S.G.P. COMMITTEE

v.

M.P. DASS CHELA (DEAD) BY LRS.

APRIL 30, 1998

[G.N. RAY AND M. SRINIVASAN, JJ.]

Code of Civil Procedure, 1908: Section 98(2) and (3).

Appeal-Division Bench—Difference of opinion between two Judges—Reference to a third Judge—Requirement that difference of opinion should be on a point of law—Held not applicable to High Courts governed by Letter patent—In such High Courts matter can be referred to a third Judge on a difference of opinion between two Judges even on a point of fact.

Practice and Procedure :

Appeal—Difference of opinion between two Judges—Reference to a third Judge—Third Judge neither writing a detailed judgment nor referring to evidence elaborately—Merely concurring with one Judge—Validity of.

Sikh Gurudwara Act, 1925: Sections 2(4) (iv), 7(1), 8, 14(1), 16(2) and 34.

Religious Institution—Gurudwara or Dera of Udasi Sadhus—Determination of—Held on facts that institution in question not a Gurudwara—Essential requirements for proving that Institution was a Gurudwara—Onus to prove—Lies on the person who asserts that the Institution is Gurudwara.

Hindu Law—Mahant—Hereditary office—Determination of.

Some worshippers of Gurudwara Dera Lang Shri Guru Granth Sahib of Village Sardargarh, District Bhatinda filed an application under Section 7(1) of the Sikh Gurudwara Act, 1925. Pursuant thereto the Governor of Punjab issued a notification dated 7th August, 1984 under Section 7(8) of the Act. P, a Mahant, filed an application under Section 8 which was forwarded to the Sikh Gurudwaras Tribunal under Section 14(1). The Mahant claimed that the Institution was not a Sikh Gurudwara but is was a Dera of Udasi Sadhus.

The Tribunal held that (i) Mahant 'P' was not a hereditary office holder

A and had no locus standi to maintain a petition, (ii) the Institution in question was Sikh Gurudwara within the ambit of Section 16(2)(iii) of the Act.

'P' preferred an appeal under section 34 of the Act before the High Court of Punjab and Haryana. One of the Judges constituting the Division Bench agreed with the Tribunal and held against the appellant. The other B Judge took a contrary view holding that Mahant was a hereditary office holder and that the Institution was not a Sikh Gurudwara. As there was a difference of opinion between the two Judges of the Division Bench, the matter was referred to a third Judge who concurred with one of the Judges of the Division Bench that appeal of the Mahant should be allowed. C Consequently appeal of the Mahant was allowed and order of the Tribunal was set aside. Shiromani Gurudwara Prabandhak Committee preferred appeal before this Court.

In Appeal to this Court it was contended on behalf of the appellant that (1) the Reference to the third Judge was violative of Section 98(2) of the Code D of Civil Procedure, 1908 because no point of law was involved in it; (2) the Judgment of the third Judge should be set aside in limine because he has not considered the materials on record independently and has only expressed his concurrence with one Judge without giving any reasons therefore; (3) there was overwhelming evidence on record to prove that the institution was a Sikh Gurudwara; and (4) under section 2(4) (iv) of the Act there should E be a devolution by hereditary succession or nomination by the office holder for the time being. The nomination of a Chela by the bhek after the death of office holder will not fall within the scope of succession; nor can it be said to be hereditary succession.

F Dismissing the appeal, this Court

HELD: 1. The reference to the third Judge in this case on a difference of opinion between two Judges of the Division Bench is not in any way vitiated and does not suffer from any infirmity. As per sub-section (3) nothing in Section 98 C.P.C. shall be deemed to alter or otherwise affect any provision of the Letters Patent of any High Court. Admittedly the High Court of Punjab G has Letters Patent. Clause 26 of the Letters Patent provides that in the event of difference of opinion between two Judges as to the decision to be given on any point it shall be heard upon that point by one or more of the other Judges and the case must be decided on the basis of the majority opinion.

[125-F-H; 126-A-B]

H *(Immidisetti) Dhanaraja and another* v. *Motilal Daga and another,*

AIR (1929) Madras 641; *M.D. Puri & Sons* v. *Lyons Cinema Ltd.*, AIR (1933) Lahore 648; *Pritam Dass* v. *Mst. Akbari and other,* AIR (1973) Madhya Pradesh 224; *Sushila Kesarbhai and others* v. *Bai Lilavati and others,* AIR (1975) Gujarat 39; *Rulia Devi and others* v. *Raghunath Prasad,* AIR (1979) Patna 115 and *Smt. Jayanti Devi* v. *Sri Chand Mal Agrawal and others,* AIR (1984) Patna 296, approved.

Mahant Swarn Dass v. *Shiromani Gurdwara Prabandhak Committee,* AIR, (1981) Punjab & Haryana 110, referred to.

2. No doubt the Judgment of the third judge is not a detailed one and it does not refer to the evidence elaborately but he has referred to the crux of the matter and expressed his opinion concurring with one of the Judges of the Division Bench. While dealing with the first question with regard to the locus standi of Mahant the third Judge has pointed out that succession to Mahantship was from guru to chela and therefore he was a hereditary office holder. Similarly on the second question, the third Judge has made particular reference to the title deed of the Institution and on the basis of the entries therein held that the Institution was not a Sikh Gurdwara. Hence, the contention that the judgment of the third Judge should be set aside is not acceptable. [125-C-E]

Mahant Dharam Dass Chela Karam Prakash v. *Shiromani Gurudwara Prabandhak Committee,* AIR (1987) Punjab & Haryana 64, referred to.

3. Section 2(4) (iv) of the Act defines hereditary office to mean an office the succession to which before the first day of January 1920 or in the case of extended territories before the first day of November 1956, as the case may be, devolve according to hereditary rights or by nomination by the office-holder for the time being and hereditary office holder means the holder of the hereditary office. There is ample evidence on record in this case to the effect that office of Mahant devolves from guru to chela. If a Mahant has several chelas and does not nominate one of them to be the next office-holder the Bhek congregates and nominates one of the chelas to be the next Mahant. This customs or usage as it may be called has been in vogue with reference to this Institution for quite a long time. If succession to the office of Mahant is in accordance with a particular scheme or a definite usage or custom, it will be a case of hereditary succession.

[126-F-H; 128-A]

4. The matter could be viewed in a different manner also. When the Mahant dies the right to the office devolves admittedly on his chelas. It is

A not in dispute in this case that it is only a chela of the previous mahant who can succeed him as a mahant. The right of succession devolves on all the chelas and one among them who is nominated to be the next mahant by the Bekh is none the less a person on whom the right to succession has devolved. Thus he is also a hereditary office holders. It is in evidence that normally the seniormost chela will be nominated unless he is found to be unfit. In the B facts and circumstances of the case P was a hereditary office holder and the view taken by the Judges is correct. [128-E-G]

Amar Dass Chela Jai Ram Das of Nabha v. *The Shiromani Gurudwara Prabandhak Committee,* **AIR (1978) Punjab & Haryana 273 and** *Mahant Dharam Dass Chela Karam Prakash* v. *Shiromani Gurudwara Prabandhak* C *Committee,* **AIR (1987) Punjab & Haryana 64 (F.B.), approved.**

Mahant Tehal Dass v. *Shiromani Gurudwara Prabandhak Committee,* **IL.R. (1979) 2 Punjab & Haryana 131, distinguished.**

D **5. Under Section 16(2), two conditions must be satisfied; (1) the Institution was established for use by Sikhs for purpose of public worship; (2) the Institution was used for such public worship by Sikhs both before and at the time of the presentation of the petition under Section 7 (1) of the Act. Unless both conditions are fulfilled, the Tribunal cannot declare the Institution to be Sikh Gurudwara. In this case it is evident from record that : (a) The** E **original grant was to an individual who belonged to udasi sect; (b) All Mahants of this institution have been Udasi Sadhus; (c) Succession to Mahantship is from Guru to chela; (d) Several Samadhis exist on the property which are objects of worship; (e) Shradhs are performed and Ram Nawami festivals are celebrated. Gola Sahib and Murti of Baba Siri Chand are** F **worshipped; (f) There is no Nishan-Sahib; and (g) no proof of public worship by sikhs. [129-A-B; 130-A-E]**

The institution in question is not Sikh Gurudwara. The Order of the Tribunal has been rightly set aside by the High Court. [131-G]

6. It is quite evident from the language of Section 16(2) that the burden G **of proving an institution to be a Sikh Gurudwara is on the person who asserts the same. Significantly in this case, none of the sixty persons who presented the petition under Section 7(1) has chosen to enter the witness box and give evidence in support thereof. There is no explanation for the same. The oral evidence adduced on behalf of the appellant has not inspired even** H **the Tribunal. All that is relied on by the appellant is the entry in Jamabandi**

Register and mutation register. The entries in those registers are to the effect that Dera Guru Granth Sahib is the owner. Those entries can hardly prove either the purpose of establishment of the institution or the use thereof before and at the time of the petition under Section 7(1) of the Act.

[129-C-E]

Lachhman Das and others **v.** *Atma Singh and others,* **AIR (1935) Lahore 666;** *Shiromani Gurudwara Parbandhak Commitee and others* **v.** *Harcharan Singh,* **AIR (1934) Lahore 1 and** *Bawa Ishar Dass and others* **v.** *Dr. Mohan Singh and others,* **AIR (1939) Lahore 239, approved.**

Pritam Das Mahant **v.** *Shiromani Gurudwara Parbandhak Committee,* **[1984] 2 SCC 600 and** *Sikh Gurudwara Parbandhak Committee Amritsar* **v.** *Mahant Kirpa Ram and others,* **[1984] 2 SCC 614, relied on.**

Hem Singh **v.** *Basant Das,* **AIR (1936) P.C. 93, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2511 of 1998.

From the Judgment and Order dated 13.5.88 of the Punjab & Harayana High Court in F.A.O. No. 189 of 1972.

H.D. Singh, C. Jayraj and D.D. Sharma for the Appellant.

P.C. Jain, Harbans Lal and A.K. Mahajan for the Respondents.

The Judgment of the Court was delivered by

SRINIVASAN, J. Leave granted.

2. This proceeding had its origin in an application by 60 persons claiming to be worshippers of Gurudwara Dera Lang Shri Guru Granth Sahib situate within the revenue estate of village Sardargarh, Tehsil and District Bahatinda under Section 7(1) of the Sikh Gurudwara Act 1925 (hereinafter to be referred to as the 'Act'). Under the provisions of sub-section (8) of Section 7 of the Act, the Governor of Punjab issued a Notification No. 1301- GP dated 7th August 1984 published in the Government gazette alongwith a list of rights, titles and interests in properties said to belong to the said Gurudwara. One Mahant Puran Dass filed a petition under Section 8 of the Act with the State Government which was forwarded under Section 14 (1) of the Act to the Sikh Gurudwaras Tribunal, Punjab at Chandigarh. Mahant Puran Dass claimed that the institution was not a Sikh Gurudwara but it was a Dera of Udasi

A Sadhus. The Tribunal impleaded the appellant herein as party respondent in the said petition. Evidence as adduced by both the parties. The Tribunal held that Mahant Puran Dass was not a hereditary office holder and had no locus standi to maintain a petition under Section 8. The Tribunal also held that the institution in question is a Sikh Gurudwara within the ambit of Section 16 (2)(iii) of the Act.
B

3. Aggrieved thereby, Mahant Puran Dass filed an appeal under Section 34 of the Act before the High Court of Punjab & Haryana. As per the requirement of the said Section the appeal was heard by two learned Judge of the Court. One of them, namely, Justice K.S. Tiwana agreed with the
C Tribunal and held against the appellant. The other learned Judge, namely, Justice Yadav took a contrary view and held that the appellant in the High Court was a hereditary office holder and that the Institution in question was not a sikh gurudwara. In view of the difference of opinion, the case was referred to a third Judge. Justice J.V. Gupta concurred with the opinion expressed by Justice Yadav and held that the appeal should be allowed.
D Consequently the appeal was allowed and the order of the Tribunal was set aside. It should be mentioned here that during the pendency of the said appeal, Mahant Puran Dass died and in his place Mahant Bhagwant Dass who was his chela came on record as legal representative.

E 4. The appellant has preferred this appeal challenging the correctness of the judgment of Justice Gupta concurring with that of Justice Yadav. During the pendency of this proceeding the respondent Mahant Bhagwant Dass died and in his place Mahant Pritam Dass has been substituted.

F 5. Learned counsel for the appellant has advanced three main contentions:

(a) The matter should not have been referred to a third Judge in the High Court and such reference is violative of Section 98 (2) of the Code of Civil Procedure. According to him there was no point of law which arose for
G consideration and in any event no point of law was framed or stated by the learned Judges who expressed different opinions. In as much as the matter was referred to a third Judge without following the procedure in Section 98 (2) C.P.C. the reference to the third Judge was a nullity and the appeal before the High Court ought to have been dismissed as there was no majority taking
H a view different from that of the Tribunal.

(b) Secondly, it is argued that Mahant Puran Dass was a hereditary office holder and had no locus standi to maintain the petition under Section 8 of the Act. A

(c) The third contention is that the Institution is a Sikh Gurudwara and there is overwhelming evidence on record to prove the same. B

6. At the outset, learned counsel for the appellant submitted that even without considering any of the above three contentions, the judgment of the third Judge, namely, Justice Gupta deserves to be set aside in limine as he has not considered the materials on record independently and he has only expressed his concurrence with the judgment of Justice Yadav without giving C any reason therefor. No doubt the judgement of Justice Gupta is not a detailed one and it does not refer to the evidence elaborately but the learned Judge has referred to the crux of the matter and expressed his opinion concurring with Justice Yadav. While dealing with the first question with regard to the locus standi of Mahant Puran Dass the learned Judge has referred to the principle laid down by a Full Bench of the Punjab & Haryana High Court in D *Mahant Dharam Dass Chela Karam Prakash* v. *Shiromani Gurdwaran Prabandhak Committee,* AIR (1987) Punjab & Haryana 64 and pointed out that succession to Mahantship was from guru to chela and therefore Puran Dass was a hereditary office holder. Similarly on the second question, the learned Judge has made particular reference to Ex. R-14 which is the crucial E document being the title deed of the Institution and on the basis of the entries therein held the Institution is not a Sikh Gurudwaras. Hence, the criticism made by the learned counsel for the appellant is not acceptable.

7. As regards the applicability of Section 98 (2) C.P.C. , it is rightly pointed out by learned counsel for the respondent that the contention was F not raised at any stage before the arguments in this appeal. It has not been raised even in the Special Leave Petition. There is also no merit whatever in the said contention. The provisions of Section 98 (3) have obviously been overlooked by learned counsel for the appellant. As per that sub-section, nothing in Section 98 shall be deemed to alter or otherwise affect any provision G of the Letters Patent of any High Court. Admittedly the High Court of Punjab has Letters Patent. Clause 26 of the Letters Patens provides that in the event of difference of opinion between two Judges as to the decision to be given on any point it shall be heard upon that point by one or more of the other Judges and the case must be decided on the basis of the majority opinion. Our attention has been drawn to the judgment of the High Court of Punjab H

A & Haryana in *Mahant Swarn Dass* v. *Shiromani Gurdwara Prabandhak Committee,* AIR (1981) Punjab & Haryana 110 and the following rulings of various High Courts taking the view that the provisions of Section 98, C.P.C. are not applicable to High Courts which are governed by Letters Patent and a matter can be referred to a third Judge on a difference of opinion between two Judges even on a point of fact:

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(i) *(Immidisetti) Dhanaraja and another* v. *Motilal Daga and another,* AIR (1929) Madras 641;

(ii) *M.D. Puri & Sons* v. *Lyons Cinema Ltd.*, AIR (1933) Lahore 648;

C (iii) *Pritam Dass* v. *Mst. Akbari and other,* AIR (1973) Madhya Pradesh 224;

(iv) *Sushila Kesarbhai and others* v. *Bai Lilavati and others,* AIR (1975) Gujarat 39;

D (v) *Rulia Devi and others* v. *Raghunath Prasad,* AIR (1979) Patna 115; and

(vi) *Smt. Jayanti Devi* v. *Sri Chand Mal Agrawal and others,* AIR (1984) Patna 296. We agree with those rulings and hold that the reference to Justice Gupta in this case on a difference of opinion between Justice Tiwana E and Justice Yadav is not in any way vitiated and does not suffer from any infirmity. There is no merit whatsoever in the first contention of the learned counsel for the appellant which is hereby rejected.

8. The second question to be considered is whether Mahant Puran Dass F was a hereditary office holder. Section 2 (4)(iv) of the Act defines hereditary office to mean an office the succession to which before the first day of January 1920 or in the case of extended territories before the first day of November 1956, as the case may be, devolved according to hereditary rights or by nomination by the office-holder for the time being and hereditary office holder means the holder of the hereditary office. There is ample evidence on G record in this case to the effect that office of Mahant devolves from guru to chela. If a Mahant has several chelas and does not nominate one of them to be the next office-holder the Bhek congregates and nominates one of the chelas to be the next Mahant. This Custom or usage as it may be called has been in vogue with reference to this Institution for quite a long time. Ex. R-H 14 itself contains the following Pedigree table :

By Caste : Sadh Udasi :

!

Khem Dass

!

Amar Dass

!

Jodha Ram

!

Harsewak Ram

!

Gian Dass

!

Jawahar Dass

After Jawahar Dass his chela Puran Dass succeeded. When he passed away, his chela Bhagwant Dass was nominated and on his death his chela Pritam Dass became the Mahant. Thus the office of Mahant was devolving from guru to chela in accordance with an established usage and custom.

9. The necessary averments have been clearly made in Paragraphs 3 and 4 of the petition filed by Puran Dass under Section 8 of the Act. In support of the said pleading, nine witnesses have been examined including Puran Dass. That evidence has been accepted by Justice Yadav and Justice Gupta. We do not find any error in their doing so. Nothing has been elicited in the cross-examination so as to discredit their evidence. The only argument advanced on behalf of the appellant is that the requirement of Section 2(4)(iv) are not satisfied in the present case. According to learned counsel under the said Section there should be a devolution by hereditary succession or nomination by the office holder for the time being. According to learned counsel, the nomination of a chela by the bhek after the death of office holder will not fall within the scope of the succession; nor can it be said to be

A hereditary succession.

10. We are unable to accept the said contention. It has been held in several cases that if succession to the office of Mahant is in accordance with a particular scheme or a definite usage or custom, it will be case of hereditary succession.

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11. In *Amar Dass Chela Jai Ram Dass of Nabha* v. *The Shiromani Gurdwara Prabandhak Committee,* AIR (1978) Punjab & Haryana 273, a Division Bench of the High Court to which Justice Tiwana was a party observed that appointment by Bhek could be one of the methods of hereditary succession.

C

In *Mahant Dharam Dass Chela Karam Prakash* v. *Shiromani Gurdwara Prabandhak Committe,* AIR (1987) Punjab & Haryana 64 (F.B.) a Full Bench of the Punjab & Haryana High Court held that the Mahantship had devolved from guru to chela in that case and it was hereditary succession and the office

D holder was hereditary office holder.

12. The matter could be viewed in a different manner also. When the Mahant dies the right to the office devolves admittedly on his chelas. It is not in dispute in this case that it is only a chela of the previous mahant who can succeed him as a Mahant. The right of succession devolves on all the

E chelas and one among them who is nominated to be the next mahant by the Bekh is none the less a person on whom the right to succession has devolved. Thus he is also a hereditary office holder. It is in evidence that normally the seniormost chela will be nominated unless he is found to be unfit.

13. Learned counsel for the appellant has drawn our attention to the

F judgment of the *Full Bench or Five Judge of the Punjab & Haryana High Court in Mahant Tehal Dass,* v. *Shiromani Gurdwara Prabandhak Committee,* I.L.R. (1979) 2 Punjab & Haryana 131. It has been held in that case that in a petition under Section 8, the Tribunal has to decide in the first instance the locus standi of the petitioner and hold whether the petition is

G maintainable or not. The said decision does not help the appellant in his contention that Puran Dass was not a hereditary office holder. In the fact and circumstances of the case we hold that Puran Dass was a hereditary office holder and the view taken by Justice Yadav and Justice Gupta is correct.

14. The next question to be considered is whether the Institution is a

H Sikh Gurudwara. The Tribunal has held that the Institution satisfies the

requirements of S.16 (2)(III) of the Act. Under that sub-section two conditions must be satisfied : (1) The Institution was established for use by Sikhs for purpose of public worship; (2) The Institution was used for such public worship by Sikhs both before and at the time of the presentation of the petition under Section 7 (1) of the Act. Unless both conditions are fulfilled, the Tribunal cannot declare it to be Sikh Gurudwara. A B

15. In *Lachhman Das and others* v. *Atma Singh and others,* AIR (1935) Lahore 666 it was held that both matters should be proved separately and when user of the Institution only has been established, it is not a necessary inference that it was established for the purpose of public worship by the Sikhs. C

16. It is quite evident from the language of Section 16 (2) that the burden of proving an institution to be a Sikh Gurudwara is on the person who asserts the same. Significantly in this case, none of the sixty persons who presented the petition under Section 7 (1) has chosen to enter the witness box and give evidence in support thereof. There is no explanation for the same. The oral evidence adduced on behalf of the appellant has not inspired even the Tribunal. All that is relied on by the appellant is the entry in Jamabandi Register and mutation register. The entries in those registers are to the effect that Dera Guru Granth Sahib is the owner. Those entries can hardly prove either the purpose of establishment of the institution or the use thereof before and at the time of the petition under Section 7(1) of the Act. Tiwana, J. has himself pointed out that the appellant herein who was the respondent before him was not in a position to furnish any direct evidence that it is a Sikh Gurudwara. D E

17. On the other hand, the entires in Ex. R-14, containing the proceedings of the Settlement commissioner held in 1903 prove beyond doubt that the institution is not a Sikh Gurudwara. Column 2 thereof shows that the original donor was Sardar Jodh Singh Saboke and the donee was Khem Dass Faqir Udasi. Column 9 refers to Guru Granth Sahib (Dera Lang) under the management of Jawahar Dass, Chela Gain Dass Udasi of the village. Column 20 contains the report of the Superintendent. That shows that the muafi was granted by Sardar Jodh Singh of Sobo for expenses of the building of Sawara Guru Granth Sahib. The opinion of the Assistant Settlement Officer is set out in Column 21. The order of the Settlement Commissioner dated 1.5.1903 in Column 22 reads thus : "*Muafi as detailed continued to the Lang Dera in the name of the custodian for the time being*". Thus it is clear that the institution was F G H

not established for use by sikhs.

18. Learned counsel for the appellant submits that Ex. R-13 is earlier in point of time to Ex. R-14 and the entries therein support the appellant's case. We find that Ex. R-13 does not contain any relevant matter. Ex. R-14 evidences the proceedings of Settlement Commission which is an Act of State and in the face of it, the documents relied on by the appellant do not have any value.

19. In a perusal of the records, we find that the following facts are proved:

(a) The original grant was to an individual who belonged to udasi sect. (Ex. R-14).

(b) All Mahants of this institution have been Udasi Sadhus (Para 16 of the Tribunal's order).

(c) Succession to Mahantship is from Guru to Chela.

(d) Several Samadhis exist on the property which are objects of worship. (PW-9 and PW-16).

(e) Shradhs are performed and Ram Navami festivals are celebrated. Gola Sahib and Murti of Baba Siri Chand are worshipped. (PW-10).

(f) There is no Nishan-Sahib.

(g) No proof of public worship by sikhs.

20. The appellant relies on the evidence that the Guru Granth Sahib is worshipped. That circumstance alone is not helpful to the appellant. It is contended by the appellant that the oral evidence of the witnesses examined by the respondent were disbelieved on some points by Yadav, J. and they ought to have been disbelieved completely. There is no substance in the contention. It is open to any Court to sift the deposition of any witness and accept a part thereof while rejecting the other part.

21. In *Shiromani Gurudwara Prabandhak Committee and others* v. *Harcharan Singh,* AIR (1934) Lahore 1, a Division Bench held that where a grant was made to an Udasi sadh so that he might found a village in a desolute place and establish a langar for feeding sadhus, the land or muafi was not granted to a Gurudwara.

22. In *Bawa Ishar Dass and others* v. *Dr. Mohan Singh and others* AIR

(1939) Lahore 239, the Court found that mahants of the institution were all along udasis and ceremonies observed by udasis and Hindus were performed. On those facts, the Court held that it was not a sikh gurudwara and that the mere fact that Guru Granth Sahib was read there did not make it a Sikh Gurudwara.

23. In *Pritam Das Mahant* v. *Shiromani Gurudwara Parbandhak Committee,* [1984] 2 S.C.C. 600 this Court held that the central object of worship in a gurudwara is Shri Guru Granth Sahib and sine qua non is that Guru Granth Sahib should be established there and worshipped by the congregation and that there should be a 'Nishan-Sahib'. The Court held that the following aspects themselves negatived the institution being a gurudwara.

(a) there were samadhis on the premises;

(b) there were idols and photos of Hindu deities as also of Baba Siri Chand;

(c) Bhai Bhagtu was an udasi saint and;

(d) Succession was from guru to chela.

24. In *Sikh Gurudwara Parbandhak Committee Amritsar* v. *Mahant Kirpa Ram and others* :, [1984] 2 S.C.C. 614 this Court held that where an Institution was established by a follower of udasi sect to commemorate the memory of his guru and succession of mahantship was guru to chela, the institution was not a sikh institution. The Bench has elaborately dealt with the requirements of Section 16(2) (iii) of the Act and pointed out the distinction between the sikhs and udasis. The Bench quoted with approval a passage in the judgment of the Privy Council in *Hem Singh* v. *Basant Das*, AIR (1936) P.C. 93 wherein the distinction between udasis and sikhs was clearly recognized. The Bench pointed out that while the udasis generate the sikh scriptures they also keep the old Hindu practices.

25. On analysing the materials on record in this case, we find that the institution in question is not Sikh Gurudwara. The order of the Tribunal has been rightly set aside by the High Court. There is no merit in this appeal and it is hereby dismissed. There will be no order as to costs.

T.N.A. Appeal dismissed.