi or Dharamsala and there is no reference to the existence or installation of Guru Granth Sahib therein and that the land was owned by Mahant Garib Dass, the first Mahant of the Dera. From this, the inference is also justified that this Dera had not been brought into existence by Maharaja Ala Singh and that the Dera Udasian was already in existence. It was subsequently that Muafi was granted and Muafi was also in the form of exemption from land revenue of the land which belonged to the first Mahant Garib Dass in his own name. A combined reading of all the documents mentioned above also warrants the conclusion that Muafi was granted subject to two conditions :

(1) that the Muafi will continue till the existence of the Dera which was sometimes described as Mandir, sometimes as Dharamsala of Dera and sometimes as Makan; and

(2) till the time the Sadhus and Fakirs who come to the Dera were fed from the Muafi amount.

In some documents, it is also mentioned that Muafi had been granted, after the matter had been reviewed, also on the condition that the same will continue not only till the existence of the Dera, Mandir, Dharamsala, but also till the time Guru Granth Sahib was recited. However, the various orders regarding the grant of Muafi or the continuance of Muafi cannot be of much relevance for the purpose of determining the origin and character of the Gurdwara keeping in view facts and circumstances of the present case especially when it is clear from Exhibit P. 22 that the Dera/Dharamsala was in existence before the grant of Muafi.

(14) A good number of other documents besides those referred to above have also been brought on the record by both sides, but

they are not of much relevance. Exhibit R. 4, is Jamabandi for the year 1903—04 A.D., in which the land is entered in the name of the Dharamsala under the management of Harsaran Dass, Chela Kaul Dass, Fakir Udasi. Exhibits R. 5, R. 6 and R. 7 are mutations of inheritance regarding Muafi from one Chela to another as per the pedigree-table given in Exhibits R. 3 and R. 8. Exhibit R. 9 is an application by the managing committee of the Dera Udasian. Exhibit R. 10, is a report of the Naib-Tehsildar in respect of this Dera. Exhibits R. 11, R. 12 and R. 13 are applications by different persons claiming to be the Chelas and entitled to the management of the Dera as Mahants after Mahant Jiwan Mukta Nand. Exhibit R. 16 is a report of the Nazim, Sunam, and Exhibit R. 17, is a report of the Deputy Commissioner. in respect of this Dera. Exhibit R. 18. is a report by the Assistant Manager of the Dera to the effect that the Granthi entrusted with the management of the Dera Udasian was not performing his duties. In this, there is also a reference to the existence of Gurdwara Sahib in village Dirbha. Its perusal shows that the said Gurdwara was mentioned as an institution difftrent from the Dera. Exhibits R. 19, R. 20, R. 21, R. 22, R. 23, and R. 24 pertain to the applications/representations or reports by the authorities in the case pending regarding the removal of Mahant Jiwan Mukta Nand from the Mahantship or the management of the Dera, but in all these documents, the Dera is described as Dera Udasian. On the side of the appellants also, a number of documents have been produced to show that the land is entered in the name of Dharamsala under the management of one Mahant or the other as Chela of his successor and the Mahant is also described as Fakir Udasi.

(15) The learned counsel for the respondent has urged that from the evidence on the record, it is established that there was no other mode of worship except that of Guru Granth Sahib in the Dera, that Guru Granth Sahib was installed in the Dera and that the Muafi was granted in favour of this Dera by a Sikh ruler and, therefore, according to the learned counsel, the only conclusion which can be drawn is that the institution known as Dharamsala or the Dera was established by Sikhs for the purpose of worship and use by the Sikhs. It was also urged that Dharamsala, Dera or the Gurdwara are interchangeable expressions and in all cases, the institution is a Gurdwara. In support of this contention, reliance

has been placed on *Mahant Jaswant Dass* v. *The Shiromani Gurdwara Parbandhak Committee* (12) *and Ram Kishan Das* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar and another*, (13). In the former case, on the basis of evidence adduced by the Committee, the finding was reached that from the very inception of the institution known as Dera, land had been gifted by the Sikh Rulers to the first ancestor and the founder of the Dera and the Muafi had been granted on the sole condition that the holy Guru Granth Sahib will be kept there and recited. It was under these circumstances the conclusion of the Tribunal that the Gurdwara, in question, was a Sikh Gurdwara was upheld. In the latter case, the Court came to the conclusion from the evidence on the record that there was no doubt that when the institution was endowed with the Muafi by the Sikh Sardar towards the end of 19th century, it was not only a Dharamsala to which the Samadh of a Sikh Sardar was attached but also a 'Makan Guru Granth Sahib.' Further, conclusion was also reached that the institution was not a Udasi Dera, but the ordinary Sikh village Dharamsala. As against this, reliance has been placed by the learned counsel for the appellants on *Shiromani Gurdwara Parbandhak Committee, Amritsar* v. *Prabhu Dayal and others* (14), wherein the institution was not hled to be a Sikh Gurdwara though the finding was that the land had been donated by a Sikh Maharaja and the Maufi had been granted on the ground that expenses for Dhoop-Deep etc. will be met from the same. It was also held that the mere fact that the holy book of Guru Granth Sahib is installed in the institution does not lead to the conclusion that it is a Sikh Gurdwara. In *Arjan Singh and another* v. *Harbhajan Das and others* (2), (*supra*), the originator of the shrine was generally known as Udasi Fakir and the institution from its inception was more a charitable institution than a religious one. It was held that the mere reciting of the Guru Granth Sahib by Sikhs under the circumstances would not convert an institution which was Udasi from its inception into a Sikh institution. The facts, in the present case, are almost similar. It is clear from the discussion of the various documents referred to above,

(12) FAO 64 of 1966 decided on 12-5-76.

(13) A.I.R. 1937 Lah. 290.

(14) F.A.O. 111 of 1965 decided on 23-8-1971.

especially, Exhibit P. 22, that the Dera to begin with, was founded by a Fakir Udasi, Mahant Garib Dass, and the land was owned by him in his own name and the said Dera was more a charitable institution than a religious one. Only Muafi was granted by a Sikh ruler subsequently. The mere fact that the grant of the Muafi was subject to the condition of the existence of the Dera as well as Guru Granth Sahib will not convert the Dera in the present case into a Sikh Gurdwara.

(16) There is no evidence on the record to warrant the conclusion that the institution, that is, the Dharamsala or the Dera had been brought into existence by the Sikhs for the purpose of public worship. Under clause (iii) of sub-section (2) of section 16, two conditions have to be satisfied. Even if one condition is not satisfied, the onus is not discharged. We are firmly of the opinion that in the present case, the respondent has not been able to discharge its burden. Consequently, we reverse the finding of the Tribunal on issue No. 2 and hold that the institution notified under section 7 of the Act has not been proved to be a Sikh Gurdwara.

(17) Besides the documentary evidence, both the parties also produced a number of witnesses who supported the respective case of the party on whose behalf they put in their appearance as witnesses. Their evidence is more or less of a partisan character and cannot be given much credence especially when the case of the appellants is clearly established from the documentary evidence as mentioned above.

(18) For the reasons mentioned above, we accept the appeal allow the petition of the appellants under section 8 of the Act and declare that the institution, in question, is not a Sikh Gurdwara. There will be no order as to costs.

N.K.S.

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