MAHANT DHARAM DAS ETC. ETC.

v.

THE STATE OF PUNJAB AND ORS.

January 14, 1974

[A. N. RAY, C.J., P. JAGANMOHAN REDDY, H. R. KHANNA AND P. K. GOSWAMI, JJ.]

Sikh Gurudwaras Act (Punjab Act 8 of 1925) as amended by Act 1 of 1959, ss. 3, 7 and 8—If violative of Arts. 14, 19(1)(f) and 26 of the Constitution.

The Sikh Gurudwara Act, 1925, enacted for providing control and management of Sikh Gurudwaras, was extended to the area known as PEPSU, by Punjab Act 1 of 1959 with certain modifications. The scheme of the Act is that places of worship about which there was no doubt were placed in Schedule I. Part III of the Act, which describes and regulates the manner of management could be made applicable by speedy assertion of the claim made on behalf of the shrines to properties, under ss. 3 to 6. Section 3(4) makes the declaration in the notification under s. 3(2) that it is a Sikh Gurudwara conclusive and incapable of being challenged. Whether any place not included in Schedule I should or should not be placed under the provisions of Part III could be determined in the manner provided for in ss. 7 to 11. An application for such a purpose may be made by 50 or more Sikh worshippers under s. 7. The State Government shall publish the petition and the list of properties claimed by the Gurudwara by notification under s. 7(3) and s. 7(5) makes the publication of a notification conclusive proof that the provisions of sub-ss. (1) to (4) have been complied with. Section 7(4) provides for individual notice of the Gurudwara's claim to a right, title or interest included in the list, to the person in possession of such right etc.

The Mahant of a Shrine included as a Sikh Gurudwara in Schedule I, the Mahant of a Shrine declared to be a Sikh Gurudwara on an application under s. 7(1) and the Mahant of a Shrine regarding which an application under s. 7(1) was pending, challenged the Constitutional validity of ss. 2(4) defining a hereditary office holder, 3, 7 and 8 which provides for the procedure for a declaration that a Gurudwara asserted to be a Sikh Gurudwara is not a Sikh Gurudwara, on the ground of violation of Arts. 14, 19(1)(f) and 26. Rejecting all the contentions,

HELD (Per A. N. Ray, C.J., P. Jaganmohan Reddy and P. K. Goswami, JJ) : 1(a) As regards the Gurudwara included in Schedule I of the Act it was declared to be a Sikh Gurudwara long prior to the coming into force of the Constitution and was managed by the Interim Gurudwara Board constituted by the Firman of the Maharaja which was the law of the PEPSU and has the force of law even after coming into force of the Constitution by virtue of Art. 372 and continues to be law till it was repealed and substituted by a law made by a competent legislature. The Mahant, therefore, had no manner of right during the entire period from 1946, when the Firman was issued till long after the amending Act, nor did he even assert his right thereto since then until the present proceedings. He cannot, therefore, be allowed now to challenge the factum that the Gurudwara is a Sikh Gurudwara. [174G-175B]

(b) The respondent specifically raised the contention and asserted in the pleadings that the Gurudwara was a Sikh Gurudwara and that its possession and management had vested in the Interim Gurudwara Board in PEPSU. [175E; 176A-B]

(c) The entry relating to the last Jamabandi for the year 1954-55 does not show that the Gurudwara was a Udasi Gurudwara. It shows that the Mahant was working under the management of the Interim Gurudwara Board. Many of the Sikh Gurudwaras were managed by Udasis and under the firmans, the Interim Gurudwara Board, which was in management of the Gurudwara, could get the affairs of the Gurudwara looked after by others under their supervision. [175F-H]

(d) Therefore, the question whether the Gurudwara was a Sikh Gurudwara or was a Udassi Gurudwara had been determined as early as 1946 by the firman

A of the Maharaja. The fact that the appellant alleged that he was in possession of the Gurudwara was of little moment because if the law vested the management in the Interim Gurudwara Board the possession of the appellant would either be permissible or hostile. In either case, the status of the Gurudwara as a Sikh Gurudwara had been determined before the Constitution and since it was a pre-constitutional law, which declared it so, the appellant cannot challenge it on the ground of violation of his fundamental rights. Even if the appellant continued to be in possession he has not acquired a right of manage-
B ment when once that right was vested in another body. The Firman of an erstwhile ruler of a princely State was law and continued to be law till repealed or substituted by a law of a competent legislature. [176G-177B]

Ameerunnissa Begum and others v. *Mahboob Begum and Others* (1953) S.C.R. 404 and *State of Rajasthan and Others* v. *Shri Sajjanlal Panjawar and others* [1974] 1 S.C.R. at p. 511, followed.

(e) The firman vested the management and possession of the Gurudwara in
C a body created by it, with a Constitution and membership, quorum etc. Such an order could be an administrative order only if the Gurudwaras in respect of which the management was vested were already vested in the State. Therefore the contention of the appellant that the firman was only an administrative order not having the force of law would be fatal to the case of the appellant. The very fact that pending a comprehensive law the Maharaja was issuing a firman itself shows that it is a law. [177B-D]

(f) The Maharaja envisaged a comprehensive law to replace his firmans
D but by that time the State was merged and the law embodied in the firmans which was continued to be the law after the merger was replaced by the Amending Act which provided for the Interim Gurudwara Board being in possession and management during the transition period. The Fundamental rights conferred by the Constitution are not retrospective in operation. Therefore, it could not be contended by the appellant that the pre-constitutional law took away rights only for an interim period and that the rights existed after the interim period and were subject to the Constitution. [177E-H]

E *Sri Jagadguru Kari Basava Rajendrawami of Gavimutt* v. *Commissioner of Hindu Religious Charitable Endowments, Hyderabad* [1964] 8 S.C.R. 252 and *Seth Shanti Sarup* v. *Union of India* A.I.R. 1955 S.C. 624, referred to.

(2) The whole object of the Act was to reduce the chances of protracted litigation in a matter involving the religious sentiments of a large section of a sensitive people proud of their heritage. The provision of law which shuts out further inquiry and makes a notification in respect of certain preliminary steps conclusive, does not involve the exercise of any judicial function. [178F-H]

F (3) Sections 3(4) and 7(5) are statutory provisions. The prescription of rules of evidence by a legislature which is competent to provide for irrebuttable and conclusive presumptions not only as mere rules of evidence but even as a substantive pieces of law so long as the relevant provisions are within its legislative competence and are not otherwise unconstitutional, is valid. [179D-E]

Municipal Board, Hapur v. *Raghuvandra Kripal and others* A.I.R. 1966 S.C. 693 followed.

G *Izhar Ahmad Khan and others* v. *Union of India and others* [1962] Supp. 3 S.C.R. 234, referred to.

(4) Section 3(2) provides that on the receipt of a list "duly forwarded under the provisions of sub-s.(1)" the State Government is expected to publish a notification. The publication of such a notification is made conclusive proof of certain facts by s. 3(4). The use of the expression "duly forwarded" shows that the State Government is expected to satisfy itself before the issue of a notification under s. 3(2), that the application was a proper application under
H sub-s. (1) and has been duly forwarded, which implies, that the requirements of s. 3(1) have been fulfilled. The High Court was, therefore, right in holding that the provisions of s. 3(4) and s. 7(5) do not suffer from any constitutional or other legal impediment. [179F-180A]

(5) The notice to be served under s. 7(4) even though it was served subsequent to the notification under s. 7(5) is determined by the rule of conclusive proof. Once the provision of conclusive presumption under s. 7(5) is held to be valid and constitutional that question could not be allowed to be agitated or rebutted as that would militate against the conclusive nature of the statutory presumption. Nor, having regard to the object of the Act, can that provision be considered to be unreasonable as these are only preliminary steps necessary for holding an inquiry which inquiry forms an essential part to the determination of the *lis*. To take advantage of preliminary steps to protract litigation is itself unreasonable. The presumption that the authorities enjoined by the Act to take certain steps will do so is an irrebuttable presumption and if that does not affect substantial justice being done between the parties to the *lis*, no question of unreasonableness will arise. [180B-E]

(6) On the death of a Guru before he nominates his Chela or where a Guru marries and is disqualified and another person is appointed as a Mahant, it may be that such a person may not have the right to challenge the notification under s. 7(3) because he is not a holder of a hereditary office. But if a hereditary office holder cannot be found then s. 8 provides for a challenge to the notification under s. 7(3) by any 20 or more worshippers of the Gurudwara. If the Bhekh of a Sampradaya is entitled to nominate a successor and a Mahant has been so nominated it could be presumed that the Bhekh will have more than twenty worshippers and they could challenge the notification even if the Mahant could not. [180E-181B]

(7) Besides, whether such a person is a hereditary office holder is a matter for the Tribunal to determine having regard to well established rules of evidence by which courts determine such matters. The assumption that such a Mahant may not be considered to be a hereditary office holder is purely hypothetical. It is for the tribunal to apply the law for determining as to whether the person who challenges the notification is a hereditary office holder and has *locus standi* to do so. [181B-C]

(8) The period of 90 days prescribed under s. 8 is not unreasonable. A period of limitation is by its very nature to some extent arbitrary but it could not be urged that 90 days is not sufficient time for 20 or more worshippers to get together to challenge the notification which is designed to declare the gurudwara in which they were worshipping to be a Sikh Gurudwara. [181D-F]

Per Khanna, J.:

(1) In the notice issued under s. 3(3) the appellant (the Mahant of Gurudwara included in Schedule I) was mentioned to be in possession of the property in dispute. Before the Tribunal when the appellant wanted to agitate the question that the property in dispute was a Udasi institution and not a Sikh Gurudwara he was not permitted to do so. Therefore, the appellant has *locus standi* to file the petition before High Court under Art. 226. [185B-D]

(2) But the respondent has conceded that it is permissible to the appellant to make a claim that the property mentioned in the notification relating to the list of properties under s. 3(2) including the property described to be the Gurudwara itself, in respect of the item in the first Schedule, belongs to a Udasi Institution. If the above stand taken on behalf of the respondent were to be accepted the basis of the grievance of the appellant that there is a denial of opportunity to him to establish his claim that the institution is a Udasi institution disappears, and s. 3(4) would not be violative of the appellant's right under Arts. 19(1)(f) and 26. [182G-183B]

(3) There is a presumption of the constitutional validity of a statutory provision. If a provision like s. 3(4) of the Act of a local enactment has been on the statute book for about half a century and a particular construction has been placed upon it by the High Court of the State which sustains its Constitutional validity this Court should lean in favour of the view as would sustain the validity of the provision and not disturb the construction which has been accepted for such a lengthy time. None of the impugned provisions has been shown to violate the constitutional rights of the appellants. [184E-F; 185F]

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Raj Narain Pandey & Ors. v. *Sant Prasad Tewari & Ors.* A.I.R. 1973 S.C. 291.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 354, 1222 and 1251/69.

From the judgment and order dated the 18th March/25th July
B 1968 of the Punjab & Haryana High Court in Civil Writ Nos. 514 of 1966, 1935 of 1962 and 2310 of 1965 respectively.

C. K. Daphtary (In C.A. No. 354/69) *V.M.J. Tarkunde,* (In C.A. No. 1251/69), *M. B. Bal, R. D. Mahant, N. S. Das, Behl* and *P. K. Palli,* for the appellants (In C.As. Nos. 354 & 1251/69).

Naunit Lal, Harbhajan Singh Kathuria and *Lalit Kohli,* for the
C appellant (In C.A. No. 1222/69).

D. V. Patel (In C.A. No. 1251/69) *Charan Singh* and *Harbans Singh,* for respondent No. 3 (In all the appeals).

V. S. Desai, K. K. Chawla, (In C.A. No. 353/69) and *O. P. Sharma,* for respondents Nos. 1—2 (In C. As. 354 and 1222/69 and respondents Nos. 1 & 4 (In C.As No. 1251/69).

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The Judgment of the Court was delivered by Jaganmohan Reddy, J. Khanna, J. gave a separate Opinion.

JAGANMOHAN REDDY, J. Civil Appeals Nos. 354 and 1251 of 1969 are by certificate against the judgment of the Full Bench of the Punjab & Haryana High Court in Civil Writ Petition Nos. 514 of
E 1966, and 1935 of 1962 respectively in which by majority the provisions of s. 3 read with Sch. 1 and ss. 5, 7 and 8 of the Sikh Gurdwaras Act, 1925, which were challenged, were held to be valid. Following the Full Bench Judgment in the above two Civil Writ Petitions, Civil Writ Petition No. 2310 of 1965 was also disposed of by a Division Bench of that High Court. Against that Judgment Civil Appeal No. 1222 of 1969 is by certificate.

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In all these appeals the places of worship to which the impugned provisions have been made applicable were situated in the erstwhile Patiala and East Punjab States Union. After the States Reorganisation Act, 1956 when the said territories were merged, the Sikh Gurdwaras Act, 1925 (hereinafter called 'the Act') was made applicable to the places of worship situated in the areas to which the Act was
G made applicable by Punjab Act I of 1959 (hereinafter called 'the Amending Act').

The appellant Lachman Das in Civil Appeal No. 1251 of 1969 alleges that he is an Udasi Faquir belonging to the Udasi Sect founded by Sri Chand; that he was the Mahant of Gurdwara Sahib Pinjore for several years and in that capacity was in possession and control of all the properties belonging to it; that the Mahantship of an
H Udasi Gurdwara devolves from Guru to Chella which is opposed to the belief of the Sikhs who believe only in ten Gurus and none else; and that though the Gurdwara is an Udasi Gurdwara it has been

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included in Sch. I of the Act the effect of which, read with sub-ss. (2) & (4) of s. 3, makes the declaration in the notification that it is a Sikh Gurdwara conclusive and incapable of being challenged.

The appellant Dharam Das in Civil Appeal No. 354 of 1969 is an Udasi Sadh and Mahant of Dera Udasi Sadhan. It is alleged that the followers of this Sampradaya form a distinct religious denomination, as such the notification dated February 17, 1961 including it in Sch. I of the Act is objectionable. It is further stated that not even the notice under s. 7(4) of the Act was given to the appellant and he was not allowed to contest that the applicants were neither Sikhs nor worshippers of the institution in dispute, nor are the fifty or more persons required for making an application under s. 7(1) of the Act and who made the application residents of the relevant Police Station, nor could the allegations that the signatures were obtained by fraud or that the application was not in time be enquired into. The notification was further challenged on the grounds that there was no authority which is required to satisfy itself that the applicants were alive or dead nor does the Act give a right to the Mahant, the person seriously affected, to challenge the *locus standi* of the applicants.

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The first appellant in C.A. 1222 of 1969 claims that he was appointed by the village Panchayat as the Mahant after removing Gurcharan Singh who succeeded after the death of the last Mahant Hari Singh who was the Guru, because Hari Singh had contracted a marriage. He alleged that the Dera in dispute known as Gurdwara Punjab Sahib was established by one Mahant Kesara Singh. The Dera has considerable properties moveable and immoveable which are managed by the village Panchayat which also appoints Mahant from amongst the Chelas of the previous Mahants. The succession, according to these averments, devolves from Guru to Chela, but if a Mahant after he succeeds contracts a marriage he is liable to be removed by the village Panchayat and another is appointed by them who will not be a hereditary Mahant within the meaning of the Act. According to the appellant on April 11, 1961 about 52 persons of Tehsil Barnala, District Sangrur, gave an application under sub. s (1) of s. 7 of the Act to get the Dera in question declared a Sikh Gurdwara which application was still pending on the date of the filing of the Writ petition on August 21, 1965 before the Singh Gurdwara Tribunal.

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In Civil Appeal No. 1251 of 1969 the High Court held that the appellant Lachman Das claimed to be a Mahant of a different Gurdwara than the one included in Sch. 1 of the Act. At p. 327 of the printed paper book this is what is stated :—

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> "The petitioner has not claimed himself to be the owner of the institution defined and described in item No. 249 of the first Schedule, and has, therefore, no *locus standi* to claim that the said institution should have been included in Schedule II. The institution in which he claims to have interest "Gurdwara Sahib Pinjore" has not been listed in

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Schedule I. Item No. 249 in the first Schedule relates to an institution of "Padshahi Pahaili", and the petitioner admits that he has nothing to do with institutions of Padshahi Pahaili. There is, therefore, no force in any of the arguments advanced on behalf of the petitioner in this case, and Civil Writ 1935 of 1962 also, therefore, merits dismissal."

B It is submitted before us that this finding of the High Court was based on a misapprehension that the appellant had claimed to be a Mahant of a different Gurdwara than that included in Sch. I of that Act. Apart from this, it is contended that sub-s. (4) of s. 3 of the Act clearly offends the guarantee of Art. 26 of the Constitution inasmuch as it provides that a Gurdwara by virtue of its inclusion in Sch. I C of the Act shall be treated as a Sikh Gurdwara and shall be managed by Sikh representatives, that the provision also violates the guarantee under Art. 19(1)(f) of the Constitution as it affects the rights of the appellant not only to claim the properties of the Gurdwara as a Mahant thereof but also to the office of the Mahant of the said Gurdwara, and that the declaration in the notification under sub-s. (4) of s. 3 of the Act which operated as conclusive proof that the Gurdwara D was a Sikh Gurdwara, was an unreasonable restriction on the appellant's fundamental rights both under Art. 26 and Art. 19(1)(f). It was further contended that the provisions in the earlier part of s. 3(4) providing that the declaration mentioned therein shall be conclusive proof that the provision of sub-ss. (1), (2) and (3) of s. 3 have been duly complied with are (i) arbitrary and hence violative of Art. 14 of the Constitution and (ii) operate as an unreasonable restriction on E the appellant's Fundamental rights under Arts. 26 and 19(1)(f).

In Civil Appeal No. 354 of 1969 apart from the contentions raised in Lachman Dass's case the appellant Dharam Dass urged certain additional grounds for invalidating the provisions of the Act. It is submitted that the rule of succession followed for the past more than 200 years from Guru to Chela is inconsistent with the Gurdwara being a Sikh Gurdwara, but notwithstanding this it has been so F declared by a notification under sub-s. (3) of s. 7 on an application made under sub-s. (1) of s. 7 of the Act claiming it to be a Sikh Gurdwara. The Privy Council had pointed out the essential differences between Udasis and Sikhs in *Hem Singh & Ors* v. *Basant Das & Anr.*(1) which criteria had not been kept in view before including the appellant's Math in Sch. I of the Act. The appellant having come to know of this notification under sub-s. (3) of s. 7 filed a petition G under s. 8 of the Act as a hereditary office holder claiming that the Gurdwara or Dera in question is not a Sikh Gurdwara and its properties do not belong to a Sikh Gurdwara before the Tribunal constituted under the Act to which the dispute was referred. The appellant filed an application before the Tribunal on January 6, 1966 requesting it to examine and determine the *locus standi* of the persons who made the petition under s. 7(1) of the Act on the basis of which the notifi- H cation was issued by the Government. The Tribunal, however, dismissed the application on the ground that it had no jurisdiction to go

(1) L.R. 63 I.A. 180.

into the question by reason of the provisions of sub-s. (4) of s. 7 of the Act. Inasmuch as the appellant is in possession of the Dera in question and is sought to be dispossessed and deprived of his Mahantship he has every right to challenge the notification but the provisions of sub-s. (5) of s. 7 of the Act prohibit him from challenging the validity of the petition on the basis of which the notification under sub-s. (3) of s. 7 of the Act was founded. As sub-s. (5) of s. 7 makes the publication of the notification conclusive proof that the provisions of sub-ss. (1), (2), (3) and (4) have been duly complied with, although matters in sub-s. (4) may be subsequent to the publication it violates Art. 14 as it is arbitrary. It also violates Arts. 19(1)(1)(f) and 26 because it places an unreasonable restriction on the exercise of the appellant's fundamental rights as an Udasi Mahant. The claim made by the appellant under s. 8 of the Act that he is a hereditary office holder within the meaning of sub-s. (4) of s. 2 of the Act has been challenged by Sikh Gurdwara Prabandhak Committee. The appellant apprehends that the Tribunal will raise this as a preliminary issue and possibly deprive the appellant an opportunity to establish that the Gurdwara is not a Sikh Gurdwara. The appellant also apprehends that he may not be accepted as a hereditary Mahant because according to the submissions made on his behalf the definition under sub-s. (4) of s. 2 rules out any Mahant who may be accepted or recognised as a Mahant of the institution by the Udasi Bekh. It may sometimes happen that there may be a break in the chain of succession from Guru to Chela such as where a Guru dies before nominating his successor or there may be a dispute between two Chelas as to who has been nominated. In such cases it is the Bekh or the congregation which determines the matter and selects a particular Chela as Mahant. A single break in the chain, according to the learned Advocate for the appellant, deprives a Mahant of being a hereditary office holder who may be prevented from maintaining a petition under s. 8 of the Act on the ground that it does not strictly comply with the definition of a Mahant. It is also submitted that the definition of a Mahant in Sub-s. (4) of s. 2 is unfair and violative of Art. 14 of the Constitution as it makes in distinction between Mahant as described in the definition and other Mahants without any nexus with the object of the Act. Further s. 8 read with s. 18 is violative of the appellant's fundamental rights because any claim to a property which has been notified as a Sikh Gurdwara is defeated by the conclusive presumption under s. 18 arising from any of the grounds mentioned in that section.

In Civil Appeal No. 1222 of 1969 additional contentions urged were that a notice under s. 7(4) of the Act was in fact issued to a dead person, namely, Hari Singh, The contention of the appellant that the notice to a dead person is void and is not a notice under law was rejected by the High Court on the ground that since there was no change in the annual revenue record and the name of the dead person was entered there in the column of ownership the notice was valid which finding is challenged as being erroneous in law. The contention that no notification was ever published along with the list at the Headquarters of the District and of the Tehsil under s. 7(3) of the Act was also rejected on the ground that under sub-s. (5) of

A 5.7 of the Act, some of the provisions of the said section have been complied with are made conclusive and cannot be challenged. As an example, it is stated that the application presented by fifty or more persons contains thumb marks of persons who are not in existence and whose identity cannot be ascertained but notwithstanding this the appellants are estopped under sub-s. (5) of s. 7 from proving that the application is actually signed by less than 50 persons. On
B this ground also the validity of sub-s. (5) of s. 7 is assailed. It is, therefore, submitted that sub-s. (5) of s. 7 is *ultra vires* the provisions of the Constitution. It is also submitted that appeals in which the Punjab and Haryana High Court had held that a notice under sub-s. (4) of s. 7 of the Act sent to a dead person or notice sent after the publication of the notification under sub-s. (3) of s. 7 is bad in law, are pending in this Court. It has been further contended that there
C is no intelligible differentia between a hereditary office holder as defined in s.2(iv) and (v) of the Act and a *de-facto* holder of office as there is no nexus between the two. Section 8 is also assailed as contravening Art. 14 because the Act provides for two different procedures for the same purpose under s. 8 and s. 38 of the Act. The procedure under s. 8 is onerous and confers rights on a hereditary office holder. It does not confer any such right on other office holders.
D The section also prescribes a period of limitation of 90 days and sets out numerous defences open to a petitioner who wants to make an application. As against this the procedure prescribed in s. 38 affords to any person who claims to have an interest in the Dera the right to appear and defend the suit and establish that the institution is not a Sikh Gurdwara. The two different procedures for the same purpose and object are discriminatory under Art. 14. In any case these are
E unreasonable restrictions on the right of the appellants and violate Art. 19(1)(f).

On behalf of the respondents it is submitted that the appellants have not established or even *prima facie* satisfied the Court that the institutions were established by the Udasis. No documents were produced not even a rejoinder of the denial of the respondents giving details about the truth of the allegations was filed, nor oven a single
F affidavit of a worshipper has been filed. The mere allegation that Udasi Faquirs have been in charge from Guru to Chela and that the appellants are Mahants is not sufficient to establish a right which is essential for presenting an application under Art. 226 of the Constitution. Several cases of this Court have been referred to in support of this proposition.

G Even assuming without conceding that the institutions were Udasi institutions, it is submitted that that right having been lost even prior to the constitution by virtue of the Firmans of the Maharaja of Patiala no relief can be claimed nor the provisions of the Act can be challenged as being unconstitutional. Several other arguments were advanced which will be dealt with hereafter.

The main question in these appeals is whether the appel-
H lants have the right to challenge the provisions of the Act by and under which a Gurdwara or an institution is declared or assumed to be a Sikh Gurdwara. The full Bench of the Punjab & Harayana High Court in its detailed judgment has considered several aspects in the light of

the contentions advanced before it which contentions have been repeated before us. Before we examine the impugned provisions, it is necessary to state that in order to remedy a situation arising out of certain historical landmarks of Sikh struggle to retain their shrines which had come into the possession of persons subscribing to non-Sikh faiths. the Act was passed. The Sikhs believe in the ten Gurus—the last of whom was Guru Gobind Singh. They further believe that there is no other Guru after Guru Gobind Singh who enjoined on his followers that after him they should consider Guru Granth Sahib as the Guru. They do not subscribe to idol worship and polytheism, nor do they have any Samadhi in their shrines. The teaching of Sikhs was against asceticism. They believe in Guru Granth Sahib, which is a Rosary of sacred poems, exhortations, etc. During the time of the Sikh Gurus, the Gurdwaras were under their direct supervision and control or under their Masends or missionary agents. After the death of Guru Gobind Singh the Panth is recognised as the corporate representative or the Guru on earth and thereafter they were managed by the Panth through their Granthis and other sewadars who were under direct supervision of the local Sangat or congregation. During Maharaja Ranjit Singh's time Sikhism became the religion of the State and large estates and Jagirs were granted to the Gurdwaras, apart from the Jagirs which had been earlier granted during the Mugal period. The position of the Gurdwaras changed during British regime. The Mahants who were in charge of the Sikh Gurdwaras could either be a Sikh Mahant or Udasi Mahant. It may here be stated that the Udasis were not Sikhs. While the teachings of Sikhs were against asceticism and were opposed to Hindu rites, the Udasis though "using the same sacred writings as the Sikhs, kept up much more of the old Hindu practices, followed asceticism, were given to the veneration of Samadhis or Tombs and continue the Hindu rites concerning birth, marriage and Shradh." (See *Hem Singh* v. *Basant Das*(1).) Though there was no reconciliation between the Sikhs and Udasis, it did not matter if the Mahant of a Sikh Gurdwara was not a Sikh Mahant because the Panth or Sangat exercised control over the Gurdwaras. After the death of Maharaja Ranjit Singh when the power of the Sikhs had waned and they were disorganised and dejected, the non-Sikh Mahants asserted their control and denied to the Panth or the Sangat rights over those Gurdwaras. After the Sikhs had recovered from their frustration caused by the defeat of the Sikh Rajas they began to assert their rights by filing suits and embarking on litigation for the recovery of their holy shrines.

The Shriomani Gurdwara Parbandhak Committee—hereinafter referred to as the S.G.P.C.—had come into existence some time in January 1921 and was later registered under the Societies Registration Act in the same year. After several attempts were made to arrive at a settlement and after trying many drafts/bills the Government of the time brought forward a measure which provided a Central Body called the Board of Control, for the management and control of all the historical Gurdwaras. By then the S.G.P.C. had taken control of many of the Gurdwaras from the Mahants who were either religious minded

(1) 63 I.A. 180, 201.

A or realising that their personal interests lay in their seeking the protection of the S.G.P.C. which had been especially formed for the purpose of managing and maintaining the Gurdwaras on lines consistent with the teachings of the Gurus and the wishes of the community had voluntarily placed the Gurdwaras under the control of the S.G.P.C. In order to provide for the control and management of these Gurdwaras and those Gurdwaras which were claimed by the Sikhs to be the Sikh B Gurdwaras, a Bill which later became the Act was presented in 1925, the aims and objects of which were, *inter-alia,* stated as follows :—

> "1. The present Sikh Gurdwaras and Shrines Bill is an effort to provide a legal procedure by which such Gurdwaras and shrines as are, owing to their origin and habitual use, regarded by Sikhs as essentially places of Sikh worship, C may be brought effectively and permanently under Sikh control and their administration reformed so as to make it consistent with the religious views of that community. The Sikh Gurdwaras and Shrines Act, 1922, which is to be replaced by the present Bill, failed to satisfy the aspirations of the Sikhs for various reasons. One, for instance, was that it did not establish permanent committees of management for D Sikh Gurdwaras and Shrines. Nor did it provide for the speedy confirmation by Judicial sanction of changes already introduced by the reforming party in the management of places of worship over which it had obtained effective control.
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> 2. The present Bill provides a scheme of purely Sikh management, secured by statutory and legal sanction, for E places of worship which are decided either by the Legislature or by an independent Tribunal set up for the purpose, or by an ordinary Court of law, to be in reality places of Sikh worship which should be managed by Sikhs."

The scheme of the Act was that there were certain places of worship about which no substantial doubt existed and those places F were forthwith placed in Sch. I, Part III, which describes and regulates the manner of management could be made applicable by the speedy assertion of the claim made on behalf of the shrines to the property alleged to belong to it, which assertion was to be by petition to the Local Government : (vide ss. 3 to 5). Secondly whether any place not included in Sch. I should or should not be placed for management under the provisions of Part III could be determined in the G manner provided for in ss. 7 to 11. In respect of these Gurdwaras under sub-s. (1) of s. 7 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 the Act or, in the case of the extended territories from the commencement of the Amending Act, a resident in the police station area in which the Gurdwara is situated, may forward to the H State Government, through the appropriate Secretary to Government so as to reach the Secretary within one year from the commencement of the Act or within 180 days from the commencement of the Amending Act, praying to have the Gurdwara declared to be a Sikh

Gurdwara. Under s. 8 twenty or more worshippers of the gurdwara, each of whom is more than twenty-one years of age and was on the commencement of the 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, 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 the 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 1st 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. Section 9 deals with the effect of omission to present a petition under s. 8. It provides that the publication of a notification under the provisions of sub-s. (1) of s. 9 shall be conclusive proof that the gurdwara is a Sikh Gurdwara and the provisions of Part III shall apply to the gurdwara with effect from the date of the publication of the notification. Section 10 provides for the filing of a petition claiming a right, title or interest in any property included in the list published under sub-s. (3) of s. 7. If no claim has been made in respect of any of the properties within the specified period the State Government is empowered to publish a notification which was to be conclusive proof of the fact that no such claim was made in respect of any right, title or interest specified in the notification. Section 11 provides for compensation to a hereditary office-holder of gurdwara notified under s. 7 or his presumptive successor. Chapter III of Part I provides for the constitution and procedure of tribunal for purposes of the Act vide ss. 12 to 37. Part II s. 38 is concerned with the application of the provisions of Part III to gurdwaras found to be Sikh Gurdwaras by courts other than the Tribunal constituted under the Act. Part III Chapter V, as already stated, deals with the control of Sikh Gurdwaras.

The Act, as we have stated earlier, was extended to the erstwhile areas of Patiala and East Punjab States Union—known as PEPSU by the Amending Act, consequently some of the provisions have been amended to provide for that situation. For instance in sub-s. (1) of s. 3 the list to be forwarded to the State Government through the appropriate Secretary to Government had to be forwarded within one hundred and eighty days of the commencement of the Amending Act. In so far as Sch. I Gurdwaras are concerned it is incumbent upon any Sikh or any holder of a Gurdwara on the date of the commencement of the Act or on the date of the Amending Act to forward to the State Government a list of all rights, titles and interests in immovable properties situated in Punjab inclusive of the gurdwara and in all monetary, endowments yielding income or profit received in Punjab which he claims to belong, within his knowledge, to the Gurdwara and to furnish several details specified therein. On receipt

A of this list the State Government under sub-s. (2) is enjoined to publish, as soon as may be, a notification declaring that the gurdwara to which it relates is a Sikh Gurdwara and, after the expiry of the period provided in sub-s. (1) for forwarding lists shall, as soon as may be, publish by notification a consolidated list in which all rights, titles and interests in any such properties as are described in sub-s. (1) B which have been included in any list duly forwarded, shall be included, and shall also cause for consolidated list to be published, in such manner as may be prescribed, at the headquarters of the district and of the tehsil where the gurdwara is situated. The State Government has to send by registered post notice of the claim to any right, title or interest included in the consolidated list to each of the persons named therein as being in possession of such right, title or interest C 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 the person who forwarded the list in which the right, title or interest was claimed. Subsection (4) makes the publication of a declaration and of a consolidated list under the provisions of sub-s. (2) conclusive proof that the provisions of sub-ss. (1), (2) and (3) with respect to such publica- D tion have been duly complied with and that the gurdwara is a Sikh Gurdwara, and the provisions of Part III shall apply to such gurdwara with effect from the date of the publication of the notification declaring it to be a Sikh Gurdwara. Section 4 provides that if in respect of any gurdwara specified in Sch. I no list has been forwarded under the provisions of sub-s. (1) of s. 3, the State Government shall, after the expiry of ninety days from the commencement of the Act, or E in the case of the extended territories, after the expiry of one hundred and eighty days from the commencement of the Amending Act, as the case may be, declare by notification that such gurdwara shall be deemed to be excluded from specification in Sch. I. Section 5 deals with a situation where a list has been published. A petition in respect of the consolidated list specified in the notification published under sub-s. (2) of s. 3 may be forwarded to the State Government claim- F ing a right, title or interest in any property included in such consolidated list *except a right, title or interest in the Gurdwara itself* within the specified period : (emphasis added). Sub-section (3) of s. 5 provides that the State Government shall also, as soon as may be, after the expiry of the period for making a claim under the provisions of sub-s. (1) publish a notification specifying the rights, titles G or interests in any properties in respect of which no such claim has been made; and the publication of 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. Section 6 provides for a claim for compensation by a hereditary office-holder of a notified Sikh Gurdwara or his presumptive successor, within the period prescribed therein by presenting a petition claiming to be awarded H compensation on the grounds that such office-holder has been unlawfully removed from his office after the first day of January, 1920, or, in the case of the extended territories, after the 1st day of November, 1956, as the case may, and before the date of the publication of

the notification, and that such office-holder or his presumptive successor has suffered or will suffer pecuniary loss in consequence of the gurdwara having been declared to be a Sikh Gurdwara. A

A canvass of the provisions of the Act presents four situations— (i) where the Legislature in its judgment considers a Gurdwara to be a Sikh Gurdwara and places it in Sch. I to which the provisions of ss. 3 to 6 are applicable; (ii) in respect of the institutions contained in Sch. II no petition under s. 7 can be entertained unless the institution is deemed to be excluded from specification in Sch. I under the provisions of s. 4 by a notification made after the expiry of ninety days from the commencement of the Act, or, in the case of the extended territories, after the expiry of one hundred and eighty days from the commencement of the Amending Act; (iii) in respect of other Gurdwaras fifty or more Sikh worshippers of a Gurdwara fulfilling the requirements of sub-s. (1) of s. 7 can pray to have the Gurdwara declared to be a Sikh Gurdwara and thereafter the provisions of ss. 7 to 11 would become relevant. That claim can be forwarded by the State Government to a Tribunal under s. 14 and enquired into by it under s. 16. If the Tribunal finds that the Gurdwara is not a Sikh Gurdwara subject to its finding being confirmed by the High Court in appeal, it shall cease to have any jurisdiction over it thereafter, subject of course to any claim made in accordance with the provisions of s. 8 praying for the restoration of the hereditary office-holder or a 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 1st day of November, 1956, in respect of which the Tribunal shall continue to have jurisdiction. On the other hand, if the Tribunal came to the conclusion that it was a Sikh Gurdwara with respect to which either there was no appeal to the High Court or the High Court had confirmed the finding of the Tribunal, that fact would be intimated to the State Government and the State Government shall, as soon as may be, publish a notification declaring such gurdwara to be a Sikh Gurdwara, and the provisions of Part III shall apply thereto with effect from the date of the publication of such notifications (vide s. 17); and (iv) where after the expiry of one year from the commencement of the Act or in the case of the extended territories from the commencement of the Amending Act as the case may be or of such further period as the State Governent may have fixed under the provisions of sub-s. (1) of s. 7 two or more persons having interest in any gurdwara in respect of which no notification declaring the gurdwara to be a Sikh Gurdwara has been published under the provisions of the Act may, with the consent of the Deputy Commissioner of the district in which such Gurdwara is situated, institute a suit, whether contentious or not, in the principal court of original jurisdiction or in any other court empowered in that behalf by the State Government within the local limits of whose jurisdiction the gurdwara is situated praying for any of the reliefs specified in s. 92 of the Code of Civil Procedure, 1908 and may in such suit pray that the provisions of Part III be applied to such gurdwara : (see s. 38). Subsections (2) to (6) of s. 38 prescribe the procedure for the inquiry. B C D E F G H

A In so far as Lachman Dass's appeal is concerned the Gurdwara Panjaur Padshahi Pehli was included as item 249 in Sch. I by s. 50 of the Punjab Act I of 1959. It is contended that the appellant has been denied a right of hearing by reason of which he has been precluded from challenging that the Gurdwara is not a Sikh Gurdwara but a Udasi Gurdwara and that the provisions of the Act are arbitrary, unreasonable and offends his fundamental rights under Arts. B 14, 19(1)(f).

During the course of the lengthy arguments, the Learned Advocate for the respondents on behalf of the State of Punjab put forward the contention that a Gurdwara as mentioned in first part of sub-s. (1) of s. 3 namely that specified in Sch. I is a spiritual notion without any physical form but that word used in the context of the C latter part of that sub-section which specifies a list, signed and verified by any Sikh or any present office-holder of a gurdwara specified in Sch. I of all rights, titles and interests in immovable properties situated in Punjab inclusive of the Gurdwara, would imply that the place of worship, namely the Gurdwara itself, can be the subject of an inquiry as to whether it belongs to the Sikhs or non-Sikhs. Accordingly he made a statement conceding that it is punishable to make D a claim that the property mentioned in the second notification under sub-s. (2) of s. 3 including the property described as Gurdwara itself in respect of item 249 in Sch. I is Udasi and consequently submits that the appellant has not been denied a right of hearing.

It is true that a denial of a right to be heard as expressed in the maxim *audi alteram partem* whether by legislative or executive E action or in any other manner is abhorrent to a civilised society; it is destructive of the elementary principles of justice according to which every citizen has to be judged and is contrary to the cherished notions of the rule of law which is the sheet-anchor and the umbilicus of the democratic system of Government embodied in our Constitution. But is this principle applicable to the facts and circumstances of this case? What are the facts and circumstances and whether F having regard to them the appellant has a right to challenge before us that the Gurdwara Panjaur Padshahi Pehli is not a Sikh Gurdwara. The question would only arise if he has a *locus standi* to do so. But if he has not, the question whether under the provisions of the Act he could challenge the inclusion of the Gurdwara as a Sikh Gurdwara in Sch. I or the declaration under sub-s. (2) of s. 3 that it is a Sikh Gurdwara need not be gone into.

G

This Gurdwara had been declared to be Sikh Gurdwara and its management vested in the Interim Gurdwara Board constituted for the management of Sikh Gurdwaras in the erstwhile State of Pepsu. By a Firman-I-Shahi dated November 2, 1946, the Maharaja of Patiala declared his intention to associate the Sangat with the management of Gurdwaras and with that object he issued necessary instruc- H tions to prepare a comprehensive legislation. In the meantime in order to avoid delay in giving that intention a practical shape he decided to appoint an Interim Committee which will undertake the management of the Gurdwaras pending the passing of the legis-

lation. Six days thereafter i.e. on November 8, 1946 the Maharaja issued another Firman appointing an Interim Committee for the management of the Sikh Gurdwaras in the State and nominated members thereof. In that Firman he designated the Committee as an "Interim Gurdwara Board", which was directed to assume the functions till then performed by the Deodhi Department and to exercise the powers vested in the Sardar Sahib Deodhi Mualla. It was also provided that the Interim Gurdwara Board shall elect a Vice-President and Secretary out of the members and its decisions will be given effect to by majority of votes. The President or Chairman will have a casting vote in case of a tie. Eight members were to form the quorum for a meeting. On December 23, 1946, pursuant to the Firman dated November 8, 1946 a notification was issued by Deodhi Mualla Department, Patiala, for the information of the general public that the management of the Sikh Gurdwaras specified therein had been handed over to the Interim Gurdwara Board, Patiala. In that list is mentioned at item 24 Gurdwara at Pinjore in the memory of Padhshahi Pehli. This Board continued to function even after the Amending Act came into force. Section 148-C of the Act provides thus :

> "148-C. Notwithstanding anything contained in this Act, every local committee in the extended territories functioning for the management of one or more Gurdwaras under the control of the Interim Gurdwara Board, Patiala, immediately before the commencement of the Amending Act, shall, till the constitution of the new Committee, be deemed to be a Committee for such Gurdwaras under this Act."

This had reference to s. 148-B which added to the Board constituted under s. 43 additional members till the next election of the new board under s. 43-A. Section 148-C made provisions in respect of employees of the Interim Gurdwara Board, Patiala and the local committee functioning under it. Section 148-E made special provisions regarding the assets and liabilities of Interim Gurdwara Board, Patiala. It provided that all lands and buildings (together with all interests of whatsoever nature or kind therein) belonging to the Interim Gurdwara Board, all assets, including stores, articles, and movable properties belonging to the Interim Gurdwara Board immediately before such commencement and utilised for or in connection with the Interim Gurdwara Board shall pass to and vest in the Board. Similarly clauses (c), (d) and (e) made provision for debts, rents and suits etc. Section 148-F made provision for removal of difficulties. In this way the Amending Act gave continuity to the vesting of the Gurdwara Pinjore Padhshahi Pehli in the Interim Gurdwara Board and to manage it even after the Amending Act, without creating any kind of hiatus in the control and management of such Gurdwaras. The Pinjore Gurdwara was declared to be a Sikh Gurdwara long prior to the Constitution and was managed by the Interim Gurdwara Board constituted by the Firman which was the law of the Pepsu State having the force of law even after the Constitution by virtue of Art. 372 and continued to be law till it was

repealed and substituted by a law made by a competent Legislature. The appellant had no manner of right during the entire period from 1946 till long after the Amending Act nor did he even assert his right thereto since then until the filing of the Writ Petition and cannot be allowed to challenge now the factum that the Gurdwara is a Sikh Gurdwara.

It is strenuously contended by the Learned Advocate for the appellant that the appellant cannot be non-suited as there were no pleadings, no allegation that the Gurdwara was declared a Sikh Gurdwara or that its management and possession was vested in the Interim Gurdwara Board or that the appellant was dispossessed at any time; nor were these allegations canvassed by the appellant in the Writ petition during its hearing before the High Court nor has the High Court dealt with this aspect; nor were any accounts required to be produced nor was the Mahant ever appointed as a servant of the Gurdwara. He further contended that the Firman does not affect the status of the Gurdwara as it was not only of a temporary nature but it specifically stated that it will be in force till a new law was made.

In our view these contentions have no force and must be rejected. The allegation of the appellant in his Writ petition paragraph—9(d) was that the State Government when preparing the two schedules did not make any enquiry, never served any notice on the appellant asking him to explain as to whether it was an Udasi institution or a Sikh Gurdwara, and arbitrarily included Gurdwara Panjaur sahib, an Udasi institution, in Sch. I which is against the principles of natural justice. In reply thereto in paragraph 9(d) respondents 1 and 3 denied these allegations and averred that the Institution was a Sikh Gurdwara and was under the management of the Interim Gurdwara Board in the erstwhile Pepsu territory. Respondent 2 also while admitting that the appellant was in possession of the Gurdwara and the property attached therewith said that possession was on behalf of the said Gurdwara. Respondent 2 further, while emphatically denying that the Gurdwara was an Udasi institution, asserted that the institution was a Sikh Gurdwara. Annexure A—I was relied upon by the appellant to show that nothing had been stated therein that the Gurdwara was under the management of the Interim Gurdwara Board. This annexure related to an entry in last Jamabandi for the year 1954-55 in which Column I showed the number of the Khata and in the second column name of the owner was described as "Gurdwara Sahib Panjore Malik Be ehatman, Mahant Lachhman Das Chela Mahant Isher Dass caste Udasi, resident of village Panjore, Mohtmim." In the third column the name of the cultivator was given. There is nothing in this entry which shows that the Gurdwara was an Udasi Gurdwara or the Lachhman Dass was not working under the management of the Interim Gurdwara Board. The words 'Be ehetmam and Mohtmim' clearly show that he was only managing it. This is not inconsistent with the allegations that many of the Sikh Gurdwaras were managed by Udasis nor is it inconsistent with the fact that under the Firmans the Interim Gurdwara Board which was in management of the Gurdwara could get the affairs of the Gurdwara

looked after by others under their supervision. For this reason perhaps originally the *vires* of the provisions of the Act was not specifically agitated in the original petition. It was only subsequently that an attempt was made to have amended. Be that as it may it cannot be said that the question of the management of the impugned Gurdwaras was not raised. In paragraph 2 of the affidavit of Kehar Singh Mann the deponent stated that the Sikh Gurdwaras in the State of Pepsu fell into three categories—(1) Gurdwaras owned and managed by the Government; (2) Gurdwaras which were managed by the the Interim Gurdwara Board established by the Ruler of the erstwhile State of Patiala by order of the Ijlas-i-khas December, 1946; and (3) Gurdwaras which were privately managed by the Local Committees. The Government by notification No. 48 Gurdwaras dated February 1, 1957, constituted a committee consisting of M.L.As and M.L.Cs to submit its report for suitable amendments being made in the Act covering the Gurdwaras situated in Pepsu and after obtaining the relevant data the Committee submitted its report on September 14, 1957 which is R-I a copy of which was attached to the affidavit of Kehar Singh Mann. These recommendations of the Committee were accepted and the Amending Act was introduced. The full Bench in its judgment referred to the basis on which certain historical Sikh Gurdwaras of erstwhile Pepsu area were included in Sch. I and others not so included. According to the Advisory Committee's report;

> "All the Gurdwaras managed by Government and the Interim Gurdwara Board should not be included in Schedule I. While recommending the inclusion of Gurdwaras mentioned in the attached lists, the Committee has given due consideration to the religious and historical importance of the Gurdwaras and their economy. It was felt that the inclusion of all the Gurdwaras managed by the Interim Gurdwara Board in Schedule I and section 85 of the Act, would be conducive to inconvenience and complications in the management of some of the Gurdwaras. The Committee has, therefore, not recommended the inclusion of some of the Gurdwaras in Schedule I."

The full Bench also further stated that the appellant has not claimed himself to be the owner of the institution devined and described in item No. 249 of the Sch. I and therefore has no *locus standi* to claim that the said institution should have been included in that Schedule.

It is, therefore, clear that the question whether Gurdwara Pinjore Padhshahi Pehli was a Sikh Gurdwara or was an Udasi Gurdwara had been determined as early as 1946 by the Firman of the Maharaja of Patiala. The fact that the appellant alleges that he was in possession of the Gurdwara is of little moment because if the law vested the management in the Interim Gurdwara Board the possession of the appellant could either be permissibe or hostile. In either case the status of the Gurdwara as a Sikh Gurdwara had been determined before the Constitution and since it was a pre-Constitution law which declared so the appellant cannot challenge it on the ground of viola-

A tion of his fundamental rights. Even if the appellant continued to be in possession he has not acquired a right of management when once that right was vested in another body. That Firman of an erstwhile Ruler of a Princely State was law and continued to be law till repealed or substituted by a competent Legislature has been concluded by the decisions of this Court in *Ameerunnissa Begum and others* v. *Mahaboob Begum and Others*,(1) and *State of Rajasthan and Others* v. B *Shri Sajjanlal Panjawat and others*.(2) In view of the legal position an attempt was made to describe the Firman of the Maharaja of Patiala referred to above as an administrative order not having the force of law. With this submission we are unable to agree. A glance at the Firman leaves no manner of doubt that it vested the management and possession of the Gurdwaras in a body created by it, with a Constitution and Membership quorum etc. It could only be adminis- C trative if the Gurdwaras in respect of which the management was vested were already vested in the State but that will be fatal to the case of the appellants. The very fact that pending a comprehensive law the Maharaja was issuing the Firman itself shows that it is a law. The pleadings clearly raised the question of the *locus standi* of the appellant to assert that the Gurdwara was not a Sikh Gurdwara and it was clearly asserted that the possession of the appellant was on D behalf of the said Gurdwara which is not inconsistent with the fact that the possession and management of it was vested in the Interim Gurdwara Board. It was contended by the learned Advocate for the appellant that if the pre-Constitution law takes away rights for an interim period then the rights existed after the interim period and is subject to the Constitution. But even if this proposition is admitted, E and it is not necessary to express our view, the assumption on which it is based is invalid. No doubt the Maharaja of Patiala envisaged a comprehensive law to replace his Firmans but by that time the State of Patiala was merged and the law embodied by the Firmans which was continued to be the law after the merger was replaced by the Amending Act which provided for the Interim Gurdwara Board being in possession and management during the transition period. In *Sri* F *Jagadguru Kari Basava Rajendraswami of Gavimutt* v. *Commissioner of Hindu Religious Charitable Endowments, Hyderabad*(3) a scheme had been framed before the Constitution and s. 103(d) of the Madras Hindu Religious and Charitable Endowments Act, 1951, properly construed, gave an operative force to the earlier schemes framed under the Madras Act 2 of 1973 as though they were framed under the Act 19 of 1951. It was not intended by this section that G those schemes must be examined and reframed in the light of the relevant provisions of the Act. In these circumstances it was held that although the scheme in question had not been completely implemented before the Constitution, that was no ground for examining its provision in the light of Art. 19 of the Constitution. The fundamental rights conferred by the Constitution are not retrospective in operation and the observations made by this Court in *Seth Shanti* H *Sarup* v. *Union of India*(4) were not applicable to that case.

(1)[1953] S.C.R. 404.
(2)[1974] 1 S.C.R. 500 at p. 511.
(3) [1964] 8 S.C.R. 252.
(4) A.I.R. 1955 S.C. 624.

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The complaint in the appeals relating to Sch. I Gurdwaras is that the mere publication of a declaration of a consolidated list under sub-s. (2) of s. 3 is by virtue of sub-s. (4) of s. 3 conclusive proof of the fact that the application made under sub-s. (1) of s. 3 was in fact made by a Sikh or any present office holder of the Gurdwara in question specified in Sch. I of the Act that the notification and the consolidated list had been published in the prescribed manner at the headquarters of the District etc. and the fact that the State Government sent by registered post a notice of the claim etc. to each of the persons named in the list as being in possession of any such right etc. i.e. of the requisites of sub-sections (1), (2) and (3) of s. 3. The appellant Dharam Das further complains that sub-s. (5) of s. 7 bars an inquiry into the fact whether the persons who made the application under sub-s. (1) of s. 7 were in fact fifty or more or not, whether such persons were in fact Sikh worshippers of the Gurdwaras or not, and whether each one of them was more than twenty-one years of age or not at the relevant time. The publication of this notification is to be conclusive proof of the compliance with the requirements of sub-ss. (1) to (4) of s. 7. These provisions have been challenged as offending Art. 14 because the impugned presumptions have the effect of taking away the rights which are available to the parties in contesting their suits under s. 38 thus driving a wedge of individious discrimination between cases tried under Part I of the Act on the one hand and those tried under Part II of the Act (s. 38) on the other; that the said presumptions are pieces of substantive law and not merely rules of evidence; and that the presumptions in question have the effect of taking away certain defences which are normally open to a litigant in an ordinary legal proceedings, i.e. the plea as to the *locus standi* of claimant either under sub section (1) of section 3 or under sub-section (1) of Section 7 by pleading and proving that such claimants did not possess the requisite qualifications entitling them to make the claim in dispute. These very contentions were urged before the High Court and negatived by it on a detailed consideration by reference to the case law.

It must not be forgotten that the whole object of the Act was to reduce the chances of protracted litigation in a matter involving the religious sentiments of a large section of a sensitive people proud of their heritage. The long history of the struggle of the Sikhs to get back their religious shrines to which reference has been made in the Sikh historical books make it amply clear that the intensity of the struggle, sacrifice and shedding of blood had made the Government of the day realize that a speedy remedy should be devised and accordingly the procedures prescribed in ss. 3 and 7 have been innovated by the Act. The provision of law which shuts out further enquiry and makes a notification in respect of certain preliminary steps conclusive, does not involve the exercise of any judicial function. It has been so held in *Municipal Board, Hapur* v. *Raghuvendra Kripal and others*(1). Though this case and the case of *Izhar Ahmad Khan and others* v. *Union of India and others*(2) had been cited

(1) A.I.R. 1966 S.C. 693 (2) [1962] Supp. 3 S.C.R. 235.

A before the High Court as supporting the contention that sub-s. (4) of s. 3 and sub-s. (5) of s. 7 are liable to be struck down as they are equivalent to an ex-parte judgment of the legislature given against the petitions on the relevant point, the High Court on an examination of this case held that the ratio supported a contrary conclusion. In *Izhar Ahmed Khan's* case sub-s. (2) of s. 9 of the Citizenship Act B provided that if any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence as may be prescribed in that behalf. Under the above provision rule 3 of Sch. III of the Citizenship Rules, 1956 was framed and it was this rule that was challenged. The Court while up-holding it examined the question as to when it could be said that C the conclusive presumption prescribed by the statute fell within the ambit of the rules of evidence and when it could not be so said. If rebuttable presumptions are within the domain of the law of evidence, irrebuttable presumptions would also be within the domain of that branch of the law. Even though the rule provided for a conclusive presumption, the majority held that it prescribed a rule of evidence. That was a case of a rule made under a statutory provision but sub-s. D (4) of s. 3 and sub-s. (5) of s. 7 of the Act are rules of evidence prescribed by the Legislature which is competent to provide, for irrebuttable and conclusive presumptions not only as mere rules of evidence but even as substantive pieces of law so long as the relevant provisions are within the legislative competence of the Legislature and are not otherwise unconstitutional.

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In *Municipal Board, Hapur's* case also the majority decision of this Court held that when a Legislature says that an enquiry into the truth or otherwise of a fact shall stop at a given stage and that fact is taken to be conclusively proved, no question of discrimination would arise. In fact that case specifically held that the provisions of law which shuts out further enquiry and makes a notification in F respect of certain preliminary steps conclusive, does not involve the exercise of any judicial function. It was pointed out that the Evidence Act is full of such fictions. In fact under sub-s. (2) of s. 3 of the Act it is on the receipt of a list "duly forwarded under the provisions of sub-section (1)" that the State Government is expected to publish a notification, the publication of which is made a conclusive proof of certain facts by sub-s. (4) of s. 3. As pointed out by the G High Court the use of the expression "duly forwarded" in relation to an application under sub-s. (1) of s. 3 shows that the State Government is expected to satisfy itself before the issue of a notification under sub-s. (2) of s. 3, that the application in question is a proper application under sub-s. (1), and has been duly forwarded, which implies that the application has been made by a Sikh or by the present office-holder of a Gurdwara specified in Sch. I, and that in H effect it has fulfilled the requirements of sub-s. (1) of s. 3. We are in agreement with this conclusion of the High Court for the reasons given by it that the provisions of sub-s. (4) of s. 3 and sub-s. (5) of s. 7 do not suffer from any constitutional or other legal impediment.

It was, however, pointed out by the High Court that the above plea was not taken in any of the Writ petitions except that in the petition filed by Dharam Das. A

There seems to have been a divergence of opinion in the Punjab & Haryana High Court in respect of personal notice to be served under sub-s. (4) of s. 7 and even though it was served subsequent to the notification under sub-s. (5) of s. 7 it was none-the-less determined by the rule of conclusive proof. But as the Full Bench of the High Court explained, and we concur with that explanation, once the provision of conclusive presumption under sub-s. (5) of s. 7 was held to be valid and constitutional that question could not be allowed to be agitated or rebutted as that would militate against the conclusive nature of the statutory presumption. Nor having regard to the object of the Act can that provision be considered to be unreasonable as these are only preliminary steps necessary for holding an enquiry which enquiry forms an essential part to the determination of the *lis*. To take advantage of preliminary steps to protract litigation is itself unreasonable. The presumption that the authorities enjoined by the Act to take certain steps will do so has been an irrebuttable presumption and if that does not affect substantial justice being done between the parties to the *lis*, no question of unreasonableness will arise. It may also be pointed out that before us it was contended that no notice was served on Bhag Singh. The Respondents' Advocate, however, wanted to produce the notice on which Bhag Singh had signed in token of his having received it, but that is a matter which we cannot entertain in this appeal. B C D E

It is also argued in Dharam Das's case that the right conferred by s. 8 of the Act on any hereditary office-holder confers that right only on a person who could trace his office as a hereditary office-holder from an unbroken line of Gurus to Chela and if there is any hiatus in that, such as for instance, the death of a Guru before he nominates his Chela or where a Guru marries and is disqualified and another person is appointed as a Mahant that person is not given the right to challenge the notification under sub-s. (3) of s. 7. This contention, in our view, is unjustified for the simple reason that "hereditary office" has been defined in clause (iv) of sub-s. (4) of s. 2 as meaning "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. If a hereditary office-holder within the meaning of clause (iv) of s. 2(4) cannot be found then s. 8 provides for a challenge to the notification under sub-s. (3) of s. 7 by 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 the Act a resident of a police station area in which the gurdwara is situated. Surely, if as is contended the Bhekh of a Sampradaya is entitled to nominate a successor where a Mahant could not nominate his succes- F G H

A sor, we presume that the Bhekh will have more than twenty worshippers who could challenge the notification. We cannot assume that the Bhekh which nominated the Mahant would be of less than twenty worshippers. If it had lesser number of worshippers than 20, it could hardly be called a Bhekh. There is, in our view, nothing unreasonable or discriminatory in this provision. As to whether a person is a hereditary office-holder at the time of the presentation of the petition B under sec. 8, will always be a case for the Tribunal to determine having regard to well-established rules of evidence by which Courts determine these matters. The assumption that if there is a break before 100 years of a succession between a Guru and Chela, the present incumbent will not be considered as a hereditary office-holder is purely hypothetical and this Court will not venture to express its C view on such an assumption. It is for the Tribunal to apply the law for determining as to whether the person who challenges the notification is a hereditary office-holder and has *locus standi* to do so.

In Civil Appeal No. 1222 of 1969 the filing of the petition within ninety days prescribed under s. 8 is challenged as unreasonable. The period of limitation is by its very nature to some extent arbitrary but it has never been urged that the period prescribed in the Limita- D tion Act is violative of Art. 14 of the Constitution, nor if such a position is taken can it be sustained. It is an elementary principle of justice that a person having a right should not sleep over it and must come forward as quickly as possible. The contingency that if a Mahant dies within a period of 90 days after the publication of the notification under sub-s. (3) of s. 7 without nominating his successor there would be no time for the Bhekh to nominate the successor E to the office or for the Bhekh to call a meeting to elect a successor of properties attached to the Gurdwara was forwarded, a declaration do not make the provision invalid. Ninety days is sufficient time for twenty or more worshippers to get together to challenge the notification which is designed to declare the gurdwara in which they are worshipping to be a Sikh Gurdwara and which offends their belief and worship. F

In our view there is no substance in any of the appeals filed before us. We agree with the conclusion arrived at by the Full Bench of the Punjab & Haryana High Court and dismiss all these appeals, but in the circumstances, without costs.

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KHANNA, J.—The short question which arises in civil appeal No. 1251 of 1969 is whether section 3(4) of the Silkh Gurdwaras Act, 1925 (hereinafter referred to as the Act) is violative of the appellant's fundamental rights under article 19(1)(f) and article 26 of the Constitution.

H Gurdwara Sahib Panjore, Pahli Patshahi, situate in Panjore is entered at item No. 249 in the first Schedule to the Act. After a list of properties attached to the Gurdwara was forwarded, a declaration was issued under section 3(2) of the Act on May 24, 1960 that the

above mentioned Gurdwara was a Sikh Gurdwara. By a separate notification a consolidated list of rights, title and interest claimed to belong to the Gurdwara was also published. In reply to a notice issued to him, Lachhman Dass appellant in civil appeal No. 1251 of 1969 filed petition under section 5 of the Act claiming rights and interest in the above mentioned property. The appellant's petition was forwarded to the Sikh Gurdwara Tribunal. In the course of the proceedings before it, the Tribunal declined to frame an issue whether the Gurdwara in question was a Sikh Gurdwara in view of section 3(4) of the Act. The appellant then submitted an application for amending his petition so as to assert that the provisions of the Act were violative of his fundamental rights. The application of the appellant was rejected by the Tribunal on the ground that it was not germane to the inquiry. The appellant thereupon filed a writ petition in the High Court under article 226 of the Constitution on the allegation that he was an Udasi faqir and that the shrine in question was an Udasi institution and not a Sikh Gurdwara. He prayed that a number of provisions of the Act might be declared to be violative of the appellant's rights under the Constitution. The petition was resisted by the State of Punjab and the Shiromani Gurudwara Parbandhak Committee (SGPC). The petition was ultimately decided by a Full Bench and the contentions of the petitioner were rejected by the majority.

A B C D

The contention which has been advanced by Mr. Tarkunde on behalf of Lachhman Das appellant is that section 3(4) of the Act is violative of the appellant's fundamental rights under article 19(1)(f) and article 26 of the Constitution. Section 3(4) reads as under :

> "(4) The publication of a declaration and of a consolidated list under the provisions of sub-section (2) shall be conclusive proof that the provisions of sub-sections (1), (2) and (3) with respect to such publication have been duly complied with and that the Gurdwara is a Sikh Gurdwara, and the provisions of Part III shall apply to such Gurdwara with effect from the date of the publication of the notification declaring it to be a Sikh Gurdwara."

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It is urged that the conclusive nature of the declaration under the above provision operates as a denial of opportunity to the appellant to prove that the institution in question is an Udasi institution and not a Sikh institution, and as such, amounts to an unreasonable restriction on the appellant's rights under article 19(1)(f) and article 26.

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At the hearing of the appeal, learned counsel for the State of Punjab as well as for that of SGPC have stated that it is permissible to make a claim that the property mentioned in the second notification under section 3(2), including the property described to be the Gurdwara itself, in respect of item No. 249 in the first Schedule belongs to an Udāsi institution.

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It is plain that if the above stand taken on behalf of the respondents were to be accepted, the basis of the grievance of the appellant that there is denial of opportunity to him to establish his claim that

A the institution in question is an Udasi institution would disappear. It is also obvious that if the interpretation sought to be placed upon section 3 of the Act by the learned counsel for the respondents were accepted, section 3(4) would not be violative of the appellant's rights under article 19(1)(f) and article 26.

Mr. V. S. Desai on behalf of the State of Punjab and Mr. Patel
B on behalf of SGPC point out that the above interpretation of section 3 is in consonance with the view taken by Coldstream J., who was the President of the Sikh Gurdwara Tribunal, in his order dated January 29, 1929 relating to Gurdwara Rupar mentioned at sl. No. 233 of the first Schedule to the Act as well as a Division Bench consisting of Broadway and Harrison JJ. of Lahore High Court in the case of (*Mahant*) *Davinder Singh* v. *Shromani Gurdwara Parbandhak Com-*
C *mittee & Anr.*(1) Coldstream J. observed in his order :

> "The sub-section itself certainly does not expressly authorise the Local Government to decide what building is referred to in the Schedule nor take away from the Tribunal jurisdiction to decide this question. The 'Gurudwara itself' is clearly one of the properties to be claimed on behalf of the Gurudwara under section 3(1). Petitions contesting these
D claims are sent to the Tribunal under section 14, and it is for the Tribunal to decide what part of the property, if any, is the 'Gurdwara itself' in which no right, title or interest can be claimed as private property."

The Division Bench observed in the case of (Mahant) Davinder Singh as under :

E "The question, therefore, is narrowed down to this : can the correctness of the notification under section 5(3) be challenged; and if so, can any individual or religious body claim any portion of the area described as a Gurudwara by the SGPC, and if it can claim any portion, can it claim the whole ?

F The answer to the first portion is, I think, that so far as the notification under section 5 deals with claims to Gurdwaras it is meaningless inasmuch as there can be no such claim. The test is not whether a man admits that there is a Gurdwara or not but whether he claims the Gurdwara as such, *e.g.* supposing there be a dispute between two sets or branches of Sikhs they cannot put in rival claims to the
G Gurdwara as a Sikh Gurdwara. Any body may put in a claim provided he avoids describing it as a claim to a Gurdwara. He may claim, in other words, that what the SGPC or any other religious body declares to be a Sikh Gurdwara form part of his private property or a part of the endowment of any institution. This is the view clearly taken by the officials responsible for the notification when they ex-
H cluded 'H' (a corner of the property had been marked 'H' in the plan annexed to the Government notification under section 3(2) of the Act.

(1) A.I.R. 1929 Lahore 603.

> Now, if he can claim a portion is there any reason why he cannot claim the whole? The test suggested by Mr. Petman is impossible and unworkable and, inasmuch as Government has not seen fit to lay down that the Schedule is conclusive proof that there is a Gurdwara at each of the places entered therein, or that a Gurdwara is a place notified as such, there is no reason, in my opinion, why any individual should not come forward and claim the whole area described and defined in the notification; provided always that he abstains from using the word 'Gurdwara' as describing and forming the subject-matter of his claim."

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Narula J. (as he then was) speaking for the majority of the Full Bench in the judgment under appeal relied upon the above observations and added :

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> "The judgment of the Division Bench of the Lahore High Court clearly supports the view that though section 5(1) bars any claim in respect of the Gurdwara itself, evey inch of the land and every part of the building of what may be described and claimed as the physical Gurdwara can be the subject-matter of a claim under section 5(1) and of adjudication by the Tribunal. This also shows that the word 'Gurdwara' as used in section 5(1) was understood by the Lahore High Court to be an institution as distinguished from the physical building popularly called the Gurdwara."

D

There is a presumption of the constitutional validity of a statutory provision. If a provision like section 3(4) of the Act of a local enactment has been on the statute book for about half a century and a particular construction has been placed upon it by the High Court of the State which sustains the constitutional validity of the provision, this Court, in my opinion, should lean in favour of the view as would sustain the validity of the provision and not disturb the construction which has been accepted for such a length of time.

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Reference in this context may be made to the case of *Raj Narain Pandey & Ors.* v. *Sant Prasad Tewari & Ors.*(1) wherein this Court observed :

> "In the matter of the interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view would not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of stare decisis can be aptly invoked in such a situation. As observed by Lord Evershed M. R. in the case of *Brownsea Haven Properties* v. *Poole Corpn.* (1958) Ch 574, there is well-established authority for the view that a decision of long standing on the basis of which

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(1) A.I.R. 1973 S.C. 291.

A many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior court not strictly bound itself by the decision."

I would, therefore, hold that section 3(4) is not violative of the appellant's rights under article 19(1)(f) and article 26.

B Question has been raised about the *locus standi* of the appellant to file petition under article 226 of the Constitution before the High Court. In this respect I find that in the notice issued under sub-section (3) of section 3 of the Act the appellant was mentioned to be in possession of the property in dispute. The appellant made a claim about the property in dispute and the same is pending before the Tribunal. During the pendency of the proceedings before the C Tribunal the appellant wanted to agitate the question that the property in dispute was an Udasi institution and not a Sikh Gurdwara. The Tribunal declined in view of section 3(4) of the Act to frame an issue on the question as to whether the Gurdwara in question was a Sikh Gurdwara. According to the appellant the denial of opportunity to him that the property in dispute was an Udasi institution and not a Sikh Gurdwara was violative of his fundamental rights. These facts, D in my opinion, were sufficient to clothe the appellant with a right to file the petition before the High Court. Whether the appellant would ultimately succeed in establishing his claim would be a matter for the Tribunal to adjudicate upon. The question as to what would be the effect of the different Firmans on the rights of the appellant relates to the merits of his claim and the same can be gone into only in the proceedings before the Tribunal and not in writ proceedings before the E High Court nor in appeal in this Court against the judgment of the High Court dismissing the writ petition.

So far as the other two appeals are concerned, they relate to properties about which notification has been issued under section 7 of the Act. The properties covered by these two appeals have not been included in the first Schedule to the Act. I agree with my learned brother Jaganmohan Reddy J. that none of the impugned provisions F has been shown to be violative of the constitutional rights of the appellants in these two appeals.

I further agree that all the three appeals should be dismissed and that the parties be left to bear their own costs of the appeals.

V.P.S. *Appeals dismissed.*