Mahant Dharam Das And Ors. vs The State Of Punjab And Ors. on 14 January, 1975

Equivalent citations: AIR1975SC1069, (1975)1SCC343, [1975]3SCR160

Author: H.R. Khanna

Bench: A.N. Ray, H.R. Khanna, P. Jaganmohan Reddy, P.K. Goswami

JUDGMENT

1. Civil Appeals Nos. 354 and 1251 of 1969 are by certificate against the judgment of th

2. In all these appeals the places of worship to which the impugned provisions have been

3. The appellant Lachman Das in Civil Appeal No. 1251 of 1969, alleges that he is an Uda

4. The appellant Dharam Das in Civil Appeal No. 354 of 1969 is an Udasi Sadh and Mahant

5. The first appellant in C.A. 1222 of 1969 claims that he was appointed by the village

6. In Civil Appeal No. 1251 of 1969 the High Court held that the appellant Lachman Das c
The petitioner has not claimed himself to be the owner of the institution defined and d

7. It is submitted before us that this finding of the High Court was based on a misappre

8. In Civil Appeal No. 354 of 1969 apart from the contentions raised in Lachman Dass's c

9. In Civil Appeal No. 1222 of 1969 additional contentions urged were that a notice unde

10. On behalf of the respondents it is submitted that the appellants have not establishe

11. Even assuming without conceding that the institutions were Udasi institutions, it is

12. The main question in these appeals is whether the appellants have the right to chall

13. The Shriomani Gurdwara Parbandhak Committee-hereinafter referred to as the S.G.P.C.

1. The present Sikh Gurdwaras and Shrines Bill is an effort to provide a legal procedure

2. The present Bill provides a scheme of purely Sikh management, secured by statutory an

14. The scheme of the Act was that there were certain places of worship about which no s

15. The Act, as we have stated earlier, was extended to the erstwhile areas of Patiala a

16. A canvass of the provisions of the Act presents four situations- (i) where the Legis

17. In so far as Lachman Dass's appeal is concerned the Gurdwara Panjaur Padshahi Pehli

18. During the course of the lengthy arguments, the Learned Advocate for the respondents

19. It is true that a denial of a right to be heard as expressed in the maxim audi alter

20. This Gurdwara had been declared to be Sikh Gurdwara and its management vested in the
148-C. Notwithstanding anything contained in this Act, every local committee in the ext

This had reference to Section 148-B which added to the Board constituted under Section 4

21. It is strenuously contended by the Learned Advocate for the appellant that the appel

22. In our view these contentions have no force and must be rejected. The allegation of
All the Gurdwaras managed by Government and the Interim Gurdwara Board should not be in

The full Bench also further stated that the appellant has not claimed himself to be the

23. It is, therefore, clear that the question whether Gurdwara Pinjore Padhshahi Pehli w

24. The complaint in the appeals relating to Sell. I Gurdwaras is that the mere publicat

25. It must not be forgotten that the whole object of the Act was to reduce the chances

26. In Municipal Board, Hapur's case also the majority decision of this Court held that

27. There seems to have been a divergence of opinion in the Punjab & Haryana High Court

28. It is also argued in Dharam Das's case that the right conferred by Section 8 of the

29. In Civil Appeal No. 1222 of 1969 the filing of the petition within ninety days presc

30. In our view there is no substance in any of the appeals filed before us. We agree wi

H.R. Khanna, J.

31. 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.

32. 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 B. 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.

33. 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.

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.

34. 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 Udasi institution.

35. 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 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.

36. Mr. V.S. Desai on behalf of the State of Punjab and Mr. Patel 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 SI. 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 Committee and Anr. A.I.R. 1929 Lahore 603 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 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 :
>
> 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 ?

The answer to the first portion is, I think, that so far as the notification under Section 5 ideals 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 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 excluded 'H' (a corner of the property had been marked in the plan annexed to the Government notification under Section 3(2) of the Act.

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.

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 :

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, every 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.

37. 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.

38. Reference in this context may be made to the case of Raj Narain Pandey and Ors. v. Sant Prasud Tewari and Ors. 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 Corporation (1958) Ch 574, there is well established authority for the view that a decision of long standing on the basis of which 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.

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

40. 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 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, 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 High Court nor in appeal in this Court against the judgment of the High Court dismissing the writ petition.

41. 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 has been shown to be violative of the Constitutional rights of the appellants in these two appeals.

42. 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.