



In the High Court of Punjab and Haryana at Chandigarh

FAO No. 115 of 1987 (O&M)
Reserved on: 4.9.2024
Date of Decision: 24.9.2024

Kaul Dass Chela Surinder Dass Appellant

Versus

Shiromani Gurdwara Parbandhak Committee, Amritsar Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Tushar Sharma, Advocate
for the appellant.

Mr. Kanwaljit Singh, Senior Advocate with
Mr. Veer Imaan Singh Gill, Advocate for the respondent.

SURESHWAR THAKUR, J.

1. Through the instant appeal, the appellant has sought the quashing of the impugned order dated 15.12.1986, whereby the petition filed by the him under Section 10 of the Sikh Gurdwara Act, 1925 (for short 'the Act of 1925') became dismissed by the learned Sikh Gurdwaras Tribunal, Punjab at Chandigarh (for short 'the Tribunal').

Brief facts of the case

2. Vide notification dated 3.11.1961, issued under Section 7(3) of the Act of 1925, issued by the Punjab Government, Gurdwara Sahib Dewanina, Tehsil Barnala, District Sangrur was declared to be a Sikh Gurdwara. Purportedly, a consolidated petition under Section 8 and under Section 10 of the Act of 1925 was filed by the appellant claiming therein

that the institution was not a Sikh Gurdwara but Dera of Dewanian Sadhs,



and, that the land of the institution was his personal property. He has also averred therein, that his ancestors were in possession of the land since the last more than 100 years.

3. Initially, the Tribunal concerned, vide order dated 30.8.1972 decided the petition under Section 8 of the Act, filed by the appellant, whereby after rendering findings favourable to the respondent, thus on the issue as to whether the institution is a Gurdwara or not, the Tribunal concerned, upheld the notification (supra). The said judgment was challenged by the appellant by filing FAO No. 283 of 1972, which became dismissed by this Court, through a decision made thereon on 29.9.1982. Subsequently, the Tribunal concerned, vide the impugned order dated 15.12.1986, dismissed the petition (supra) filed by the appellant under Section 10 of the Act of 1925, while holding that the property in question belonged to Gurwara Sahib Dewanian. Hence, the instant appeal.

Submissions of the learned counsel for the appellant

4. The learned counsel for the appellant has argued before this Court, that though through the concurrent decisions, as made initially by the Tribunal concerned, whereby the petition preferred by the appellant under Section 8 of the Act of 1925 was dismissed on 30.8.1972, and, subsequently by this Court on 29.9.1982 through a decision made upon FAO No. 283 of 1972, whereby the appeal filed by the appellant challenging the verdict (supra) also became dismissed. Moreover, resultantly when though thereby rather within the meaning of Section 7 of the Act of 1925, provisions whereof become extracted hereinafter the said property was declared to be a Sikh Gurudwara. However, he submits, that the said concurrently made decisions rather do not operate as *res judicata*, nor thereby occur an



estoppel against the present appellant to re-agitate the claim in terms of Section 10 of the Act of 1925, provisions whereof become extracted hereinafter.

“Section 7- Petitions to have a Gurdwara declared a Sikh Gurdwara.

(1) Any fifty or more Sikh worshippers of a gurdwara, each of whom is more than twenty-one years of age and was on the commencement of this Act [or, in the case of the extended territories from the commencement of the Amending Act] [Inserted by Punjab Act No. 1 of 1959, Section 8(a).] resident in the police station area in which the gurdwara is situated, may forward to the [appropriate Secretary to Government] [Substituted for the words 'Secretary to Government, Transferred Departments,' by the Government of India (Adaptation of Indian Laws) Order, 1937.] so as to reach the Secretary within one year from the commencement of this Act or within such further period as the [State] [Substituted for the words 'Provincial' by the Adaptation of Laws Order, 1950.] Government may by notification fix for this purpose, a petition praying to have the gurdwara declared to be a Sikh Gurdwara:

Provided that the [State] [Substituted for the words 'Provincial' by the Adaptation of Laws Order, 1950.] Government may in respect of any such gurdwara declare by notification that a petition shall be deemed to be duly forwarded whether the petitioners were or were not on the commencement of this Act [or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be,] [Inserted by Punjab Act No. 1 of 1959, Section 8(b).] residents in the police station area in which such gurdwara is situated, and shall thereafter deal with any petition that may be otherwise duly forwarded in respect of any such gurdwara as if the petition had been duly forwarded by petitioners who were such residents:

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

(2) List of property claimed for the gurdwara and of persons in possession thereof to accompany a petition under sub-section (1). - A petition forwarded under the provisions of sub-section (1) shall state



the name of the gurdwara to which it relates and of the district, tahsil and revenue estate in which it is situated, and shall be accompanied by a list, verified and signed by the petitioners, of all rights, titles or interest in immovable properties situated in Punjab inclusive of the gurdwara and in all monetary endowments yielding recurring income or profit received in Punjab, which the petitioners claim to belong within their knowledge to the gurdwara the name of the person in possession of any such right, title or interest, and if any such person is insane or a minor, the name of his legal or natural guardian, or if there is no such guardian, the name of the persons with whom the insane person or minor resides or is residing, or if there is no such person, the name of the person actually or constructively in possession of such right, title or interest on behalf of the insane person or minor, and if any such right, title or interest is alleged to be in possession of the gurdwara through any person the name of such person shall be stated in the list; and the petition and the list shall be in such form and shall contain such further particulars as may be prescribed.

(3) Publication of petition and list received under sub-sections (1) and (2). - On receiving a petition duly signed and forwarded under the provisions of sub-section (1) the [State] [Substituted for the words 'Provincial' by the Adaptation of Laws Order, 1950.] Government shall as soon as may be, publish it along with the accompanying list, by notification, and shall cause it and the list to be published, in such manner as may be prescribed, at the headquarters of the district and of the tahsil and in the revenue estate in which the Gurdwara is situated, and at the headquarters of every district and of every tehsil and in every revenue estate in which any of the immovable properties mentioned in the list is situated and shall also give such other notice thereof as may be prescribed :

[Provided that such petition may be withdrawn by notice to be forwarded by the Board so as to reach the [appropriate Secretary to Government] [Proviso added by Punjab Act 4 of 1932, Section 3. It came into force on Ist January, 1933, vide Punjab Government notification No. 2695 (H-G/Gurdwara) dated 19th December, 1932.], at any time before publication, and on such withdrawal it shall be deemed as if no petition had been forwarded under the provisions of sub-section (1)].

(4) Notice of claims to property to be sent to persons shown in the



list as in possession.- The [State] [Substituted for the words 'Provincial' by the Adaptation of Laws Order, 1950.] Government shall also, as soon as may be, send by registered post a notice of the claim to any right, title or interest included in the list to each of the persons named therein as being in possession of such right, title or interest either on his own behalf or on behalf of an insane person or minor or on behalf of the gurdwara :

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

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

x x x x

“Section 10. Petition of claim to property including in a list published under sub-section (3) of Section 7-

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

*(2) **Signing and verification of petitions under sub-section (1).** - A petition forwarded under the provisions of sub-section (1) shall be signed and verified by the person forwarding it in the manner provided by the Code of Civil Procedure, 1908(5 of 1908), for the signing and verification of plaints, and shall specify the nature of the right, title or interest claimed and the grounds of the claim.*

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

5. The learned counsel has further argued, that the concurrent



the declaration whereby the said property was declared to be a Sikh Gurudwara. However, he has argued, that since the provisions engrafted in Section 10 of the Act of 1925 also do empower any person to subsequently institute a petition claiming a right, title or interest in any property included in the list so published in terms of sub-Section (3) of Section 7 of the Act of 1925. Consequently, he has argued, that though the subject matter of apposite claims became rested through the passing of concurrent orders (supra), thus on a petition filed under Section 8 of the Act of 1925, provisions whereof become extracted hereinafter. However, he submits, that the domain and scope of the provisions (supra) rather are completely different, from the right vested in the present appellant thus in terms of Section 10 of the Act of 1925.

“8. Petition to have it declared that a place asserted to be a Sikh Gurdwara is not such a gurdwara.

When a notification has been published under the provisions of sub-section (3) of Section 7 in respect of any gurdwara, and hereditary office-holder or any twenty or more worshippers of the gurdwara, each of whom is more than twenty-one years of age and was on the commencement of this Act [or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be] [Inserted by Punjab Act No. 1 of 1959, section 9(a).], a resident of a police station area in which the gurdwara is situated may forward to the [State] [Substituted for the words 'Provincial' by the Adaptation of Laws Order, 1950.] Government, through the [appropriate Secretary to Government] [Substituted for the words 'Secretary to Government, Transferred Departments,' by the Government of India (Adaptation of Indian Laws) Order, 1937.] so as to reach the Secretary within ninety days from the date of the publication of the notification, a petition signed and verified by the petitioner, or petitioners, as the case may be, claiming that the gurdwara is not a Sikh Gurdwara, and may in such petition make a further claim that any hereditary office-holder or any person who would have succeeded to such office-holder under the system of management prevailing before the first day of January, 1920



[or, in the case of the extended territories, before the 1st day of November, 1956, as the case may be,] [Inserted by Punjab Act No. 1 of 1959, Section 9(d).] may be restored to office on the grounds that such gurdwara is not a Sikh Gurdwara and that such office-holder ceased to be an office-holder after that day :

Provided that the [State] [Substituted for the words 'Provincial' by the Adaptation of Laws Order, 1950.] Government may in respect of any such gurdwara declare by notification that a petition of twenty or more worshippers of such gurdwara shall be deemed to be duly forwarded whether the petitioners were or were not on the commencement of this Act [or, in the case of the extended territories, on the commencement of the Amending Act, as the case may be] [Inserted by Punjab Act No. 1 of 1959, Section 9(d).], resident in the police station area in which such gurdwara is situated, and shall thereafter deal with any petition that may be otherwise duly forwarded in respect of any such gurdwara as if the petition had been duly forwarded by petitioners who were such residents.”

6. Resultantly therebys it was inappropriate for the learned Tribunal concerned, to through the impugned decision declare that the earlier decision was made on a composite petition, besides it was also inappropriate for the learned Tribunal concerned, to declare that the disputed property was a Sikh Gurudwara, especially when therebys detriment has accrued to the appellant's claim relating to his purported personal ownership over the disputed property. Therebys since the earlier passed concurrent decision(s) respectively by the Tribunal concerned, and, by this Court, on 29.9.1982, but were passed only within the boundaries of the statutory provisions enclosed in Section 8 of the Act of 1925. Therefore, no estoppel worked against any re-agitation of any right of the present appellant in respect of his espousal qua his purportedly holding an independent right, title and interest as owner over the subject lands, thus in terms of the relevant jamabandis.



Submissions of the learned senior counsel for the respondent

7. The learned senior counsel for the respondent has argued before this Court that vide notification issued under Section 7(3) of the Act of 1925 on 3.11.1961, Gurudwara Sahib Dewanian, Tehsil Barnala, District Sangrur was declared to be a Sikh Gurudwara, and, when subsequently the challenge thereto became rejected, thus on a composite petition reared by the appellant both under Section 8 and under Section 10 of the Act of 1925. Therefore, he has further argued, that since the hereditary claim put-forth by the appellant has already been decided, whereafter the subject property has been declared to be a Sikh Gurudwara. Moreover, when thereafters no individual ownership was ever claimed and also no evidence became adduced in respect of the above. Therefore, it is argued, that a complete estoppel yet is working against the present appellant to make any valid challenge to the impugned decision, as became rendered on 15.12.1986, by the Tribunal concerned, and, which became subsequently affirmed even by this Court through a decision made on 29.9.1982, upon, FAO No. 283 of 1972.

**Reasons for rejecting the submissions of the learned senior counsel
for the respondent**

8. For the reasons to be assigned hereinafter, this Court deems it fit to after quashing the impugned order, pass an order of remand upon the Tribunal concerned, to after carefully examining the jamabandis, to pronounce whether the appellant's claim, vis-a-vis, the subject property purportedly being his personal property, in whatsoever capacity, thus is required to be upheld or is required to be rejected.

9. For determining the said fact, it is necessary to extract the relevant portion of the impugned verdict, as became rendered by the



“The petition filed by Mahant Kaul Dass, was a composite one, in which not only the nature of the institution was disputed by the property claimed to be that of the Gurudwara, was also claimed not to belong to the Gurudwara. The petition was, also, therefore, registered under Section 10, as petition No. 420 of 1965. This remained stayed during the pendency of the petition and the appeal under Section 8, and was taken up after dismissal of the appeal by the High Court on 29th September 1982.”

10. Though, it is stated therein, that a composite petition relating to the espoused claims, thus being filed, both in terms of Section 8 of the Act of 1925, and, in terms of Section 10 of the Act of 1925. However, the above stated fact in the impugned verdict rather is shorn of veracity, as on a reading of the initially instituted petition, it is clear that in the said petition became encompassed only a claim reared under Section 8 of the Act of 1925.

11. Moreover, a reading of the above extracted relevant portion of the impugned order, also discloses that a petition under Section 10 of the Act of 1925 also became filed, and, to which Petition No. 420 of 1965 became assigned. It is further stated therein, that the further proceedings over the said petition were not undertaken, as the engagements of further proceedings thereovers became stayed during the pendency of the petition (supra) besides given there being a subjudice appeal on a decision passed in a petition filed under Section 8 of the Act of 1925, rather before this Court. However, since it is also stated therein, that only after a dismissal order becoming passed by this Court on 29.9.1982, upon the appeal (supra), as became reared by the present appellant against the decision made by the Tribunal concerned, on 30.8.1972, that the impugned order was passed, whereby prima facie qua the petition filed under Section 8 of the Act, led the disputed property to



become subjected to a declaration that it was a Sikh Gurudwara.

12. The resultant impact or effect thereof, is that, the staying of proceedings for reasons (supra) on a petition under Section 10 of the Act of 1925, but also is an admission on the part of the Tribunal concerned, that the earlier made decision was not on a composite petition filed, but under Section 8 and under Section 10 of the Act of 1925, besides also underscores that separate claims were raised by the present appellant in the petition filed under Section 8 of the Act of 1925, and, in the instant petition filed under Section 10 of the Act of 1925, and, to which rather supra registration number became assigned. Apparently, the said different provisions carry therein different subject matters for determinations thereovers becoming made. Therefore, since even post the making of a decision on a petition filed under Section 8 of the Act of 1925, thus a statutory privilege in terms of Section 10 of the Act of 1925, becomes endowed vis-a-vis any person, thus for claiming a right, title or interest as owner in respect of the said property, thereupon the said apposite contra-distinct claim, thus was also required to be separately decided.

13. In sequitur, when the principle of constructive res judicata, as embodied in Section 11 of the CPC, provisions whereof become extracted hereinafter, does embody therein, thus the fine principle (i) that in the event of similarity of parties both in the earlier and the subsequent lis, (ii) and/or in the event of both containing a similar subject lis (iii) besides with the apposite inter se conclusivity occurring over the apposite common subject matters, thus through makings of a binding, and, conclusive decision, thus thereby the aggrieved becoming estopped to re-institute any claim in respect thereof, rather is not completely applicable to the instant



situation.

14. The reason being that, the conclusivity of the earlier decision rendered over the earlier lis between the apposite similar parties, rather relates only to the passing of a decision, on a petition filed under Section 8 of the Act of 1925, but does not cover the claim raised under Section 10 of the Act of 1925, thus for the trite reason that the domain and scope of different provisions (supra) is rather contra-distinct from each other. Therefore when for applying the principle of res judicata but requires qua the hereafter duo of parameters being satisfied (i) Apposite commonality of parties (ii) Apposite commonality of the subject lis', whereas, when for reasons (supra) the earlier petition covered a subject domain, rather completely divergent from the subject domain enclosed in Section 10 of the Act of 1925.

“Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

15. Consequently, the learned Tribunal concerned, could not merely on the basis of making misreading of the initial petition concerned, that it was a composite petition falling both under Section 8 and under Section 10 of the Act of 1925, thus make a misconception, that all the claims which were raised earlier in a petition cast under Section 8 of the Act of 1925, thus became conclusively rested. Moreover, it was also inappropriate for the learned Tribunal concerned, to subsequently declare that thereby the subsequent petition raised under Section 10 of the Act of 1925 by the present



appellant rather was not maintainable or was misconstituted, as the same became hit by the bar of constructive res judicata, thus on the purported ground qua since all the said claims became earlier clinchingly rested through a binding and conclusive concurrent verdict(s) becoming earlier recorded by the Tribunal concerned, and, which became also subsequently affirmed by this Court. Resultantly qua the earlier conclusively settled claim rather no fresh determination becoming required to be made, but also was a fallaciously drawn conclusion.

16. If so, reiteratedly since different provisions have different contours rather dealing with different genres of claims. Consequently, and, reiteratedly the said different genre of claims set-forth in different statutory provisions (supra), thus were required to become separately decided, rather than merely on the ground, that since the earlier decision was over a purportedly joint petition, besides therebys since it purportedly was not over a different petition under a different statutory provision, than the instant one, qua thereupon rather the instant petition yet becoming hit by the bar of constructive res judicata

17. Though, the earlier litigation was also between parties similar to the parties in the subsequent petition, whereons, the impugned decision was made but the striking difference inter se the extant and the earlier lis, but rather becomes grooved in the supra.

18. Moreover, though the jamabandis appertaining to the subject property appear to become scrutinized by the Tribunal concerned, whereby prima facie through a decision made on the relevant lis on 30.8.1972, the entries therein were declared to make the subject property to become amenable to be declared as a Sikh Gurudwara. Though the said decision



resulted in affirmation thereto becoming made by this Court while deciding FAO No. 283 of 1972. However, without delving into the decision making process entered into by the supra wherebys they concluded that the said properties did become validly notified under Section 7 of the Act of 1925 to be a Sikh Gurudwara.

19. Be that as it may, nonetheless the prominent fact which emerges to the fore, is that, the subject matter in the earlier lis, rather related to the statutory boundaries set-forth in Section 8 of the Act of 1925 and not to the boundaries set forth in Section 10 of the Act of 1925. Since it is stated (supra) that the said provision are contra-distinct to the provisions embodied in Section 10 of the Act of 1925. In addition, when this Court also concludes, that the learned Tribunal concerned, through the impugned decision mis-projected that the earlier petition was a composite petition. Consequently, given the separateness of domain(s) or of statutory boundaries of the claims, respectively carried in Section 8 and in Section 10 of the Act of 1925, therebys in a subsequent motion, the learned Tribunal concerned, was yet required to dehors, the fact that the jamabandis became earlier appraised rather to re-appraise them for determining whether as a matter of fact, the claim raised by the present appellant qua his individually owning the property in whatsoever form, rather was a well raised claim.

20. Though, in the above endeavour, this Court does not deem it fit and appropriate to re-evaluate the appreciation, as earlier done of the jamabandis concerned, but in the larger interest of justice, since prima facie it is unfolded by the jamabandis, that the entries antecedental to the vestment of the subject property being made vis-a-vis the SGPC, qua ex facie thus manifesting, the clear fact that the subject property prima facie became



ingrained with the fine rubric of *animus dedicandi*. As such, prima facie if the said *animus dedicandi* inhered in the subject property, thus prior to the earlier decision became made on 30.8.1972, upon the petition filed under Section 8 of the Act of 1925, and, which the later became affirmed on 29.9.1982 by this Court. Therefore, the said antecedental entries when prima facie invested a right in the donee concerned, which may not prima facie be the respondent. Therefore, even if the subject property is reflected in the jamabandis antecedental to the passing of the relevant orders to be owned by Dera Dewanian. Moreover, though thereins there is no individual entry in the name of the present appellant, but when he purportedly claims the right of Mohtmimship, which right is hereditary in nature, over the disputed property. Consequently, the said fact was required to be proven through an apposite permission being granted to him to adduce evidence, that he had acquired heirship as Mohtmim over the subject property. The said non assigning of the apposite opportunity but has caused a damage to the solemn principle of *audi alteram partem* and/or thereby he has been condemned unheard.

21. It is only for the above reasons, that this Court finds merit in the instant petition, and, after quashing the impugned order, orders for a remand of the instant lis to the Tribunal concerned, for a fresh decision being made thereovers, but after all the requisite permissions becoming granted to all the concerned to discharge the evidence adducing onus, in respect of the issue relating to whether the antecedental entries in the jamabandis became ingrained with an *animus dedicandi*, whereby prima facie there was a vestment over the subject property vis-a-vis the donee concerned, and, or with the concomitant effect qua any right of inheretence over the subject



property vesting yet now vis-a-vis now an unproven Mohatmim.

Final order

22. Consequently, the instant appeal is allowed. The impugned order is quashed and set aside. The matter is remanded to the learned Tribunal concerned, to decide the matter afresh, but within a period of six months from today.

23. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 24th, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No