

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. SAO No. 92 of 2017 (O&M)
 Date of Decision: 15.12.2018**

Guru Nanak Public School TrustAppellant

VERSUS

Jasbir Singh and othersRespondents

2. SAO No. 93 of 2017 (O&M)

Guru Nanak Public School TrustAppellant

VERSUS

Jasbir Singh and othersRespondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sumeet Mahajan, Sr. Advocate
 with Mr. Amit Kohar, Advocate
 for the appellants in both the appeals.

Ms. Harpreet Kaur, Advocate
for respondent no. 1 in SAO-92-2017.

Mr. Vikas Bahl, Sr. Advocate
with Mr. Nikhil Sabharwal, Advocate
for respondent no. 6 in SAO-92-2017

Mr. Vikrant Attri, Advocate
for Mr. Dhiraj Chawla, Advocate
for respondent no. 6 in SAO-93-2017.

SURINDER GUPTA, J.(Oral)

Heard.

1. Plaintiff-appellant (Guru Nanak Public School Trust, Sarabha Nagar, Ludhiana) filed suit against defendants, namely, Jagat Singh Secretary, Giani Bhagat Singh, Member of Local Managing Committee of Guru Nanak Public School, Sarabha Nagar, Ludhiana and Kulwant Kaur Viridi, ex-Principal of Guru Nanak Public School, Sarabha Nagar, Ludhiana,

claiming following reliefs:-

- (i) To restrain defendants no. 1 and 2 (Jagat Singh and Giani Bhagat Singh) from posing as Secretary and Member of Local Managing Committee of Guru Nanak Public School Trust;
- (ii) to restrain Kulwant Kaur Viridi from posing and working as Principal of Guru Nanak Public School, Sarabha Nagar, Ludhiana;
- (iii) to restrain defendants from accepting any donation, fee or any amount from any person on behalf of plaintiff-Trust or its Managing Committee or the schools run by the plaintiff-Trust by the name of Guru Nanak Public School;
- (iv) to restrain the defendants from operating or dealing with bank accounts of Guru Nanak Public School Trust, Managing Committee, school or by any other name;
- (v) to restrain defendants from interfering in the management of school functioning under the Trust;
- (vi) for mandatory injunction directing defendants to hand over the record of the schools being run under the plaintiff-Trust and record relating to the Trust and its Managing Committee;
- (vii) for rendition of accounts directing defendants to render the accounts in relation to the funds collected and spent on behalf of the Trust and the school functioning under the Trust.

2. It is evident that all the reliefs sought by plaintiff-Trust were in personam against defendants no. 1 and 2 and no relief was claimed against any Committee of the school.

3. Defendants no. 1 and 2 died during pendency of the suit and an application was filed on behalf of Jasbir Singh and Surinder Singh as President and Secretary of the Managing Committee of Guru Nanak Public School. This application was allowed to substitute Jasbir Singh and Surinder Singh in place of Jagat Singh (defendant no. 1). In place of defendants no. 1 and 2, Ravinder Singh Sokhi and Prem Singh were allowed to be impleaded while no one was ordered to be impleaded in place of defendant no. 3. These persons were impleaded as party and one Rajinder Singh Gill was also impleaded as Principal of the School in place of defendant no. 3 in original suit. It transpires that no amendment of the plaint was sought to admit or deny that Jasbir Singh is President and Surinder Singh is Secretary of the Managing Committee of Guru Nanak Public School.

4. Learned trial Court dismissed the suit and plaintiff as well as defendants Jasbir Singh and others filed two separate appeals before Additional Sessions Judge, Ludhiana. In that appeal, application was moved by respondent no. 6-Guru Nanak Public School, Sarabha Nagar, Ludhiana to implead it as party. First Appellate Court allowed the application with the observation that specific issue no. 11 has been framed in the suit as to “whether Guru Nanak Public School Managing Committee is entitled to manage affairs of the school” but it has not been impleaded as party. It took note of the fact that Jasbir Singh and Surinder Singh have contested the suit as President and Secretary of the Committee but despite

having knowledge the plaintiff did not implead Committee as party. The application filed by the Committee was allowed with the observations in para 26 of the order as follows:-

“26. In these facts and circumstances in the light of the said discussion and observations finding merits, the application under Order I Rule 10 read with Section 151 CPC moved by Guru Nanak Public School Committee is allowed and it is ordered to be impleaded as defendant no. 6 in the suit. With the result, an opportunity to the plaintiff Trust to amend the plaint, opportunity to the Committee to file the Written Statement, opportunity to re-appreciate the pleadings to see whether any new issue arises or is pressed for as well as opportunity to lead further evidence by the plaintiff Trust, evidence by the Committee and thereafter its rebuttal by the plaintiff Trust is required to be given, warranting the setting aside of the impugned judgment and decree dated 29.08.2011, to be decided afresh. The appeal in hand stands accepted, with costs, accordingly. Parties are directed to appear before learned trial Court on 18.09.2017 at 9.30 a.m. sharp.....”

5. The case was remitted to the trial Court with the observation that parties are aware of the existence of the Committee. Issue no. 11 was already there and evidence has been led. Opportunity was given to plaintiff to amend the pleadings, if so desired, and trial Court was directed to dispose of the case within a period of three months.

6. Against order of Appellate Court, plaintiff has come up with these appeals.

7. Learned counsel for the appellant has mainly stressed on the issue that Jasbir Singh and Surinder Singh, who are President and Secretary of respondent no. 6-Committee (in SAO No. 93 of 2017), have defended the suit for and on behalf of the Committee, as such, firstly there was no need to implead Guru Nanak Public School Committee, as party and even if it is to be impleaded as party, report could be called as the evidence has already been led on its behalf and appeal could be decided on merit.

8. Learned counsel for respondent no. 6-Guru Nank Public School Committee has argued that the Committee being a juristic person was required to be defended by its authorized person. Neither there is any pleading regarding the Committee nor any relief has been sought against the Committee, as such, none was authorized by it to defend the case on its behalf. Some observations have been recorded by the trial court against the Committee in its absence, as such, Committee has to come forward to defend its stance.

9. As already discussed, reliefs were sought against original defendants in personam. Though, Jasbir Singh and Surinder Singh were substituted in place of defendant no. 1 and Ravinder Singh Sokhi and Prem Singh were substituted in place of defendants no. 1 and 2, plaintiff never amended the plaint to seek any relief against Jasbir Singh and Surinder Singh. Ravinder Singh Sokhi and Prem Singh were in fact substituted in place of defendants no. 1 and 2 and learned counsel for the appellant has admitted that no relief has been claimed against these two persons. The Appellate Court was well aware of all the infirmities that had cropped in

and had given opportunity to plaintiff-appellant to amend the plaint. After amendment of the plaint parties will get opportunity to lead evidence, if so required, or to make statement that evidence already on record may be read. It appears that though plaintiff filed the suit against three defendants in personam but later on course of the suit was changed to claim the relief against the Committee. The pleadings were not amended either to implead the Committee as party or even to mention that Jasbir Singh and Surinder Singh are the President and Secretary of the Committee, as such, are authorized to defend the case on behalf of the Committee. In the original suit no relief of injunction, mandatory injunction or rendition of account was claimed against President of the Committee. Giani Bhagat Singh (defendant no. 2) was impleaded as trustee of the Guru Nanak Public School Trust and not as office bearer of the Committee. The Appellate Court has rightly observed that matter cannot be decided on merit without impleading and giving opportunity to Committee to put forth its case.

10. Keeping in view above facts, I find no legal or factual infirmity in the order passed by the Appellate Court calling for any interference in this appeal.

11. Parties are directed to appear before the trial Court on 21.01.2019 and the trial Court will proceed further and decide the appeal as per direction of Appellate Court.

(SURINDER GUPTA)
JUDGE

December 15, 2018

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No