

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. R. No.5954 of 2023

Pronounced On : November 15, 2023

Gurudwara Gurdarshan Parkash and another Petitioners

vs.

Rashpal Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Amit Jhanji, Senior Advocate
with Ms. Priyanka Kansal, Advocate
for the petitioners.

Ms. Divya Jerath, Advocate
for Mr. Navjot Singh, Advocate
for the respondents.

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GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 18.02.2020 (Annexure P-13), passed by learned Civil Judge (Junior Division), Hoshiarpur, vide which application filed by the petitioners under Order 39 Rules 1 and 2, read with Section 151 CPC (Annexure P-11), has been dismissed. Further challenge is to order dated 22.09.2023 (Annexure P-15), passed by learned Additional District Judge, Hoshiarpur, whereby appeal filed against the aforesaid order Annexure P-13 has also been rejected and Receiver-cum-Administrator has been appointed to manage the affairs of Dera/suit property.

2. Brief facts, as culled out from the paper-book, are that the plaintiffs/petitioners (hereinafter referred to as – the plaintiffs) filed suit

(Annexure P-10) for grant of permanent injunction restraining the defendants/respondents from interfering in any manner in the property, as shown in the site plan attached and mentioned in the heading of the plaint and situated at Dera Baba Jawahar Dass Ji (for brevity – Dera), Village Soos, District Hoshiarpur, which is the ownership of Astham Dera Baba Jawahar Dass Ji and is being managed by Dera's Charitable Trust, as shown in the site plan attached and mentioned in the heading of the plaint.

3. The case of the plaintiffs is that Dera is a Charitable Trust, duly registered with the Sub-Registrar, Hoshiarpur and the said Trust manages the property of Dera at Village Soos. The said Dera is well known among the Sikh followers. After death of last caretaker of this religious institution, the up-keep of this institution was being done by the Gram Panchayat, Soos. As per intentions of the villagers of Village Soos and Gram Panchayat, they decided to hand over services/sewa of the Dera to Damdami Taksal, Jatha Bhindran, situated at Village Mehta, District Amritsar. In the meeting of Gram Panchayat, Soos under the chairmanship of Sarpanch Hardeep Kaur, which was attended by all the five Panches, it was unanimously decided by passing a resolution/Panchayatnama that the Gram Panchayat, Soos was earlier managing and taking care of Dera but now, since it is not capable to handle this responsibility, it has been decided to hand over the management and service of Dera to Sant Baba Harnam Singh Bhindrawale and accordingly, management was handed over to Damdami Taksal in very peaceful manner.

4. After taking over the above-mentioned Dera, Damdami Taksal

decided to register a Charitable Trust so as to run the institution in a transparent and better way. Accordingly, on 25.06.2018, Trust was got registered with objective to work for the upliftment and welfare of the mankind and to unite them in complete solidarity by improving them ethically, socially and educationally and the same is being run by the said Trust since 13.05.2018. There is no complaint of any sort against the conduct of the persons, who are managing the affairs of the Dera.

5. The defendants, who were earlier getting the monetary benefits out of the institution, entered into conspiracy to take over the affairs of Dera. Initially, defendants started malicious campaign against the persons managing the affairs of the Dera but when their attempts to create rift in the Society failed, then they started abusing and threatening the plaintiffs and other Trust members to either vacate the premises or face dire consequences. On 01st March, 2019, at night, they armed with weapons, started creating ruckus in front of the religious institution demanding the keys from office bearers of plaintiffs and other members, and when nobody came outside, they started shouting and openly declared that they would take over the Dera by killing either one or all members of the Trust.

6. On 5th March, 2019, the defendants held a general meeting in the village instigating the villagers to come with them to take over the institution but the villagers did not accompany them. They openly threatened to take the matter in their own hands illegally and unlawfully. Their act is only to create rift in the Society and to take forcible possession of the Dera.

7. Due to unlawful acts of the defendants, the plaintiffs moved a petition before this Court bearing CRM-M-11116-2019, for protection of life and liberty of the plaintiffs and other members of the Dera and the Trust, wherein Superintendent of Police, Hoshiarpur was directed to do the needful for protection of life, liberty as well as property of the Trust.

8. The Dera is presently being managed properly. Daily services of the Dera are being performed by the competent persons. The day-to-day accounts of the Holy Gurudwara are duly maintained in Punjab National Bank, Branch Bullowal, District Hoshiarpur. The Permanent Account Number (PAN) of the Dera has also been issued by the Taxation Department. Electricity connection is also installed there. The defendants, who are not religious persons and are headstrong, are threatening and interfering in the management and sewa of the Dera. So, prayer was made to restrain the defendants from interfering in any manner in the properties of the Dera, as shown in the site plan attached, by way of causing any damage to its buildings in any manner.

9. Defendants no.1 to 17, 19 and 21 contested the suit by filing written statement. Their case is that plaintiff no.2 Trust had no right, title or interest to manage the affairs and properties of Dera and has no locus standi to manage the same. The Gram Panchayat of Village Soos alone was not competent to manage the affairs of Dera and its properties. Earlier, a civil suit was filed by Gram Panchayat regarding right, title and interest to manage the said Dera and the same was decreed on 25.09.1984 but in appeal, the matter was compromised. The resolution of Panchayat dated

16.02.1987 was placed before the Court as Ex.C-1 about terms and conditions for the Committee for managing the affairs and properties of the Dera, This compromise dated 16.02.1987 is the sole legal verdict for constituting Committee for management of the Dera, which included 32 members. The said Committee had never authorized the plaintiffs to perform any duty at Dera. Thus, the plaintiffs have got no right, title or interest to manage the Dera and the properties attached to it. The resolution dated 13.05.2018 is without any authority and is forged and fabricated one. The stamp paper, on which the said resolution was scribed, was never purchased by Avtar Singh son of Ajit Singh. The act of registration of Trust on 25.06.2018 is an act of manipulation by the plaintiffs and has got no legal sanctity and does not bind the villagers and the defendants.

10. A dispute also arose last year regarding management of Dera whereupon the District Magistrate, vide its order dated 12.05.2018, has appointed a Committee of officers to supervise the donations being offered at the Dera, collect and deposit the same in the account of the Dera. There is tradition of huge donations/offerings by the worshippers of Dera and plaintiffs have an eye over these offerings to which they are not entitled to at all. The plaintiffs, in connivance with the Sarpanch of Gram Panchayat, want to use these donations of Dera. The Dera and properties attached to it are being managed by the Managing Committee. Wives of defendants no.1 and 7 are duly elected members of Panchayat and defendants no.2 to 4 are themselves elected Member Panchayats of Village Soos. The plaintiffs intentionally did not place on record a copy of the writ petition to conceal

the fact that matter in the writ petition is in issue in the present suit as well.

11. Learned Trial Court dismissed the application for grant of temporary injunction. In appeal filed by the plaintiffs, it is held that the order dated 18.02.2020, passed by learned Trial Court, does not suffer from any infirmity or illegality and the same does not require any interference. So, the appeal was dismissed. The learned Appellate Court made interim arrangement while passing the order. The relevant extract of the order passed by the learned Appellate Court is as under :-

*“...Therefore, following orders are passed as an **interim measure** during the pendency of the suit before the trial court :-*

i) To manage the affairs of Dera/ suit property effectively and in transparent manner, the SDM, Hoshiarpur is appointed as Receiver-cum-Administrator of the Dera Baba Jawahar Dass Ji village Soos Distt. Hoshiarpur. Henceforth, all the assets of suit property i.e immovable or movable properties including the bank accounts opened from time to time by both the parties, offerings, donations, bank securities etc shall be under the control of the SDM, Hoshiarpur. None of parties shall remove/alienate/dispose off any such assets from the suit property in any manner. Further for proper management of the day to day affairs of Dera, an Interim committee shall be formed by the SDM, Hoshiarpur within one month from today. The said committee will be headed by SDM, Hoshiarpur and would include two members each from both the

contesting sides/ parties, who would be assisting the SDM, Hoshiarpur in managing the day to day affairs of Dera/ suit property. Both the parties shall forward the names of their respective members for including them in the said interim committee to SDM, Hoshiarpur within 15 days from today. In case names of the members to be included by both the parties are not forwarded by any of the party within the stipulated period, then the SDM, Hoshiarpur is authorised to nominate such members from both sides at his own discretion.

ii) All the financial powers of the Dera Baba Jawahar Dass Ji village Soos shall vest in SDM, Hoshiarpur. All the donation boxes in the suit property shall be sealed and opened in the presence of SDM, Hoshiarpur or in the presence of his duly authorised person only and preferably in the presence of members of the interim committee. Proper record/ accounts/inventory shall be maintained with regard to collection of donations/other offerings. All the donations in cash would be deposited in the bank account as per directions of the SDM and other offerings would be kept under the lock and key /supervision of SDM and would be dealt with by the SDM, Hoshiarpur as he deem it fit for its better utilization. SDM Hoshiarpur is further authorised to spend the funds of Dera as he deem fit for the betterment of the Dera/devotees/villagers of village Soos and for its effective management in any manner and proper account book shall be maintained with regard

to all expenses made from such funds. The management of affairs of Dera would also include its maintenance, development, hiring employees, holding various functions and other activities of Dera/suit property from time to time as decided by SDM, Hoshiarpur in consultation with members of Interim Committee. The SDM, Hoshiarpur is also authorised to operate all the bank accounts including existing bank accounts ever opened in the name of Dera/Trust/Management of the Dera so formed from time to time and necessary intimation in this regard be sent to the concerned banks. Both the parties shall also be bound to disclose the details of such bank accounts to the SDM, Hoshiarpur within 15 days. The SDM Hoshiarpur is also authorised to open new bank account in some nationalized bank being Receiver-cum-Administrator of the Dera Baba Jawahar Dass Ji for better management of its funds as he deems fit. In case any dispute arises with regard to day to day management of the Dera/ suit property amongst the members of the interim committee, then decision made by the SDM, Hoshiarpur shall be final.

13. *The SDM Hoshiarpur may take the assistance of Police in consultation with SSP, Hoshiarpur for effective implementation of this order and who would ensure maintenance of proper law and order in and around the suit property. Copy of this order is forwarded to Sub Divisional Magistrate, Hoshiarpur and SSP Hoshiarpur for further necessary compliance.”*

12. Learned counsel for the petitioner has submitted that the Courts below have non-suited the petitioners on the ground that there was compromise Ex.C-1 and the resolution dated 16.02.1987, whereby the arrangement was made that all the Panchayat members would be the members of the Committee of Dera and Gram Panchayat would have no right to manage the Gurudwara, which is a Sikh institution, to be managed by the worshipper of Sikh religion. A non-Sikh cannot manage the Gurudwara. Defendants are not the members of any Committee. They are not eligible to manage the affairs of a religious body or to render services to Holy Sri Guru Granth Sahib Ji installed in the Dera. Many criminal cases have been registered against them, details whereof are mentioned in para no.7 of the appeal filed before learned District Judge, Hoshiarpur (Annexure P-14), which reads as under :-

“FIR No. 62 under Section 323, 324, 148, 149 IPC has been lodged against defendant No.2 Avtar Singh and defendant no.8 Karan Deep Singh at Police Station Bullowal and Narinder Singh son of Roop Singh lodged in Central Jail Ludhiana and similarly, there is also FIR No.0124 against defendant No.17 Simarjit Singh, lodged at Police Station Bullowal under Section 354, 323, 324, 451 and 34 IPC. FIR No.0015 has been lodged against defendant No.14 Narinder Singh under Section 420, 120-8 IPC and under Section 13 of Punjab Prevention of Human Smuggling Act 2012. FIR No.2 was lodged against defendant No.20 Amandeep Singh under Section 302, 201

*IPC at Police Station Bhogpur, Tehsil and District
Jalandhar.”*

13. Thus, it is clear that some of the defendants are the persons with criminal background and are not maintaining the Sikh tenements. Earlier, few persons filed suit against Gram Panchayat and Gram Panchayat agreed to form a Committee and passed the resolution. Accordingly, all the Panches were directed to nominate three members and this Committee was formed only for two years. There is nothing on record to show what happened after two years. No record was brought on the file about working of the said Committee or its existence after the lapse of two years. The said compromise was neither acted upon nor implemented in any manner. No record has been produced by the defendants to the effect that they have ever formed any Managing Committee or the said Managing Committee had ever worked for the Holy Gurudwara. The *Rehat Maryada* of Sikh religion shows that all the religious affairs can be performed by *Amritdhari Sikhs* and not by the criminal persons.

14. The suit has been filed for the protection of religious property as as per para No.413 of Mulla Hindu Law, defendants are claiming their rights through Gram Panchayat but no existing right or title in any religious property vests in the Gram Panchayat. Any temple, Masjid or Gurudwara, by its very nature, is a juristic person. So, the Dera in question is also a juristic person. The entire village and Panchayat executed Panchayatnama dated 13.05.2018 in favour of the plaintiffs and all the services/sewa was duly handed over to the plaintiffs. The photographs of handing over the

sewa and the entire programme including *Ardas Samagam* are duly annexed. News was also published regarding handing over the keys, in different newspapers. Various Annual Jorh Mela and 550th Parkash Utsav of Shri Guru Nanak Dev Ji were celebrated. The resolution dated 10.02.2020 was passed after giving commendation for successful celebrations of the same. Site plan was produced showing entire buildings, Samadhs, Langar Halls being run by the plaintiffs. *Jamabandis* for the year 2014-15 depicted the property to be the Dera in question in the revenue record. Khasra Girdawri shows the disputed Khasra Number to be Gair Mumkin Dera “Makbuja Dera Baba Jawahar Dass”. The Panchayatnama dated 13.05.2018 was signed by more than 300 residents of village including some of the defendants. The Trust in question was registered on 24.07.2018 before the Sub-Registrar, Hoshiarpur and the same has never been challenged by any person including defendants. The Trust is doing work for upliftment and welfare of the mankind and is having philanthropic objects.

15. The learned courts below wrongly twisted the facts and made out a case which is not even pleaded by the defendants. The defendants, in the present case, have nowhere pleaded that the Holy Gurudwara was having succession from Guru to Chela or it was Gurudwara of Udasi Bheikh.

16. The learned Lower Appellate Court further committed grave error in appointing a Receiver-cum-Administrator of the Dera to manage the affairs of the Dera. There were no complaints filed against the plaintiffs regarding mismanagement of the Dera or mismanagement of its funds. It is the case of the defendants in the written statement that accounts of the Dera

are duly being maintained in a transparent manner. The learned Lower Appellate Court appointed the Receiver without any basis, in order to deprive the petitioners of their right to perform sewa of the Dera. Receiver is normally appointed with a view to protect the property being squandered but before appointing the Receiver, the Court is required to keep in view rights of the parties, parties interested and there being no adequate remedy to take care of the interest of others. Receiver is appointed in case there is some emergency or danger or loss calling for an immediate action. Receiver cannot be appointed merely on the ground that there would not be any harm. The plaintiffs are not claiming ownership of the Dera but are only claiming the right to manage the Dera and to perform its sewa in accordance with Sikh tenements. They have been managing and performing sewa since 2018 and sewa was handed over to them in a lawful manner by Gram Panchayat. The plaintiffs would suffer irreparable loss and injury in case they are deprived of their rights. Prima facie, the case is also in favour of the plaintiffs. They would suffer loss and injury if rights of the plaintiffs are not protected during pendency of the suit. Balance of convenience is also in favour of the plaintiffs since they are performing sewa and there is no complaint against them regarding maintaining *Rehat Maryada* and about misappropriation of any funds. The appointment of Receiver is totally against the law. The orders passed by learned Courts below are not sustainable. Reliance in this regard has been placed on **Rame Gowda (dead) by LRs vs. M. Varadappa Naidu (dead) by LRs and another reported as (2004) 1 Supreme Court Cases 769** and **Anathula Sudhakar**

vs. P. Buchi Reddy (dead) by LRs and others reported as **(2008) 4 Supreme Court Cases 594.**

17. Learned counsel for the respondents has argued that in pursuance of the order passed by the Appellate Court, Receiver is already appointed and the said order is already implemented. So, the same cannot be changed now. It is further submitted that the suit property/Dera is being managed by the Committee, in pursuance of the order passed in the earlier case. As per the resolution of Gram Panchayat dated 16.02.1987, the Gram Panchayat was one of the constituents of the said Committee of 32 members. The said Committee has never authorized the plaintiffs to perform the duties of the Dera. It is further submitted that the Gram Panchayat alone had no authority to manage the affairs of the Dera and the management of the Dera could not be handed over to plaintiffs by passing resolution dated 13.05.2018. The Managing Committee, in pursuance of Resolution dated 16.02.1987, has never been dissolved. So, it is the Committee only, which can manage the affairs of Dera/suit property. Since it is known as Samadh of Baba Jawahar Dass Ji etc. and plaintiffs claimed to maintain it according to Sikh religion. As there is no place of worship of Samadh in Sikhism, so, the plaintiffs have no right to manage the Dera/suit property. The entire suit property is in Shamlat and part of the suit property is owned by private persons. So, Gram Panchayat has not right to hand over the suit property owned by private persons to any one alone. For transferring the management of the suit property, the consent of all the stake holders was required, but there is no such consent. The plaintiffs have no ownership rights in any

manner over the suit property and learned Appellate Court is right in holding that there was threat to law and order situation in the area and has appointed Receiver till the disposal of the suit. No prima facie case exists in favour of the plaintiffs and no balance of convenience is in their favour and they shall not suffer any irreparable loss. So, the present revision petition deserves to be dismissed.

18. I have heard submissions of learned counsel for the parties and have perused the case file.

19. The specific case of the plaintiffs is that Dera Baba Jawahar Dass Ji, Village Soos, District Hoshiarpur is well known among the Sikh followers. After the death of its last care-taker, the up-keep of this institution is being done by Gram Panchayat of Village Soos. The said Gram Panchayat, vide its resolution dated 13.05.2018, unanimously decided and handed over the management and services of the said place to the plaintiffs. Charitable Trust was created on 25.06.2018 and the said religious institution/Dera is being run by the said Trust. Thus, it can be said that on the day of filing the suit, plaintiffs are managing the affairs of the Dera/suit property and the said management has been handed over to the plaintiffs by none else but Gram Panchayat of Village Soos. It is not the case of the defendants that Holy Shri Guru Granth Sahib is not installed in the said Dera. So, such an institution is to be prima facie managed and served as per the Sikh tenements. Earlier, dispute arose regarding the management of the Dera. The said suit was decreed vide judgment and decree dated 25.09.1984. In the appeal, compromise was effected. As per resolution

dated 16.02.1987, a 32 persons Committee was constituted for the purpose of managing the Dera. The plaintiffs have placed on the file Annexure P-18, whereby Managing Committee was constituted for a period of two years, in pursuance of the compromise, but thereafter, there is no other document showing that the Committee has been actually functioning thereafter. Prima-facie, there is no record that at the time of handing over the management of Dera to the plaintiffs, such Committee was actually working. The part of the suit property is owned by Shamlat, which vests in Gram Panchayat and Gram Panchayat has handed over the management of the Dera to the plaintiffs. There is nothing to show that the Dera is not being managed properly, any litigation has arisen or any complaint has been filed with any Authority with regard to usurping the funds of the Dera. The plaintiffs have not acquired the management of the Dera by force or by unlawful means but the same has been handed over to them by Gram Panchayat of the Village itself. Plaintiffs are not claiming any ownership rights in the property of Dera. Thus, prima-facie, the Gram Panchayat has given responsibility to the plaintiffs to manage the affairs of Dera/suit property in the year 2018 and plaintiffs are properly managing and serving the Dera as per Sikh tenaments. So, plaintiffs have got every right to manage the same till this management is taken back in accordance with law. The First Appellate Court, apprehending that there would be law and order problem, appointed the Receiver to manage the affairs of the Dera. When a person is natural or juristic or a Trust and is managing the property, then such person cannot be deprived of the Management/custody of the property by appointing

Receiver. The management from the plaintiffs can only be taken back in accordance with law and not forcibly and same cannot be given to the Receiver without any basis. The question whether plaintiff has right to manage the Dera/suit property or defendants have right to manage the same, can only be decided during trial of the case. The appointment of Receiver is one of the extreme measures which the Court normally takes with a view to protect the property being squandered. Before appointing a Receiver, the Court is to keep in view, the rights of the parties, parties interested and there being no adequate remedy to take care of others' interest. A Receiver cannot be appointed to deprive a party of a *de facto* possession. The appointment of Receiver is considered to be very harsh remedy and such jurisdiction should be exercised only in extreme case with utmost care and caution. A Receiver can only be appointed if it appears to the Court to be just and convenient. The meaning of "***just and convenient***" has been explained By Hon'ble Kerala High Court in the case of **Mary and others vs. Biju P. Sebastian** reported as **2011(1) R.C.R.(Civil) 43**. Para 4 and para 5 of the said judgment read as under :-

*"4. What is meant by "just and convenient"?
The word, "just" is derived from the Latin word "justus" which came from the Latin word, "jus" which means "a right, more technically a legal right". The word "just" is defined in Century Dictionary as "right in Law or ethics". In the Standard Dictionary that word is defined as meaning "conforming to the requirements of right or positive law". The word "convenience" means*

*"suitability of a thing". Fletcher Moulton, CJ. in **Edwards & Co. v. Picard [(1909) 2 KB 903]** has construed the expression "just or convenient" occurring in the Judicature Act, Sec.25(8) thus:*

"The effect of the words "just or convenient" is to my mind much the same as "where it is practicable and the interest of justice require it".

*Jessel, M.R. in **Beddow v. Beddow [(1878) 9 Ch.Div. 89]** stated that in ascertaining what is "just", regard must be had to what is "convenient" as well.*

5. *Lindley, CJ. stated in **Holmes v. Millage** (supra) that court should appoint a Receiver for the protection of rights or for the prevention of injury, according to the legal principles. Referring to Section 503 of the Code of 1882 (quoted supra) Straight, J. held in **Srimathi Prosonomoyi Devi and another v. Ma Hob Rai and others [(1883) 5 ILR Allahabad 556]** that the power (for appointment of a Receiver) is not to be exercised as a matter of course and that it is not a reason for allowing an application for appointment of a Receiver that it can do no harm to appoint one. The discretion given by that Section is one that should be used with the greatest care and caution. The Madras High Court in **Krishna Swamy Chetty v. Thangavelu Chetty and others (AIR 1955 Madras 430)** has quoted with approval the following passage from **Crawford v. Ross [39 Ga 44 (Z 28)]**:*

"The high prerogative act of taking property out of the hands of one and putting it in pound under the order of

the Judge ought not to be taken except to prevent manifest wrong immediately impending."

Reference was also made to the following words of Atkinson, J. in Dozier v. Logan [101 Ga 173 (Z 29)] :

"The appointment of a receiver is recognised as one of the harshest remedies which the law provides for the enforcement of rights and is allowable only in extreme cases and in circumstances where the interest of the creditors is exposed to manifest peril "

Thus, the order of appointment of Receiver by learned First Appellate Court is *per se* wrong and is against settled principles of law.

20. At this stage, *prima facie*, plaintiffs have been properly managing the affairs of Dera/suit property and they have been given the said management by the Gram Panchayat itself and they cannot be deprived by any person, who has no better right to manage the same. The learned Courts below failed to consider that it is the duty of the Court to protect the plaintiffs and none be allowed to interfere in the management, possession etc. of the plaintiffs, during the pendency of the case. Learned Appellate Court has wrongly appointed the Receiver for handing over the management of the property of Dera/suit property, when there was no necessity to appoint the same.

21. In the light of the above discussion, the present revision petition is allowed and the orders passed by learned Courts below are hereby set aside. The defendants are restrained from interfering in the management of

Dera/suit property except in due course of law.

22. The learned counsel for the respondents has submitted that the SDM concerned has started acting in pursuance of the order passed by First Appellate Court. Since the order of appointment of Receiver has been set aside, so, the SDM concerned shall not interfere in the management of Dera/suit property in any manner on the basis of order of appointment of Receiver.
23. The plaintiffs shall properly and regularly maintain the record of receipts and expenditure and shall file a copy of the account statement in the learned Trial Court after three months, till disposal of the suit.
24. However, nothing stated herein above shall have any effect on the merits of the case.
25. Pending applications, if any, shall stand disposed of along with this judgment.

November 15, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes.