

(2010) 05 P&H CK 0269

High Court Of Punjab And Haryana At Chandigarh**Case No:** First Appeal from Order No. 2036 of 2009 (O and M)

Balbir Singh

APPELLANT

Vs

Sham Singh and Others

RESPONDENT

Date of Decision: May 26, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Sikh Gurdwaras Act, 1925 - Section 142, 143, 87

Citation: (2010) 159 PLR 648**Hon'ble Judges:** Rakesh Kumar Jain, J**Bench:** Single Bench

Judgement

Rakesh Kumar Jain, J.

This appeal is directed against the order dated 29.11.2008, passed by Sikh Gurdwara Judicial Commission, Amritsar (hereinafter referred to as the "Commission"), whereby a petition filed u/s 142 of the Sikh Gurdwaras Act, 1925 (for short, "the Act"), alongwith an application under Order 39 Rules 1 and 2 read with Section 151 of Code of Civil Procedure, 1908 (for short, CPC), has been dismissed on the ground that petition filed u/s 142 of the Act, is not maintainable as the property in dispute is not a "Notified Sikh Gurdwara".

2. In brief, the facts of the case are that Balbir Singh (appellant) filed a petition u/s 142 of the Act, against five persons, namely, Sham Singh, Gyani Niranjn Singh, S. Gursangat Singh, S. Kulwant Singh and S. Gurmail Singh. It is pleaded that the appellant is a Sikh, professing Sikh religion, believing in the teachings and preachings of Ten Sikh Gurus and Sri Guru Granth Sahib and is a interested person in the better management and welfare of the notified Sikh Gurdwaras including Gurdwara Sri Guru Granth Sahib Ji, Lehra Mandi, District Sangrur. The respondents were elected members of the notified Sikh Gurdwara Siri Guru Granth Sahibji, Lehra Mandi. Respondent No. 1 has also been elected in the new Committee of which

Gyani Niranjn Singh is the President, respondent No. 3 is the Vice President, whereas respondent Nos. 4 and 5 are the members of the Local Gurdwara Committee since 1999. In the petition, relief was sought against respondent No. 1 Sham Singh and respondent No. 3 S.Gursangat Singh, whereas respondent Nos. 2, 4 and 5 were impleaded as necessary and proper parties. It was, inter-alia, alleged in the petition that main Gurdawara building is having Sri Guru Granth Sahibji and a sealed Golak kept as per rules by the local Gurdwara Committee u/s 87 of the Act. The said golak is legally opened in the presence of Gurdwara Inspector of Shiromani Gurdwara Prabandhak Committee (for short, "SGPC") and the President and Vice President of the management of Local Committee. Respondent No. 1. alongwith respondent No. 3 unauthorisedly installed Shri Guru Granth Sahibji in the building consisting of two rooms and three verandahs falling in land measuring 3 kanals 5 marlas, bearing khasra No. 715, which is about one and half kilometer away from the main Gurdwara. The said land was donated by Inder Singh, father of the petitioner about 50 years ago but now it is owned by notified Sikh Gurdwara Sri Guru Granth Sahibji. Respondent Nos. 1 and 3 have put a private golak of their own in the said unauthorized Gurdwara Sahib and have misappropriated Rs. 6000/- per month during the last more than four years. Even the prominent melas including the Shaheedi De-hara Siri Guru Arjan Devji and Sangrandh Amawas etc. are separately celebrated in the said Gurdwara. Besides this, about 50 Akhand Paths are recited in the said Gurdwara by S.Sham Singh (respondent No. 1) and S.Gursangat Singh (respondent No. 3) by associating private Pathis and are themselves taking Bheta and sharing the same with the pathis since Nov.2002. No income of the Golak or Pathis collected at the rate of Rs. 2100/- per Path or Melas is entered in the cash Register and no receipt is issued in the name of Main Gurdwara Sahib; A chowkidar-cum-langari by the name of S. Gurjant Singh son of S. Ishar Singh is deployed in the building where unauthorized Gurdwara is functioning and said Langhri is being paid his salary from the notified Sikh Gurdwara funds and even the Sugar and tea leaves are procured from the main Gurdwara Sahib free of costs. The said Gurdwara has been given the name of Gurdwara Inder Puri Shaheedan, Lehra Gagga and receipts of the same are issued after taking money from the Sangat in the name of Gurdwara Inder Puri Shaheedan and also in the name of Gurdwara Parbandhak Committee, Bye Pass Road, Lehra Gagga, Sangrur. In this manner, it is alleged that respondent Nos. 1 and 3 have misappropriated an amount of Rs. 2,88,000/- from golak and from Akhand Paths Rs. 4,20,000/

3. On these pleadings, prayer was made that respondent Nos. 1 and 3 be ordered to pay Rs. 7,08,00,00/- with interest @ 18% per annum, they be disqualified from working as members or office bearers for a period of five years and be also directed to pay damages to the tune of Rs. 5 lacs in the funds of the said notified Sukh Gurdwara.

4. Two written statements have been filed, one by respondent Nos. 1 and 5 and other by respondent No. 3 alone. In the written statement filed by respondent Nos.

1 and 5, it is submitted that second Gurdwara has been established on land measuring 3 kanals 5 mar-las because the main Gurdwara administered by the local committee is 1.5 k.m. away from the main Gurdwara and the interest of the Sangat living around this land was to be watched as well as the interest of the main Gurdwara land was also to be protected. Hence, the Swaroop of Guru Granth Sahib was installed in the second Gurdwara and the management of the second Gurdwara was administered by the neighbourhood Sangat consisting of Darshan Singh son of Ishar Singh; Hakam Singh son of Gurbachan Singh, Mansha Singh son of Jai Ram, Hari Singh son of Gurcharan Singh, Hardev Singh son of Inder Singh, Ajaib Singh son of Surjit Singh and Baldev Singh son of Gurbachan Singh.

5. Respondent No. 1. Sham Singh is also associated in the functioning of the second Gurdwara being a member/office bearer of the notified Gurdwara Lehra (main). The Bheta collection/Golak money of the second Gurdwara is so meagre that it is very difficult even to employ a Chowkidar or Granthi. It is in these circumstances that the payment of Chowkidar Gurjant Singh is charged from the main Gurdwara because the land on which second Gurdwara has come up belongs to the main Gurdwara Lehra Gagga.

6. Written statement of respondent No. 3 is more or less the same. However, additional feature was that he had been critical of activities of Sham Singh (respondent No. 1).

7. It is worthwhile to mention here that the petition was filed on 12.12.2006 which was accompanied by an application for the purpose of appointment of a Local Commissioner. The said application was allowed and Local Commissioner was appointed on 13.12.2006, who has submitted his report dated 16.12.2006 in which it was observed that:

That as per the above said order, I reached the Gurdwara Sahib Sri Gur Granth Sahibji, Vill. Lehra Mandi, Distt. Sangroor at 9.00 A.M. on 14.12.2006 and found a legal sealed Golak, in front of Sri guru Granth Sahibji in the room where Sri Guru Granth Sahibji is installed, locked and sealed by the managing Committee of Local Gurdwara and SGPC Officials. Another Golak of Kar Sewa which is with the consent of the management in the notified Gurdwara premises. It was revealed that Sri GURU GRANTH Sahib has been installed in an owned and posses by the notified Gurdwara building about 200 meters from the main legal Gurdwara. The said second un-authorized Gurdwara is being administered by S. Sham Singh and the keys of the Golak were with him. The Golak was not sealed with any official seal and Sri Guru Granth Sahib Swaroop was placed in the said room and the Golak was lying in the front of the Bir of Sri Guru Granth Sahib. The second un-authorised Gurdwara is in existence since 1999 as was found by me by making inquiries at the spot from different persons. I opened the Golak of the Gurdwara being administered by S. Sham Singh by getting the Golak opened through S. Sham Singh and an amount of Rs. 1212.90 was counted and recovered and handed over to S. Sham Singh in the

presence of the persons and obtaining their signatures as per the annexure attached herewith. S. Sham Singh admitted the fact that the Golak is being opened every 15 days. It was also revealed that S. Sham Singh had been accepting money for preparing the Degh of Karah Parshad and other works associated with Gurdwara such as recitation of Paths etc. by issuing receipts from private and separate receipt book to the devotees. It was further revealed that the Gurdwara is also owner of one big shop rented out to Hari Krishan Sweet House owned by Rattan Chand and four other shops rented out to Dr. Harbhajan Singh, Sh. Chiranji Lal, Sh. Amar Nath and Gyani Santokh Singh, Cycle Wala which was located outside second Gurdwara. The rent of these shops is going to the funds of notified Sikh Gurdwara Lehra Mandi.

8. On the pleadings of the parties, the Commission framed the following issues:

1. Whether the respondents have committed the acts of malfeasance, misfeasance, non-feasance, breach of trust, neglect of duty etc? OPP

2. Whether the petitioner has not come to the Court with clean hands? OPR

3. Whether there is cause of action has to the petitioner to file the present petition? OPR

4. Whether the petition is bad for non-joinder of necessary parties? OPR

5. Whether the petition is bad for the non-service of notice u/s 143 of the Sikh Gurdwara Act, 1925? OPR

9. Both the parties were given opportunity to lead their evidence. The petitioner examined S. Dhillon as PW-1, Balbir Singh as PW-2, Maghar Singh as PW-3, Sarwan Singh as PW-4, Devinder Singh as PW-5 and tendered in evidence certain documents from Ex.P-1 to P-27 and Ex.PW3/1 to Ex.PW3/99 before closing his evidence. Respondents examined Gurjant Singh as RW-1, Joginder Singh as RW-2, Gurjant Singh as RW-3, Darshan Singh as RW-4, Gurmel Singh as RW-5, Sham Singh as RW-6, Gursangat Singh as RW-7 and also tendered in evidence documents Ex.R1 and Ex.R2 while closing their evidence.

10. While deciding issue No. 1, learned Commission has opined in para Nos. 8 and 9 as under:

Now, the question arises whether petition u/s 142 of the Sikh Gurdwara Act can be filed against the managing committee of Gurdwara which is not notified. The answer is negative. The second Gurdwara Inderpuri Shaheedan is not a notified Sikh Gurdwara. As such, the petition u/s 142 of the Sikh Gurdwara Act relating to the Gurdwara which is not a notified Sikh Gurdwara is not maintainable.

From the above discussion, we were of the view that the petitioner has failed to prove any loss caused by the respondents to the Gurdwara Sahib in question. Rather, it is proved that a separate gurdwara was constructed in order to protect the property donated by Inder Singh. Hence, the issue is decided against the petitioner.

and in favour of the respondent.

11. While deciding issue No. 2, it was observed that the possession of land of second Gurdwara was donated by father of the appellant, therefore, he is a necessary party in the litigation and as such, the issue was decided against him.

12. Issue No. 3 was also decided in terms of the decision of issue No. 2. Issue No. 4. pertaining to the petition being bad for non-joinder of necessary parties was not pressed by the respondents and as such, it was decided against the respondents and in favour of the petitioner.

13. Issue No. 5. was decided against the petitioner on the ground that the petitioner did not implead the Committee as respondent-party in order to avoid notice u/s 143 of the Act, which is mandatory in nature.

14. The sum and substance of the findings recorded on issue of relief is that the petition was dismissed.

15. The parties have been litigating tooth and nail inasmuch as when an application under Order 39 Rules 1 and 2 of CPC was dismissed by the learned Commission on 15.2.2007, FAO No. 2219 of 2007 (O&M) was filed by the appellant in which notice of motion was issued on 24.5.2007 and in the meanwhile, respondent Nos. 1 and 3 were restrained from interfering in the functioning of the Gurdwara. Ultimately, said appeal was disposed of by this Court on 22.4.2008 with the following order:

Learned counsel for the appellant contends that the appeal be disposed of in case the respondents agree to expeditious disposal of the matter by the Sikh Gurdwara Judicial Commission, Amritsar. The contention is that the appellant would take only two dates/opportunities to conclude the entire evidence.

Learned counsel for respondents Nos. 1, 2, 4 and 5 states that the respondents would take two dates/opportunities to conclude their entire evidence.

Likewise, learned Counsel for respondent No. 3 also states that his client would take two dates/opportunities to conclude his entire evidence.

The learned Counsel for respondents agree for disposal of the appeal in the terms suggested by learned Counsel for the appellant.

Having regard to the contention of the learned Counsel for the parties, the matter is disposed of and the Sikh Gurdwara Judicial Commission is requested to dispose of the matter within 1-1/2 months after giving opportunities to the parties as noticed above.

In the meantime, interim order to continue.

16. As per above order, the Commission was requested to dispose of the matter within 1-1/2 months after giving opportunities to the parties. Consequently, the main petition was decided, though against the petitioner on 29.11.2008 giving him a

cause of action to file the present appeal.

17. Learned Counsel for the appellant has submitted that the present appeal had been filed alongwith an application i.e. CM. No. 10425-CII of 2009 for stay. In this case, at the time of preliminary hearing, notice of motion was issued and respondent Nos. 1 and 3 were restrained from interfering in the functioning of the Gurdwara. The said order has not been vacated by this Court. This appeal was admitted on 19.1.2010 with the interim order to continue and was ordered to be listed within three months for regular hearing. That is how this appeal is listed before this Court for final disposal.

18. Mr. Arun Palli, learned senior counsel appearing for the appellant has argued that the impugned order passed by the Commission not touching the core issue which was raised in the petition filed u/s 142 of the Act that respondent Nos. 1 and 2 are involved in the management of second Gurdwara being members of the Local committee of notified Gurdwara for setting up a parallel Gurdwara on the land of notified Gurdwara and are usurping the offerings and bhets etc. of Sikh worshippers and have thus abused their powers of being members of the Committee.

19. It is further submitted that the respondents have not disputed that second Gurdwara is established by respondent Nos. 1 and 2 on the land of notified Gurdwara which was meant for langar as there were two rooms and three verandahs. They have set up Swaroop of Guru Granth Sahib, kept Golak and have engaged private Pathis for the purpose of holding Paths and Kirtans from which they have lot of earnings which has never been accounted for. He also referred to the report of the Local Commissioner who has reported that " said second unauthorized Gurdwara is being administered by S. Sham Singh and the keys of the Golak were with him. The Golak was not sealed with any official seal and Sri Guru Granth Sahib Swaroop was placed in the said room and the Golak was lying in front of the Bir of Sri Guru Granth Sahib. Degh of Karah Parshad and other works associated with Gurdwara such as recitation of Paths etc. by issuing receipts from private and separate receipt book to the devotees."

20. The net result of the arguments of learned Counsel for the appellant is that respondent Nos. 1 and 3 by using their official powers of the members of the Executive Committee of notified Gurdwara have set up a parallel Gurdwara without the permission of SGPC. Therefore, it is submitted that they are liable to account for the amounts which they have earned or recovered from the second Gurdwara, are also liable to penal action by way of damages and their disqualification from being members of the Local Committee of notified Gurdwara.

21. On the other hand, learned Counsel for the respondents has argued with vehemence that the petition at the instance of the appellant is out of personal interest. He has submitted that the appellant has not impleaded the Committee as a party to the petition to which prior notice u/s 143 of the Act is required to be given.

It is further submitted that second Gurdwara is not a notified Sikh Gurdwara, therefore, petition filed u/s 142 of the Act is not maintainable. He has drawn attention of this Court to Schedule 1 appended with the Act in which at Item No. 294. "Gurdwara Sahib Guru Granth Sahib" is mentioned as the notified Sikh Gurdwara and Gurdwara Inder Puri Shaheedan is not notified. Thus, learned Counsel for the respondents has submitted that in the absence of second Gurdwara being a notified Gurdwara, petition u/s 142 of the Act has rightly not been entertained by the Commission. Therefore, he prays that this appeal be dismissed with costs. He has also submitted that the respondents have not caused any loss to the notified Gurdwara, therefore, they are not liable to pay any penalty or damages as claimed by the appellant.

22. I have heard both the learned Counsel for the parties and have perused the record with their assistance.

23. There are certain undisputed facts in this case (i) Gurdwara Sahib, Guru Granth Sahib, Lehra Mandi, Sangrur, is a notified Sikh Gurdwara recorded at item No. 294 in Schedule 1 of the Act; (ii) Gurdwara Inderpuri Shaheedan is not a notified Sikh Gurdwara; (iii) the property in dispute, namely two rooms and three verandahs which have now been converted into Gurdwara Inderpuri Shaheedan is a part of notified Sikh Gurdwara, namely, Gurdwara Sahib Sri Guru Granth Sahib (iv) there is a elected body of notified Sikh Gurdwara, whereas there is no elected body of second Gurudwara.

24. Thus, the basic question in this case is that whether parallel second Gurdwara on the land of notified Sikh Gurdwara is out of the purview of Section 142 of the Act or being a part of notified Gurdwara and comes within the definition of "Sikh Notified Gurdwara". In this case, this fact is admitted by the respondents that second Gurdwara is on the land of notified Gurdwara, therefore, in my view, if parallel Gurdwara has been set up by the respondents on the land of notified Gurdwara, petition u/s 142 of the Act, shall be maintainable because not only the land underneath Gurdwara building has been notified but also the land appurtenant to Gurdwara building is also notified. Thus, the findings recorded by the Commission under Issue No. 1. are reversed. Insofar as the findings recorded under Issue No. 5 is concerned, the said findings runs contrary to the findings recorded under Issue No. 4.

25. The upshot of the above discussion is that the present appeal is allowed and the impugned order of the Commission is set aside. However, since the Commission has not given any opinion about mis-feasance and mal-feasance alleged on the part of the respondents, therefore, the matter is being remanded back to the Commission to decide it afresh on merit as the respondents are also claiming that they have not caused any loss to the notified Gurdwara.

26. The parties are directed to appear before the Commission on June 14, 2010 either in person or through counsel. Commission is also further directed to decide the lis between the parties as early as possible, preferably within one month from the date of appearance of learned Counsel for the parties before it as no evidence is to be recorded. Interim order passed by this Court on 8.7.2009 shall be maintained till the disposal of the petition by the Commission. It is also made clear that the Commission shall not be influenced with the findings recorded by this Court as the same have been recorded about the maintainability of the petition.