

Before Mahesh Grover & Shekher Dhawan, JJ.

CHARAN DASS—*Petitioner*

versus

SHIROMANI GURDWARA PRABANDHAK COMMITTEE—
Respondent

FAO No. 207 of 1971

November 04, 2016

Sikh Gurdwara Act, 1925—Ss.7, 8, 10 and 16—Worshippers of the Gurdwara Sahib Dera Udasian filed petition under S.7 (1) contending that the Dera be declared a Sikh Gurdwara—Notification to that effect was issued—This led to filing of two petitions under S.8, one by Charan Dass claiming to have succeeded to the hereditary office in the Dera—Sikh Gurdwara Tribunal delivered the verdict by a majority of 2:1—appeal against—Held, guiding principles to be considered while declaring a Dera or a Gurdwara to be a Sikh Gurdwara would be S.16(2)(iii)and(iv)—Evidence delineated that Bhagat Bhagwan was pivotal to the institution (Dera) which was managed through a line of succession of Gurus and Chelas—And succession through chelas is alien to the concept of Sikhism—Other significant factors which lend character of a Sikh Gurddwara are manifestly absent as the existence and worship of samadhs and portraits of Shri Chand would suggest—There was nothing to suggest that Bhagat Bhagwan was himself a Sikh or a Sikh saint, and thus it could not be concluded that this institution was set up in the memory of a Sikh saint—Therefore, ingredients of S.16 do not manifest themselves on appraisal of entire evidence—Appeal accepted, holding that the Dera in question is not a Sikh Gurdwara.

Held that, it would be necessary to extract Section 16 of the Act also which assumes relevance since it provides the guiding principles to be considered while declaring a Dera or a Gurdwara to be a Sikh Gurdwara a Sikh institution and of particular importance would be Sections 16(2)(iii) and (iv) and thus, the reason for its emphasis.

(Para 9)

Further held that, evidently, the issue which becomes foundational to the controversy raised by the respondents, would revolve around the parameters of Section 16(2) (iii) and 16(2)(iv) and to simplify, we would encapsulate them as below :-

- (1) To be a Sikh Gurdwara, it has to be established that it was used for Sikhs for the purpose of public worship.
- (2) Was used for such worship for Sikhs before and at the time of presentation of the petition under sub-section (1) of section 7.
- (3) Was established in memory of a Sikh martyr, saint or a historical person and was used for such worship by Sikhs before and at the time of presentation of the petition.

(Para 10)

Further held that a perusal of the above, delineates the following character of the institution :-

- (1) Bhagat Bhagwan was pivotal to the institution which was managed through a line of succession of Gurus and Chelas.
- (2) There are smadhs existing on one side. The succession was from Bhagat Bhagwan to his Chela Piara Dass who died without a Chela rendering the succession open in favour of Ishar Dass, a Gurbhai (since Ishar Das was also a Chela of Piara Das). D'hors the issue as to whether a Gurbhai could legitimately succeed or not, the fact of the matter is that Ishar Dass traced his succession to Bhagat Bhagwan. There is nothing to suggest that Bhagat Bhagwan was himself a Sikh saint. This is also belied by the fact of succession duly borne out from the revenue record (Exs.P.6,7,8,12,16,17,22). Since succession through Chelas is alien to the concept of Sikhism. The account of a historian about Bhagat Bhagwan being blessed by the 7th Guru does not *ipso facto* reflect on his being a Sikh to continue with the Sikh preachings in the institution.
- (3) Even though witnesses of the respondents have stated about the Parkash of Guru Granth Sahib being held in the institution besides recital of Guru Granth Sahib, the other significant factors which lend character of a Sikh Gurdwara, are manifestly absent as the existence and worship of smadhs and portraits of Siri Chand would suggest.

(Para 26)

Further held that a careful analysis of the revenue record coupled with the oral evidence would show that the land of the Dera has passed on in succession to successive chelas – an attribute alien to a Sikh Gurdwara. This coupled with the analytical conclusion from the

oral evidence would lead us to the final conclusion that the institution is not a Sikh Gurdwara. There is no evidence that the Dera has the attributes and characters of a Sikh institution to satisfy the tests laid down by the Hon'ble Supreme Court in *Pritam Dass Mahant v. Shiromani Gurdwara Prabandhak Committee*. There is no evidence further to state that Bhagat Bhagwan was a Sikh saint and thus, it cannot be concluded that this institution was set up in the memory of a Sikh saint, as pleaded by the respondents. There is also no evidence to show that Bhagat Bhagwan was himself a Sikh or a practicing Sikh faith. Thus, the ingredients of Section 16 of the Act do not manifest themselves on appraisal of the entire evidence.

(Para 39)

S.S. Panag, Advocate, *for the appellants.*

Shri Kanwaljit Singh, Senior Advocate with S.S. Mattewal, Advocate, for the respondents.

MAHESH GROVER, J.

(1) By this order we shall dispose of F.A.O. Nos.207 of 1971, 531,532,588 and 589 of 1984. For the sake of convenience, brief facts have been taken from F.A.O. No.207 of 1971 which is directed against the judgment dated 11.3.1971 of the Sikh Gurdwara Tribunal, Punjab Chandigarh (hereinafter referred to as the Tribunal) constituted under the Sikh Gurdwara Act, 1925 (hereinafter referred to as the Act). (As per the majority view, the verdict was delivered by 2 : 1).

(2) Fifty five worshippers of the Dera in question filed a petition under Section 7(1) of the Act contending that the Gurdwara Sahib Dera Udasian, situated in the Patiala Region of the State of Punjab should be declared a Sikh Gurdwara. A notification was issued on 16.8.1963 and published along with the petition giving a consolidated list of rights, title and interests in the properties claimed to belong to the Sikh Gurdwara. This led to the filing of two petitions under Section 8 of the Act which were referred to the Government, one petition by Ishar Dass, Chela of Bhagwan Dass and second by Charan Dass, the appellant herein. The S.G.P.C. made an application to be impleaded as a party to the petition which prayer was accepted to raise an objection to the petition that the appellants in both the petitions did not have a locus standi to move an application under Section 8 of the Act, besides asserting that the Dera was a Sikh Gurdwara thereby defending the notification.

(3) The Tribunal under Section 1 of the Act framed the following two issues around which the entire controversy centres :-

(1) Whether the petitioner is a hereditary office holder of the Institution in question? OPP

(2) Whether the institution in dispute is a Sikh Gurdwara within the provisions of Clauses (III) of Sub-Section (2) of Section 16 of the Act? OPP

(4) The petition filed by Charan Dass in his individual capacity was disposed of on his own statement on the issue of locus. It was thus, the petition filed by Ishar Dass on which the Tribunal rendered its decision. Ishar Dass passed away during the pendency of the petition and Charan Dass claimed to have succeeded him to the hereditary office and he got himself impleaded as a party to the proceedings.

(5) The matter was then agitated before this Court by way of an appeal which was disposed of and the issue regarding the hereditary status and its relevance to the locus and evidence in support thereof was not gone into by this Court on the ground that there has been no specific averment with regard to the hereditary office changing hands. This question was irrelevant and need not be gone into at the appellate stage particularly when all the issues were beyond pleadings.

(6) The matter then went to the Hon'ble Supreme Court which remanded the matter back vide order dated 8.12.1994 and the relevant portion of the order is extracted here below :-

“In the first place, it is necessary to bear in mind that the fact that the deceased Ishar Dass preferred the petition on the plea that he was a hereditary office holder in relation to the Dera which was sought to be declared a Sikh Gurdwara. It is true that he did not state how the office devolved by succession in so far as that Dera was concerned. The respondent, Shiromani Gurdwara Prabandhak Committee, while contending that the petition did not disclose the custom, did not call upon the petitioner to state the same but preferred to go to trial on the issue extracted hereforth. Once the parties were permitted to lead evidence without demur from the opposite side and they went to trial on the issues the failure to make a specific averment in the pleadings rendered in the background because that very custom was the subject matter of oral as well as documentary evidence

on which the parties went to trial. Both sides have led oral as well as documentary evidence on the issue whether or not Ishar Dass was the hereditary office holder of the Dera in question. Once parties have gone to trial, the question in regard to the status of Ishar Dass had to be decided in the light of evidence already rendered. Similarly, the claim of the present appellant as a successor in the office to Ishar Dass had also to be tested on the strength of that evidence. The High Court should have evaluated the evidence and should have recorded a finding whether or not the contention was proved, not proved or disproved. The High Court could not and should not have disposed of the appeal on the technical ground that custom have not been pleaded in the petition lodged by Ishar Dass. It is well settled that once the parties go to trial on a issue in regard to which the pleading is incomplete, the petitioner is permitted to lead evidence without demur and the respondent cross examine the witnesses for the petitioner and then leads evidence in rebuttal, it is not open to the respondent that to contend that in the absence of the averments in that behalf the petition out to be dismissed. We are, therefore, of the opinion that the High Court should have appreciated the oral as well as the documentary evidence led by the parties and should have recorded its own findings on merits rather than throwing out the appeal on the technical ground of the petitioner not having pleaded custom in support of his contention that he was the hereditary office holder of the Dera in question.

In the result, we allow this appeal, set aside the order of the High Court and remit the matter back to the High Court for disposal on merits in accordance with law. No order as to costs.

(7) We have now been called upon to determine the issue afresh.

(8) Before we commence with the discussion on merits, it would be apposite to extract Sections 7,8 and 10 of the Act as below :-

7. Petitions to have a gurdwara declared a Sikh Gurdwara.- (1) Any fifty or more Sikh worshippers of a gurdwara, each of whom is more than twenty-one years of

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

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

Provided further that no such petition shall be entertained in respect of any institution specified in Schedule I or Schedule II unless the institution is deemed to be excluded from specification in Schedule I under the provisions of section 4.

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

resides or is residing, or if there is no such person, the name of the person actually or constructively in possession of such right, title or interest on behalf of the insane person or minor, and if any such right, title or interest is alleged to be in possession of the gurdwara through any person the name of such person shall be stated in the list ; and the petition and list shall be in such form and shall contain such further particulars as may be prescribed.

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

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

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

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

(5) Effect of publication of petition and list under sub-

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

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

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

such residents.

9.

XXX XXX XXX

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

(2) Signing and verification of petitions under sub-section (1).- A petition forwarded under the provisions of sub-section

(1) shall be signed and verified by the person forwarding it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908), for the signing and verification of plaints,¹ and shall specify the nature of the right, title or interest claimed and the grounds of the claim.

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

(9) It would be necessary to extract Section 16 of the Act also which assumes relevance since it provides the guiding principles to be considered while declaring a Dera or a Gurdwara to be a Sikh Gurdwara a Sikh institution and of particular importance would be Sections 16(2)(iii) and (iv) and thus, the reason for its emphasis. Section 16 is extracted here below :-

“16. Issue as to whether a gurdwara is a Sikh gurdwara to be decided first and how issue is to be decided.- (1) Notwithstanding anything contained in any other law in force, if in any proceedings before a tribunal it is

disputed that a gurdwara should or should not be declared to be Sikh Gurdwara, the tribunal shall, before enquiry into any other matter in dispute relating to the said gurdwara, decide whether it should or should not be declared a Sikh Gurdwara in accordance with the provisions of sub-section(2).

(2) If the tribunal finds that the gurdwara -

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

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

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

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

(v) owing to some incident connected with the Sikh religion (was) used for such worship by Sikhs, (before and at the time of the presentation of the petition under sub-section (1) of Section 7);

the Tribunal shall decide that it should be declared to be a Sikh Gurdwara, and record an order accordingly.

(3) Where the tribunal finds that a gurdwara should not be declared to be a Sikh Gurdwara, it shall record its finding in an order, and, subject to the finding of the High Court on appeal, it shall cease to have jurisdiction in all matters concerning such gurdwara, provided that, if a claim has been made in accordance with the provisions of section 8 praying for the restoration to office of a hereditary office-holder or person who would have succeeded such office-

holder under the system of management prevailing before the first day of January, 1920 (or, in the case of the extended territories, before the first day of November, 1956) the tribunal shall, notwithstanding such finding continue to have jurisdiction in all matters relating to such claim; and if the tribunal finds it proved that such office-holder ceased to be an office-holder on or after the first day of January, 1920 (or, in the case of the extended territories, after the first day of November, 1956), it may by order direct that such office-holder or person who would have so succeeded by restored to office.”

(10) Evidently, the issue which becomes foundational to the controversy raised by the respondents, would revolve around the parameters of Section 16(2) (iii) and 16(2)(iv) and to simplify, we would encapsulate them as below :-

- (1) To be a Sikh Gurdwara, it has to be established that it was used for Sikhs for the purpose of public worship.
- (2) Was used for such worship for Sikhs before and at the time of presentation of the petition under sub-section (1) of section 7.
- (3) Was established in memory of a Sikh martyr, saint or a historical person and was used for such worship by Sikhs before and at the time of presentation of the petition.

(11) All these factors would thus, depend on the evidence which would be evaluated but before this, we would like to refer to the judgment of the Hon'ble Supreme Court in *Pritam Dass Mahant versus Shiromani Gurdwara Prabandhak Committee*¹, wherein it was held as under :-

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

8. Both the Gurus and the Book deserve respect, which they are accorded because of the Bani which they express,

¹ (1984) 2 S.C.C. 600

the word of divine truth. Therefore, it was possible for Guru Arjan, the fifth in the human line, to bow before the collection which he had compiled and installed in the newly-built Darbar Sahib in 1604 for he was acknowledged the higher authority of the Bani due to the personal importance and significance which he possessed as Guru.

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

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

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

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

The Eternal Father Willed, and I raised the Panth.

All my Sikhs are ordained to believe the Granth as their

preceptor.

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

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

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

**13. Temples are found almost in every religion but there
are some differences between Sikh temples and those of
other religions. The Sikh gurdwaras have the following
distinctive features :**

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

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

(3) Gurdwara is a place where a copy of Guru Granth

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

14. From the foregoing discussion it is evident that the sine qua non for an institution being a Sikh gurdwara is that there should be established Guru Granth Sahib and the worship of the same by the congregation, and a Nishan Sahib as indicated in the earlier part of the judgment. There may be other rooms of the institution meant for other purposes but the crucial test is the existence of Guru Granth Sahib and the worship thereof by the congregation and Nishan Sahib. It is not necessary that there must be a granthi in a gurdwara. Any learned person can read Guru Granth Sahib and explain to the congregation.

xxx

xxx

xxx

16. Shri Naunit Lal, counsel for the appellants contended that the High Court has misread the evidence and that has vitiated its finding. He referred to the material portions of the judgment and the evidence of the parties to support his contention. On perusal of the judgment and the relevant evidence we do not find any misreading of evidence by the High Court. This contention, therefore, has no force. We, however, find that the High Court proceeded on the assumption that admittedly Bhai Bhagtu was a Sikh saint and that the disputed institution was established in his memory. This would be evident from the following observation made by the High Court.

“On an overall consideration of this aspect we are inclined to accept the contention of Mr. Shant that admittedly Bhai Bhagtu was a Sikh saint and this institution was established in his memory and as such the case of the respondent would also come within the ambit of Section 16 (2)(iv) of the Sikh Gurdwara Act.” But this observation is not warranted from the pleadings or the evidence of the parties, Pritam Dass, the appellant, as PW-8, in his deposition has categorically stated:

“Bhai Bhagtu was an Udasi Fakir.” In the pleadings also the appellant set up that Bhai Bhagtu was an Udasi saint and the institution was a Dera of the Udasi sect, while the respondent, on the other hand, in its reply stated that Bhai Bhagtu was a Sikh Saint and the institution was established in the memory of that Sikh Saint. In this state of pleadings and the evidence adduced by the parties it will not be correct to say that admittedly Bhai Bhagtu was a Sikh Saint and that this institution was established in his memory. Rather this was the only disputed question to be decided by the Court. Thus while holding that there is no misreading of evidence we find that there is misreading of the pleadings of the parties.

17. It was next contended for the appellant that the appellant of Udasi sect being in charge of the institution in question, the succession to the institution being from Guru to Chela, the institution being recorded as Dera of Udasi sect in some of the revenue records, the existence and worship of various idols and smadhs within the precincts of the institution and the absence of a granthi in the institution are all incompatible with the institution being a Sikh Gurdwara.

xxx

xxx

xxx

19. The Court has been called upon to decide whether the institution in question is a Sikh Gurdwara. While considering this question the Court has to take into consideration all the circumstances which favour or militate against the institution being a Sikh Gurdwara. In the very nature of things and in view of the requirements of sub-section (2) of Section 16 it becomes necessary to consider

whether the institution being in charge of an Udasi saint, the existence of Smadhs of Udasi saints and worship thereof, or the existence of the idols and absence of a granthi and succession to the institution from guru to chela are all relevant considerations and the Court has to consider them if there is evidence on the record. In the instant case evidence has been adduced on behalf of the appellant about the existence of smadhs and the various idols, the absence of a granthi and succession to the institution from guru to chela. We see no reason why the appellant be prevented from urging the aforesaid circumstances.

20. On the question whether the existence of smadhs and of the idols and the absence of a granthi or succession to the institution from guru to chela militates against the institution being a Sikh Gurdwara the counsel for the parties have adduced evidence in support of their respective contentions. The counsel for the parties have also cited cases in support of their respective contentions.

21. The counsel for the appellant relied on **Hem Singh v. Basand Dass, 63 Ind App 188**. In that case the question for consideration was whether Udasis are Sikhs. The Court held that Udasis are not Sikhs for the purpose of Sikh Gurdwara Act. Although Guru Nanak founded Sikhism as a new religion by sweeping away idolatry and polytheism, Shri Chand, the son of Guru Nanak the founder of the Udasis, was himself not a Sikh but a Hindu. No reconciliation between the Sikhs and Udasis ever took place. The Udasis are in consequence not Sikhs, but schismatics who separated in the earliest days of Sikhism and never merged with the followers of the Gurus.

22. Reliance was next placed upon **Ishar Dass v. Dr.Mohan Singh, AIR 1939 Lahore 239**. The Court held :

“ ... it has been established that the Mahants have all along been Udasis, that the institution was an Udasi monastery, that the Guru Granth Sahib was read there by the Udasi Mahant and that Sikhs may have attended these readings but that all other ceremonies, observed by Udasis and Hindus, were performed at the institution. It cannot be held from the mere fact that the Udasis also read the Guru Granth Sahib, a

book which they do venerate, that the Sikhs should be associated in the management of this genuine Udasi institution. It was held by a Division Bench of this Court in ILR 15 Lahore 247 that the Udasi order constitutes a separate sect, distinct from the orthodox Sikhs and that though they have retained many Hindu beliefs and practices, yet in the wider sense of the term they may also be Sikhs. They occupy an intermediate position between strictly orthodox Sikhs and Hindus. The Udasis are in fact a monastic order in their origin and are followers of Bawa Siri Chand, son of the first Guru. Though they worship smadhs etc., they do reverence the Grantha Sahib without completely renouncing Hinduism. They are often in charge of the village Dharamshala or Gurdwara, which is a Sikh institution, but in other cases the Sadh and his chelas constitute a monastery or college. Owing to their intermediate position, it is possible for Udasis to be in charge of a Sikh Gurdwara, properly so called out but it does not follow that that institution is a Sikh Gurdwara and not a true Udasi institution merely because the Granth Sahib is read.”

23. In **Harnam Singh v. Gurdial Singh**, (1967) 2 SCR 739 on an analysis of various decision this Court held :

“These decisions clearly indicate the principle that though the Sikh Guru Granth Sahib is read in the shrines managed by the members of the Udasi sect, that was not enough to hold that those shrines were Sikh Gurdwaras. In the case before us, the mere fact that at some stage there was a Guru Granth Sahab in this Dera cannot thus lead to any conclusion that this institution was meant for, or belonged to the followers of the Sikh religion. Clearly the Dera was maintained for an entirely distinct sect known as the Nirmala Sadhs who cannot be regarded as Sikhs and, consequently, in their mere capacity of followers of Sikh religion residing in Village Jhandawala, the plaintiffs/respondents could not be held to have such an interest as could entitle them to institute the suit under Section 92 of the Civil Procedure Code.”

(12) The Hon'ble Supreme Court has also held that the question that is to be determined in such like controversies is the character of the

institution with the issue of locus relegated to a consideration thereafter.

(13) In *Uttam Dass Chela Sunder Das versus Shiromani Gurdwara Prabandhak committee, Amritsar*², the Hon'ble Supreme Court observed as under :-

“19. It is noteworthy that when the tribunal finds that the Institution/Gurdwara cannot be declared as a Sikh Gurdwara, it ceases to have jurisdiction in all matters concerning such Gurdwara. Only a limited jurisdiction is kept conferred on the tribunal under sub-section (3) to be deciding restoration to office of a hereditary office-holder or of a person, who would have succeeded such office-holder, under the system of management prevailing, before a certain date. The tribunal shall in that event, notwithstanding such finding of the institution being not a Sikh Gurdwara, continue to have jurisdiction in all matters relating to such claim on grounds tenable under Section 8. “

(14) Therefore, we would proceed to evaluate the evidence with regard to the character of the institution. Initially when the petition was filed, the written statement on behalf of the S.G.P.C. was to the effect that the institution in question was established by Sikhs for worship of Sikhs. After the evidence had been led an amendment was sought in the written statement where a plea was raised that this institution was established by one Garib Dass, 'par-pota' (great grandson) Chela of Bhagat Bhagwan who was a Sikh saint, this amendment was accepted with no challenge to it.

(15) The contention of the counsel for the appellant is that even if this amendment is accepted which in any case, they would have to, considering that no challenge was made at the relevant time, merely by referring to Bhagat Bhagwan as a Sikh saint, would be inconsequential if there is no evidence to show that Bhagat Bhagwan was a Sikh practising Sikhism or a Sikh saint. None of the witnesses stated about Bhagat Bhagwan being a Sikh and the only evidence relied upon by the respondents was with reference to few Books written by various authors particularly a Book of 1959 published by the S.G.P.C. itself recording Bhagat Bhagwan as a Sikh. The statement of Dr.Ganda Singh, a historian and a Manjora Sikh was also recorded which also

² 1996(2) R.R.R. 513

does not conclusively establish the factum of Bhagat Bhagwan being a Sikh or a Sikh saint. Even if it is accepted that Bhagat Bhagwan was a Sikh, his connection to the Dera has not been established by any evidence to suggest that the institution was established for Sikhs.

(16) Apart from this, it has been contended with reference to the evidence as revenue record giving lineage of the Mahants who have been referred to as celibates which in turn, would establish the character of the institution to be an Udasi Dera. It is argued that the celibacy is one of the hallmarks of the Udasi saints and it has been observed by the Lahore High Court in *Ram Parshad and others versus Shiromani Gurdwara Prabandhak Committee and others*³ as under :-

“6. There are before us two main questions, namely whether Udasis are Sikhs for the purposes of the Act and whether the Tribunal rightly determined the nature and origin of the institution. I propose to take up these questions in the order named.

7. In a discussion of the former of those two questions, it will be perhaps helpful to treat the subject first from the historical point of view and then to examine the present beliefs and practices of the Udasis and see whether they fall within the recognized tenets of the Sikh religion. The subject is not an easy one from either point of view.

8. Guru Nanak, the first of the ten Sikh Gurus, was born in 1469 A.D. and died in 1539. He was a Khatri Hindu by birth, and by his work and teaching the founder of the Sikh religion. Although he left his home and wandered extensively, he at length returned and whether he at one time practised asceticism or not, his teaching; was that asceticism was unnecessary :

“the pious hermit and devout householder being equal in the eyes of the Almighty :” Cunningham's History of the Sikhs, edited by Garret, 1918, p.45.”

7. In consequence he passed over his own son, Siri Chand, as a successor to himself and appointed Lahna, whose name was changed to Angad. Siri Chand “became the founder of the Hindu sect of Udasis”, a community indifferent to the “concerns of this world”)op. cit. p.48). The supersession of

³ 1931 A.I.R. (Lah) 161

Siri Chand by his father Nanak appears to me to be an important factor in the situation. At p.30 of the paper book, Part II, a story is told in the Twarikh Guru Khalsa (5th edition, p.571) that Siri Chand, out of extreme fury, cursed Angad ; and this is repeated at Part 11, p.36, line, 19, where it is written that "Siri Chand became angry, and putting ashes on his head went away. "The next stage in Siri Chand's life was the excommunication of his sect by Guru Amar Das, the third Guru. Mr.Bose, in his Glossary of Punjab Tribes and Castes Vol.3, p.479, refers to their separation from Amar Das and states that it has sometimes been wrongly termed ex- communication," but on the other side, we have authority of Dr.Trumpp (quoted below), and the census reports of Ibbetson and Maclagan at paras. 261 and 90 respectively. Even if ex- communication is too strong a term, there was at least a definite cleavage. The opinion of Dr.Trumpp is found in translation of the Adi Granth at p.116, where the Udasis are described as having been founded by Siri Chand, and on the following page it is stated that they practise the Hindu rites concerning birth death, marriage and Shradh, as all old Sikhs did" and later :

Guru Amar Das eliminated them from the Sikh community and they were thence no longer acknowledged Sikhs, though they themselves never gave up this claim.

10. Macaulliffe, perhaps the best authority of all, relates (the Sikh Religion, Vol.2, p.2) that the sons of Guru Nanak" in no wise showed filial obedience or affection." These opinions must, I think, prevail against the view expressed in Asiatic Researches, Vol.17 (see paper book, Part3, pp.42, 43). There the Udasis are shown among seven classes of Sikhs and the article dealing with them begins with the words : "These may be regarded as genuine disciples of Nanak." Their practices are then described. At p.43, 1.24, the author states something that is not relied on by either party, namely :

the Udasi sect was established by Dharam Chand, the grandson of Nanak, through whom the line of sage was continued, and his descendants known by the name of Nanakputras, are still found in the Punjab, where they

are treated by the Sikhs with special veneration.

11. These passages from Asiatic Researchers 'do not appear to be based on any particular authority; they do not refer to any original works and they contain an observation which is admittedly incorrect.

12. Nor can reliance properly be placed on "Modern Hinduism" by W.J.Wilkins (1887). The second part of that volume is devoted to Hindu sects, Chap.8, in this part, is headed "Miscellaneous Sects", and the third division comprises Sikhs (p.97) at P.98 it is written :

There are seven classes of Sikhs, each with some slight modification of creed and ritual ; the following only need special mention ; (a) the Udasis (solitary) ... They regard themselves as "the true and genuine followers of Nanak" ... The classification appears to be arbitrary and it should be observed that the Suthra Shahis (p.99) "are regarded as a disgrace to the community by the genuine Sikhs", while the Nirmalas : (see at p.99) have been held in *Kirpa Singh v. Ajaipal Singh* A.I.R. 1930 Lah.1 to have "practically lost their importance as a sect of Sikhs, having merged to a very largo extent amongst Hindus.

Siri Chand lived to a great age, for he was still alive during the Gurudom of Guru Hargobind, the sixth Guru (1606-1645), and it was during his last years that he received Gurditta, son of Guru Hargobind, as a disciple. He had earlier met the fourth Guru, Ram Das, who had treated him with greatest possible respect, treatment which does not indicate that Siri Chand was in any sense a follower of the Guru (see paper book, Part 2, pp.28 and 29). It has been suggested that the giving of Gurditta to Siri Chand as a disciple was proof of a final reconciliation between that Guru and the founder of the Udasi Order. There is however no authority for the view that the former separation ceased to exist and that a fusion took place. On the other hand, it is suggested that the sixth Guru was merely using diplomacy in order to disarm the opposition.

14. Another aspect of the case from the historical point of view is focussed on the subdivisions of the Udasi Order. It appears that there were four dhunas and six bakshishes, the

connection between the two however not being made clear. The dhunas, said to have been founded by Chelas of Gurditta, were called after Baba Almast, Babas Hasna, Phul Ji and Gobind Ji. Some of these were at one time Sikhs, but the very fact that they joined the Udasi Order would indicate that they no longer remained Sikhs. The subject has been examined by the learned President of the Tribunal at two places in his judgment (Part 1, p.259, lines 10 to 23 and from p.261, line 36, to p.262, line 41). As stated there, the general conclusion is that, on the one hand, the fact of some dhunas being founded by persons who were originally Sikhs is of no great importance, and on the other hand bakshishes were conferred more or less indiscriminately and do not help towards an answer of the question before us. I would endorse the conclusion of the learned President on this subject, which has not been seriously attacked in appeal.

15. I think that the inferences to be drawn from history and historical commentators are as follows:

(1) That, although Guru Nanak founded Sikhism as a new religion by sweeping away idolatry and polytheism, Siri Chand, the founder of the Udasis, was himself not a Sikh but a Hindu ;

(2) that no reconciliation between the Sikhs and Udasis ever took place ; and

(3) that the Udasis are in consequence not Sikhs, but schismatics who separated in the earliest days of Sikhism and never merged with the followers of the Gurus.

(17) A strenuous reference has been made to the evidence led by the respondents themselves and the Book issued by the S.G.P.C. namely '**Udasi Mat**' by Sarup Chand wherein Bhagat Bhagwan has been referred as Udasi and no evidence has been led to establish his connection with Garib Das. A reference has also been made to another Book namely '**Udasi Sikhia Mithia**'.

(18) As against this, the respondents have questioned the petition as being not maintainable on the ground that it was neither signed or verified by a competent person i.e. Ishar Dass and rather, the verification is by the counsel. Besides, it is contended that there is non-compliance of the provisions of Section 8 of the Act. More emphasis

was laid thereafter on the hereditary claim of Ishar Das, again, the result of which is of questioning the locus.

(19) Both the parties referred to the oral testimony which they had adduced before the Tribunal in support of their plea.

(20) We would now examine the evidence that has been led and referred to. The relevant portion of the statements of the witnesses is extracted here below:-

“PW-1 Sahib Singh :

... The dera of which the petitioner is the Mahant belong to the Udasi fraternity as is evidenced from its name Dera Udasian. The petitioner is the Chela of Bhagwan Dass. I had seen Bhagwan Dass. I used to see him as Bhagwan Dass and Bachan Dass. Piara Dass succeeded Bhagwan Dass on the death of the latter. The petitioner succeeded to the Mahantship after the death of Piara Dass as Guru Bhai. Bachan Dass is dead. Badan Dass is alive. Viran Dass was Guru of Bhagwan Dass. I saw Viran Dass also. The succession to the Mahantship is from guru to chela in this dera udasian. If there is no chela then gurbhai succeeds. The followers of the Sikh faith have nothing to do with dera Udasian. I have never seen Parkash of Guru Granth Sahib being performed here. There are 7 or 8 smadhs besides the dera. The objects of worship in this dera are the smadhs, Gola Sahib and the pictorial image of Baba Siri Chand.

xxx

xxx

xxx

(Cross-examination):-

. . . The village of Salana Dula Singhwala and Salana Jiwan Singhwala are predominantly inhabited by Jat Sikhs. In both these estates there is a Sikh Gurdwara a piece. The Gurdwara in Patti Salana Dula Singhwala was founded about 20 years ago and that in Salana Jiwan Singhwala has been in existence long before my birth. The dera Udasian in Salana Dula Singhwala is the oldest institution. There used to be mufai land to this dera, but not now.

...

...

...

I have been seeing Bhagwan Dass as a Mahant since he was about 45-46 years of age....”

PW-2 Ram Singh Sarpanch :

I know the petitioner Mahant Ishar Dass. Bhagwan Dass was his guru. Bhagwan Dass left behind four chelas. On the death of Bhagwan Dass his chela Piara Dass succeeded him. Ishar Dass succeeded Piara Dass. Both Piara Dass and Ishar Dass being chelas of Bhagwan Dass.

... ..

In the fraternity of Udasis to which the dera belongs the Mahant chooses one of his chelas as his successor and then the successor is installed to the gadi by him. The succession is from Guru to chela. The institution in dispute which is called Dera Udasian is within the territorial jurisdiction of Salana Dula Singhwala.

... ..

There are 8 or 10 small smadhs and two big smadhs inside the premier of the dera. The main object of worship in the dera is Gola Sahib.

CROSS-EXAMINATION:

Gola Sahib consists of ashes. It is lying at a place of worship. The object of worship is placed by the side of a dry phalai tree. This Gola Sahib is not covered by any cloth. There is no temple in my village. I do not go to dera udasian for worship. I go to the gurdwara in the village, being a follower of the Sikh faith.

... ..

These smadhs were not constructed in my life time. Piara Dass left behind no chela and he was succeeded by the petitioner who is a gurbhai. ...

PW-3 BHAN SINGH PANCH :

... ..

There is no nishan sahib hung on this dera. No kirtan is performed, nor is there any Sikh festival observed. I have never seen parkash of Guru Granth Sahib here. The objects of worship are the smadhs. Murtis and Gola Sahib. The smadhs are right inside the premises of the dera.

CROSS-EXAMINATION :

Two of the smadhs are inside a room while the small ones are outside in the open. The smadhs inside the room are on the left of it. These smadhs are of the ancestors of the present mahant. There is a smadh of Bhagwan Dass. I cannot say whose smadhs there are. Gola Sahib is also placed in the room where the smadhs are built.

... ..

The petitioner and his ancestors are the followers of the udasi faith. There are two gurdwaras in the village, one in Patti Salana Dula Singhwala and another in Patti Salana Jiwan Singhwala.

... ..

Piara Dass left no chela of his own. The petitioner is his gurbhai.

PW-4 GURMAIL SINGH, LAMBERDAR :-

... ..

I have never seen parkash of Guru Granth Sahib being performed there. I have never seen any recital of Kirtan there. The objects of worship in the dera Udasian are some Murtis and the smadhs. the succession to the Mahantship is from guru to chela. ...

PW-5 MAHANT HARI DASS :-

... ..

I had seen Bhagwan Dass in my life time. Bhagwan Dass was the chela of Viran Dass. Bhagwan Dass left behind him four chelas. Piara Dass, Ishar Dass petitioner Bachan Dass deceased and Badan Dass. Piara Dass succeeded Bhagwan Dass. The petitioner succeeded Piara Dass. Piara Dass left behind no chela and the petitioner gurbhai succeeded him. The succession to the gadi is from guru to chela and in the absence of a chela a gurbhai succeeds. A chela is succeeded by his guru and on the death of the mahant he is installed to the gadi by the bhok.

... ..

I have been inside the dera in dispute. The objects of worship are the smadhs and the Gola Sahib ”

(21) No question of significance regarding the kind of worship carried on in the Dera was put to this witness in the cross-examination.

PW-6 BADAN DASS :-

I know the petitioner who is my gurbhai. Both of us are the chelas of Mahant Bhagwan Dass.

... ..

Piara Dass the first chela was appointed as Mahant after the death of Bhagwan Dass. After Piara Dass the petitioner became the Mahant. Piara Dass left no chela.

... ..

The dera in dispute is an Udasian institution. No kirtan is recited. Parkash of Guru Granth Sahib is not performed here. The image of Baba Siri Chand is the object of worship as also Gola Sahib. The smadhs of our ancestors are also the reverence.

... ..

I do not know who was the guru of Man Dass. Bhagwan Dass, Piara Dass and the petitioners had the keshas and long beards like myself. None of these had any faith in Holy Granth Sahib of the Sikhs. It is a fact that the land attached to this dera was originally donated by Maharaja Jaswant Singh of erstwhile Nabha State. There used to be a muafi attached to this dera but it is not so now. The muafi originally bestowed by the muslim rulers. No land was donated this dera by the Sikh proprietors of the village. ...

PW-7 ISHAR DASS :-

(Note:- This witness is extremely hard of hearing and the questions are explained to him through his associates).

Bhagwan Dass was my Guru. I am an Udasi faqir. Bhagwan Dass had four chelas namely Piara Dass, Bachan Dass, Badan Dass and myself. Bachan Dass and Piara Dass are dead. Piara Dass became the Mahant on the death of my Guru Bhagwan Dass. After the death of Piara Dass I became the Mahant. Piara Dass died about 18 years ago and I became the Mahant. The members of my Bhek appointed me the Mahant. ”

(22) As against this, the respondents produced their witnesses and the relevant portions of their statements are extracted here below :-

“RW-1 BAKHTAWAR SINGH :-

I have seen the institution in dispute known as Gurdwara Sahib Dera Udasian. The first Mahant of this institution of whom I have any memory was Viram Dass. Bhagwan Singh followed him in the gadi. Piara Dass became Mahant after Bhagwan Dass. Piara Dass died about 30 years ago. Piara Dass had no chela and none was installed on the gadi of the Mahantship. Ishar Dass being literate was told to serve the institution as a survivor.

... ..

This institution has been in existence long before I was born. The holy Granth is the object of worship in the institution in dispute. There is no other object of worship in the institution in dispute.

... ..

Gurpurbhs on the (word not legible) is celebrated in the institution in dispute. This is the oldest Sikh Gurdwara in the village.

... ..

There is no committee of management in the institution in dispute. The petitioner bears the income of the land attached to the institution. No one else has any right to collect or distribute the income attached with the institution except the petitioner because nobody can enter the premises of the institution. Ishar Dass petitioner is a Sikh according to me. He is not an Udasi sadhu. I cannot say if Bhagwan Dass was guru of Ishar Dass petitioner, I only know that Piara Dass was the chela of Bhagwan Dass. Bhagwan Dass may have had four chelas namely Bachan Dass, Badan Dass, Piara Dass and Ishar Dass.

... ..

Bhagwan Dass was a Sikh by faith. Sikhs generally have the Singh added to their name. Bhagwan Dass and Piara Dass were installed on the gadi in my presence. Bhagwan Dass was appointed to the gadi about 40 years ago. Bhagwan

Dass was installed on the gadi because he was chela of Viran Das. Piara Dass was installed on the gadi for the same reason being the chela of Bhagwan Dass. ...

RW-2 MANGAL SINGH :-

... ..

The muafi is also attached to the institution in dispute. The holy Granth is the only object of worship in the institution in dispute. Sikhs visit the institution in dispute for purposes of worship.

... ..

The birthday of Guru Nanak Devi ji is celebrated in the premises of the institution. A path is also performed on Dussehra festival. The Parkash of the Holy Granth in the institution in dispute has ever been there since I know of. The path of the Holy Granth has not been there ever since the present dispute. Again said, the Holy Granth is still there in the institution in dispute even after the present dispute started.

... ..

The Holy Granth has its parkash in a room on the left as one enters the institution. There are some smadhs on the premises of the institution in dispute. These are smadhs of the sadhus who died here. These mahants whose smadhs exist here were mahants of this institution. All these sadhus were udasi sadhus. People come to pay respect to the smadh as well. Sadhus who now reside in the institution in dispute and the petitioner worship the smadh. Bhagwan Dass had only one chela Piara Dass.

... ..

Ishar Dass is an udasi faqir by faith. Udasis visit the institution in dispute Udasi sadhus attend the gathering of the installation of a mahant in this institution. ...

RW-3 CHANAN SINGH :-

Sikhs go to worship in the institution in dispute. Birthday of the first Guru is celebrated in the institution in dispute. The path of the Holy Granth is performed in the institution in

dispute as also in the village whenever required by the members of the village community. All the Mahants had long keshas.

... ..

Ishar Dass is an Udasi sadhu and used to wear saffron clothes. The previous mahants also used to wear saffron clothes. Bhagwan Dass had no other chela except Piara Dass. Badan Dass present in the court has been residing on the premises of the institution in dispute ever since he was a young boy.

.....

I have never visited the institution in dispute for the last 15 years. ...

RW-4 THAMAN SINGH :-

... ..

The village community appointed Ishar Dass after the death of Piara Dass to look after the institution in dispute and to feed the traveller, Ishar Dass is not chela of Piara Dass or Bhagwan Dass. The Holy Granth is the only object of worship in the institution in dispute. He used to celebrate purnamashi, Dussehra.

... ..

All the mahants of the dera in dispute have been udasi sadhus. The succession to the gadi in the institution in dispute is from Guru to Chela. Ishar Dass petitioner has been residing in the dera for the last 35 years.

... ..

All these mahants used to call Bhagwan Dass as Guru ji.

... ..

I have never been allowed to enter the institution in dispute by the mahants.

RW-5 DALIP SINGH :-

... ..

I have seen the institution in dispute. The Holy Granth is the

only object of worship.

... ..

CROSS-EXAMINATION :

I have never been inside the institution in dispute. ...

RW-6 ZORA SINGH :-

... ..

Tradition is that the institution in dispute was founded to commemorate the memory of Sant Bhagat Bhagwan. Bhagat Bhagwan ji was a Sikh of the 7th Guru. Bhagat Bhagwan ji had been grazing cattle and preached Sikh tenets at this place. When he came to this place he sat under a Phalashi tree where now a platform has been raised.

... ..

The above version was given to me by elderly people of the village as also by Ishar Dass petitioner himself. Ishar Dass petitioner is a chela of Mahant Bhagwan Dass In the institution in dispute there has been worship of the Holy Granth. People also get their vows fulfilled by praying at the platform. The Sikhs predominate in the population of village Salana Dulla Singh as also the neighbouring villages. The Sikhs go to this institution for worship of the Holy Granth. The Sikhs go to this institution for worship on account of the tradition that it was founded in the memory of a Sikh of the 7th Guru.

CROSS-EXAMINATION :

There are two villagers by the name of Salana in Sub Tehsil Amlah. The Patwar circle of these two villages are different. I was posted as a Patwari of Salana Jiwan Singh. From there I was transferred as a Patwari to Salana Dulla Singh.

... ..

I cannot say as to when Bhagat Bhagwan ji came to this place and how long he stayed there. It is within my knowledge that when Bhagat Bhagwan came to this place he was accompanied by two or three saints. I am not, however, in a position to give the names of those saints. I am unable to give the life sketch of Bhagat Bhagwan. I am not aware if

Bhagat Bhagwan was an Udasi Faqir. In fact he was a Sikh saint. Ralla Singh, Dewa Singh and Hari Singh amongst others were the persons who gave me the above tradition. Ishar Dass petitioner is not an Udasi. The distinction between an Udasi and Sikh according to me is that the Udasis wear Dhoti and tie saffron turban whereas a Sikh wears Kacha and recites Granth Sahib. ...

(23) No significant statement was made by RW-7 Jagir Singh.

(24) Of some significance would be the statement of RW-8 Dr. Ganda Singh, Director of Punjab Historical Studies, Punjabi University, Patiala. The relevant portions of his statement are extracted here below :-

“ My researches primarily have been in Sikh history. Bhagat Bhagwan is regarded as a Sikh saint and is said to have been blessed by Guru Har Rai, the 7th Guru. In Volume IV of Mucauli Fee's "The Sikh Religion" at pages 288-89 it is mentioned that Bhagat Bhagwan went to Guru Har Rai to receive initiation. Before being initiated Bhagat Bhagwan was a Sanyasi and was called Bhagat Gir. As a preacher Bhagat Bhagwan was not successful and told Mehira Chand that he was not able to create a strong impression in his listeners. Mehira Chand then advised Bhagat Bhagwan to go to the Guru and to have his blessings. After this had been accomplished Guru Hari Rai directed Bhagat Bhagwan as a missionary to go to the eastern provinces and preach the teachings of the Guru. Bhagat Bhagwan is also mentioned in Surja Parkash in Volume IX page 3574 and 3579 of the first edition and in the second at pages 3572-3577. Surja Parkash is one of the first complete histories of the 10 Sikh Gurus and the author is Bhai Santokh Singh.

... ..

According to one account Baba Siri Chand died in 1669 BK. corresponding to 1611 AD and another version says that he died in 1654 BK corresponding to 1597 AD. Guru Hari Rai ascended the Gadi in 1645 AD and died in 1661 AD.

CROSS-EXAMINATION :

The origin of the Udasi sect dates back to the time of Baba Siri Chand. Baba Siri Chand was followed by Dharam

Chand of Mehir Chand. I am not definite on this point. Baba Gurditta son of Guru Har Gobind, the 6th Guru, was not an udasi though he was sent by his father to Baba Siri Chand for guidance. There is nothing on the record to show that guidance was sought from the hands of Baba Siri Chand. Baba Gurditta although he stayed with Baba Siri Chand for some period he did not adopt Udasi faith. I have not made any study on the point whether Baba Gurditta had any chelas.

Udasis are not a separate religion from the Sikhs and in fact constitutes and order of the sikh religion. Being of schmastic faith Udasis merely differ from the Sikhs unlike Hindus who totally differ from the Sikhs. It is in this sense that I say that Udasis are merely an Order of the Sikhs and not a separate religion by itself.

I say that Udasis are of the same order because they believe in Guru Granth Sahib as such if Baba Siri Chand. The difference between them is of minor importance and it is that in addition to Guru Granth Sahib they worship Baba Siri Chand. The Udasis unlike the Sikhs also visit the smadhs but they do not revere them. I have never been to an Udasi institution where their worship of Gola Sahib is performed.

... ..

It is true that amongst the Sikhs the only object of worship is Guru Granth Sahib. Sikh is one who accepts the 10 Gurus as an article of his faith as also Guru Granth Sahib. There are also some persons who can be called Sikhs although they rever some other Gurus besides the 10 Gurus. Namdharis led by Guru Ram Singh are an illustration. Nirmalas have separate Akharas presided over by their Gurus. Udasis have their own Akharas, the principles ones being Dhuna and Bakshishs.

... ..

They however, do not believe in the Khande De Pahul. Before Khande Ke Pahu I was initiated, the Sikhs used to take Charna Pahul. It was drinking water which has been touched by the thumb of the Guru. Mehir Chand whose guidance Bhagat Bhagwan sought before going to the 7th

Guru was an Udasi. It is not mentioned anywhere that Bhagat Bhagwan accepted the Bhekh of the Udasis before he went to Mehira Chand. It is mentioned in Suraj Parkash to which I have referred at page 3573 that Bhagat Bhagwan who adopted in Udasi Bhes when he went to see Mehira Chand. It means only this that he was wearing Udasi dress. It is not mentioned anywhere that Bhagat Bhagwan took Charan Pahul from Guru Har Rai. I may mention here that taking of Charan Pahul is not recorded anywhere.

... ..

As an Udasi missionary Bhagat Bhagwan had no influence and it was after the initiation of Guru Har Rai he was successful. I have not studied the point whether the chelas of Bhagat Bhagwan have been in charge of Udasi Deras.”

(25) The aforesaid extracts are the relevant pieces of evidence besides some other oral evidence which is repetitive or inconsequential.

(26) A perusal of the above, delineates the following character of the institution:-

(1) Bhagat Bhagwan was pivotal to the institution which was managed through a line of succession of Gurus and Chelas.

(2) There are smadhs existing on one side. The succession was from Bhagat Bhagwan to his Chela Piara Dass who died without a Chela rendering the succession open in favour of Ishar Dass, a Gurbhai (since Ishar Das was also a Chela of Piara Das). D'hors the issue as to whether a Gurbhai could legitimately succeed or not, the fact of the matter is that Ishar Dass traced his succession to Bhagat Bhagwan. There is nothing to suggest that Bhagat Bhagwan was himself a Sikh saint. This is also belied by the fact of succession duly borne out from the revenue record (Exs.P.6,7,8,12,16,17,22). Since succession through Chelas is alien to the concept of Sikhism. The account of a historian about Bhagat Bhagwan being blessed by the 7th Guru does not *ipso facto* reflect on his being a Sikh to continue with the Sikh preachings in the institution.

(3) Even though witnesses of the respondents have stated about the Parkash of Guru Granth Sahib being held in the institution besides recital of Guru Granth Sahib, the other significant factors which lend character of a Sikh Gurdwara, are manifestly absent as the existence and worship of smadhs and portraits of Siri Chand would suggest.

(27) The historical aspect of Dr.Ganda Singh's research and his study deserves respect only to the extent of its effort to unravel the history which in any case, can be termed ambivalent and speculative like all historical perspectives or analysis of character from the past which are hostage to some speculation at the hands of theorists. A Division Bench of this Court while dealing with a similar kind of issue in *Nitya Nand etc. versus S.G.P.C., Amritsar*⁴, observed as under :-

“20. Under Section 57 of the Evidence Act, the Court may presume that any book to which it refers for information on matters of public or general interest was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published. In questions of public history, the Court can only dispense with evidence of notorious or undisputed facts. But before any judicial notice could be taken of any passage in books relating to the alleged tradition something more than the mere existence of the passages would have to be proved before the passages could be regarded as evidence of the existence of the tradition. It must be shown that the writer had any special knowledge and the alleged tradition, or that the tradition is a repetition of that given in the history. Reference can be usefully made to the following observations in the Division Bench decision of the Lahore High Court in *Achal Singh and others v. Mahant Girdhari Dass*, (1937) 39 P.L.R. 802 :

“Before any judicial notice could be taken of any passages in books relating to the alleged tradition something more than the mere existence of the passage would have to be proved before the passages could be regarded as evidenced of the existence of the tradition. It must be shown that the writer had any special knowledge of the alleged tradition or the tradition is a repetition of that given in the history.”

(28) The aforesaid would indeed form the basis for our conclusion for we find no significant traits of a Sikh institution or Sikh practices being followed in the institution in dispute. The Hon'ble Supreme Court in *Uttam Dass Chela Sunder Das versus Shiromani Gurdwara Prabandhak committee, Amritsar* (*supra*) observed as

⁴ 1992(1) R.R.R. 405

under :-

“ISSUES AS TO WHETHER A GURDWARA IS A SIKH GURDWARA TO BE DECIDED FIRST AND HOW ISSUE IS TO BE DECIDED -

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

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

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

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

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

(29) The distinctive features to be noticed while declaring a Sikh

institution as a Gurdwara, were eloquently noticed by the Hon'ble Supreme Court in *Pritam Dass Mahant versus Shiromani Gurdwara Prabandhak Committee* (*supra*).

(30) We may now refer to the documentary evidence Ex.P1 which is an extract from the pedigree table relating to Village Salana Dula Singh, Tehsil Sirhind, District Patiala, the relevant portion of which is extracted here below :-

“Man Dass
Chela
Kishan Dass
Chela
Bir Dass
Chela
Bhagwan Dass
Ishar Dass

Charan Dass
(In red ink)”.

(31) Ex.P2 is the copy of the order dated Maghar 8, Sambat 1933, the relevant portion of which is extracted here below :-

“On perusing the file of the case in the peshi, it has been noticed that there is no Sanad with Muafidar relating to time of former shahan (rulers). In the absence of the Sanad, the land is liable to be forfeited. But it is apparent that the Muafidar has been in possession of this land since long. The major proof with regard to this Muafi is that in the year 1915 at the time of dispute of Mahantship, the Muafidar was granted Mohantship on payment of Rs,500/- as Nazrana, and the verification regarding payment of Nazrana should ... from the report of the revenue officer. At that time, this position with regard to Muafi was known. When Nazrana was taken by the Government no objection with regard to Muafi and was raised. So the Muafi cannot be forfeited now. In accordance with your opinion and the objection it is a fit case for continuation of Muafi. Hence you are competent to issue orders because your opinion has been accepted. The file is returned herewith. It is clear that you have previously mentioned clearly in your proposal that the Muafi in respect of this land was granted Maurosse-i-ala

(common ancesstop) of the Muafidar since the time of former Shahan (rulers). This sentence was not incorporated in any summary or statement. When objection was raised by this office, it was written to the contrary that as per with the statement of the Muafidar and lambardars etc., the Muafi was granted since the time of former Shahans (rulers). It is clear mistake. Had it been recorded that the Muafidar and the Lambardar State that the Muafi was granted since the time of former Shahan (rulers) it would have been most appropriate. In future, you should take note of it. But this is also the condition that this Muafi shall continue so long as a particular or his successor remains celibate, otherwise it shall stand forfeited. Report after compliance.

Dated Maghar 8, Sambat 1933.

From the office Sadar Bandobast.”

(32) Ex.P3 is an extract from the Arz relating to Village Salana Dula Singh, the relevant portion of which is extracted here below :-

“In this village Muafi has been granted in respect of land measuring 85 bighas and 7 biswas Pukhta as entered in Fard La-Kharaj (statement regarding land exempted from payment of land revenue dated, Maghar 15, Sambat 1933 (BK) with the sanction of His Highness in the name of Bawa Kishan Dass Chela of Man Dass, Sadh Udasi on the condition that he should remain celibate and should not keep family. We, the Lambardars, neither realize anything from him on account of Malka and Kar Bagar treating him as Sadh nor shall we do so in future. In future if, any co-sharer or all the co-sharers of the village grants or grant Muafi in respect of his/their produce of the land to anybody on his/their behalf as mentioned in para 4, that land shall not be considered as grant by His Highness and the same shall be considered as having been given by the Zamindars. The owner of that land shall continue paying the parta dues in respect thereof from his own pocket.”

(33) Ex.P14 is again a pedigree table similar to Ex.P2.Ex.P5 is an extract from the revenue record of Village Salana Dula Singh prepared in Sambat 1932 recording Kishan Dass Chela of Man Dass, caste Faqir Udasi. The relevant portion of the same is extracted here below :

(34) Ex. P15 is an extract from the revenue record of Village Salana Dula Singh prepared in Sambat 1932 recording Kishan Das Chela of Man Dass, caste Faqir Udasi. The relevant portion of the same is extracted here below:-

Name of the owner with parentage case and Got.	Name of the cultivator with parentage and residence.	Remarks
--	--	---------

xxx

xxx

xxx

(SAMBAT 1932)

Kishan Dass Chela of Man Dass, Caste Faqir Udasi.	In Red ink 103 Under personal cultivation.	Inquiry regarding the estate of this Khata having been made on file No.45 preliminary Register and the Estate having been deemed to be free from liability, the possessor was declared to be the owner on being approved by the Sadar Bandobast vide order, dated Magh 12, Sambat 1932 (?). Inquiry relating to Muafi of the land as entered in this <u>Khata</u> having been made on File No.115 – register of <u>Muafis</u> like that of Salana Jiwan Singh it was ordered on Maghar 8, Sambat 1933 (BK) in the <u>Kilas Khas</u> that the land should remain <u>Muafi</u> so long as the <u>Muafidar</u> remains celibate and the <u>Muafi</u> shall stand forfeited to the State in case he keeps family.
---	--	---

(35) The relevant portions of Exhibits, P6, P7, P8 and P9 pertaining to Village Salana Dula Singh are extracted here below :-

Name of the owner with description	Name of the cultivator with with description.	Remarks
------------------------------------	---	---------

xxx

xxx

xxx

(SAMBAT 1984-85)

Bimmal Dass Chela of Kishan Dass,	Under personal cultivation.	Mahant Biram Das has died. Mahant Bhagwan Dass Chela of the deceased in the heir and possessor of his estate. File No. 2 regarding Muafi was instituted on
-----------------------------------	-----------------------------	--

caste
Faqir
Sadh
Udasi,
Kuti wala
Muafidar.

Baisakh 9, Sambat 1973 (BK).

xxx xxx xxx

From Tehsil Amloh: As per orders of Mashir Khas (Privy Counselor dated Jeth 25, Sambat 1973(BK) (7.6.1916) it is sanctioned. Mutation regarding Muafi has been sanctioned in favour of Mahant Bhagwan Dass. Hence, the Mutation regarding Muafi in favour of Mahant of the Dera is sanctioned. The fee has been received as per rules.

Dated Bhadon 16, Sambat 1973 (BK)
(31.8.1916).

SIGNATURE OF:

THE TEHSILDAR (IN URDU)

Ex.P7

Name of Traf or well	Name of the owner with description.	Remarks
xxx	xxx	xxx
(SAMBAT 1994-95)		
Sarwan Singh etc. Lambardar, etc.	Bawa Bhagwan Dass Chela of Biram Das, Sadh Udasi resident of the village, Malik Aabza having right (?) in Shamlat, since the foundation of the village.	This mutation has been put up in the general assembly. Mangal Singh and Amar Singh Lambardars, having separated, have stated that Bawa Bhagwan Das has died and that his chela is Piara Dass, who is in possession. The new entry is verified. Hence, it is ordered that this mutation regarding succession to the Estate of Bawa Bhagwan Dass in favour of Piara Dass is Dated Chet 30, Sambat 91.
		SIGNATURE OF: THE TEHSILDAR (IN URDU)

(Produced by the petitioner on 15.3.65).

Ex.P8

Name of Traf or well	Name of the owner with description.	Remarks
----------------------	-------------------------------------	---------

xxx

xxx

xxx

(SAMBAT 1998-99)

Sarwan
Singh
Lambardar

Bawa Piara
Dass Chela
of
Bhagwan
Dass, Sadh
Udasi
resident of
the village,
Malik-Q-
Azza
having
share in the
Shamlat
since
foundation
of the
village.

Sawan Singh Lambardar having appeared has stated that Piara Das has died and that he is the heir. The aforesaid Lambardars, also corroborate the said fact, the order regarding sanction relating to the appointment of Mahant has been passed in favour of Ishar Dass. Hence, it is ordered that mutation regarding succession to (the estate of?) Piara Das, deceased in favour of Ban Ishar Dass, Chela of Bhagwan Dass, Sadu Udasi is sanctioned as per new entries.

Dated Har 30, Sambat 1996(BK)
(15.7.1939).

SIGNATURE OF:
THE TEHSILDAR
(IN URDU)

(Produced by the petitioner on 15.3.65).

Ex.P9

Name of Traf or well	Name of the owner with description.	Remarks
----------------------	-------------------------------------	---------

xxx

xxx

xxx

(SAMBAT 1994-95)

Joon
Singh
aforesaid

Bawa Ishar Das,
Bhagwan Dass,
Sadh Udasi Mali
Kabeza right-

Sanctioned in future instructions be issued to the effect that no long as appointment of any Mahant through

holders in Shamlat Doorhi Wala Khas Alla is not since the approved no Mahant is entitled to foundation of the get Daster for two years or any village. Bandhan or grant of Muafi, etc. from the government. Mutation regarding Muafi of any land should (not?) be sanctioned. It should be entered therein that the lands which belong to any Dera, should (not) be considered as ownership of the Mahant. Rather ownership of the Dera should be entered under the management of the Mahant. The Mahant will, however be not entitled to sell or mortgage the lands of the Dera.(?) Information to this effect be also sent to the Revenue Department and it should also be published in the Gazette.

Dated 18.4.1951 A.D.

(36) Ex.P9 assumes significance as it seeks to consider the lands given to any Dera as property of the Mahant bestowing only management with no rights to sell or mortgage as per Farman issued by the rulers at that time.

(37) Exhibits P.10 to P.19 are the revenue records pertaining to Village Salana Dula Singh.

(38) It is relevant to state here that the land of the Dera is situated in two villages and there are separate revenue records for them. The relevant portion of Exs.P10 to P19 is extracted here below :-

Ex.P10

	Name of the owner with description.	
xxx	xxx	xxx
	(SAMBAT 1960-61)	
	Biram Dass Chela of Kishan Dass, Caste Sadh Udasi of	

Kotiwala(Kutiwala).

Ex.P11

Name of the owner with description.

xxx

xxx

xxx

(SAMBAT 1984-85)

Bawa Bhagwan Dass Chela of Biram Dass Sadh Udasi r/o the Village Malik Cabza with share in the Shamlat Deh since the foundation of the village.

Ex.P12

Name of the owner with description.

xxx

xxx

xxx

(SAMBAT 1984-85)

Bawa Piara Das Chela of Bhagwan Dass Sadh, Udasi resident of the village Malik Qabza right-holder in Shamlat Deh since the foundation of the village.

Ex.P13

Name of the owner with description.

xxx

xxx

xxx

(SAMBAT 1961-62)

Dera Udasi situated in the area of Salana Dula Singh Wala under the management of Baw Ishar Dass Chela Bhagwan Das Chela Biram Das.

Ex.P16

Name of the owner with description.		
xxx	xxx	xxx
(SAMBAT 1984-85)		
Biram Das Chela of Kishan Dass, caste Sadu Udasi resident of the village.		

Ex.P17

Name of the owner with description of land exempted from payment of revenue.		Name of Taraf or well
xxx	xxx	xxx
(YEAR 1993-94)		
	Bhagwan Dass Chela of Biram Dass Caste, Sadh Udasi resident of the Village Malik Qabza Right-Holder in the Shamlat since the foundation of the village.	207
	Piara Dass Chela of Biram Dass Caste, Sadh Udasi resident of the village Malik Qabza right-holder in the Shamlat since the foundation of the village.	215

(DATE OF) order Revenue Minister Har, 1, with name of the officer, who passed the order. Sambat 92(BK) (16.6.35)

Ex.P18

Name of Traf or well		Name of the owner with description.
xxx	xxx	xxx
(SAMBAT 1997)		

Waryam Singh etc. Piara Dass Chela of Bhagwan aforesaid. Dass, Caste, Sadh Udasi resident of the village Malik Qabja right holder in the Shamlat since foundation of the village.

Ex.P19

Name of Traf or well	Name of the owner with description.
xxx	xxx
(SAMBAT 1950-53)	
	Ishar Dass Gurbhai of Piara Dass Caste, Sadh Udasi, resident of the village Malik Qabza.

(39) A careful analysis of the revenue record coupled with the oral evidence would show that the land of the Dera has passed on in succession to successive chelas – an attribute alien to a Sikh Gurdwara. This coupled with the analytical conclusion from the oral evidence would lead us to the final conclusion that the institution is not a Sikh Gurdwara. There is no evidence that the Dera has the attributes and characters of a Sikh institution to satisfy the tests laid down by the Hon'ble Supreme Court in *Pritam Dass Mahant versus Shiromani Gurdwara Prabandhak Committee*. There is no evidence further to state that Bhagat Bhagwan was a Sikh saint and thus, it cannot be concluded that this institution was set up in the memory of a Sikh saint, as pleaded by the respondents. There is also no evidence to show that Bhagat Bhagwan was himself a Sikh or a practising Sikh faith. Thus, the ingredients of Section 16 of the Act do not manifest themselves on appraisal of the entire evidence.

(40) The objection of the respondents that before the Tribunal, the petition was neither signed or verified by Petitioner Ishar Dass, fades into insignificance, as such an objection ought to have been raised at the outset. Once the parties travelled through the process to record evidence on the issues to which they were alive, such a technicality cannot be raised at this stage to oust the entire claim of the appellants. This objection is therefore, negated.

F.A.O. No.207 of 1971

(41) Consequently, while accepting the appeal, we would hold that the Dera in question is not a Sikh Gurdwara and would thus, set aside the majority view of the Tribunal.

F.A.O. Nos.531,532,588,589 of 1984

(42) Since we have concluded that the institution is not a Sikh Gurdwara, these appeals arising from order which have been passed under Section 10 of the Act seeking publication or details of the property in view of the notification declaring the property to be a Sikh Gurdwara, would be rendered infructuous and are dismissed as such.

Tribhuvan Dahiya