SHIROMANI GURUDWARA PRABANDHAK COMMITTEE A

V.

MAHANT PREM DASS

Civil Appeal No. 1767 of 2002

FEBRUARY 24, 2009 B

(TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.)

Sikh Gurdwaras Act, 1925:

Sections 7(3), 8, 16(2), 34 – Institution known as Gurdwara Sahib Gurdwara Bhagat Bhawan held to be a Sikh Gudwara C *by the Sikh Gurdwaras Tribunal – High Court held that the institution was used as Dera of Bhagat Bhawan and was in fact an Udasi Faqir Institution and as such was not a Sikh Gurdwara – On appeal,* ***Held:*** *Having gone through the details of the evidences, it is seen that the findings recorded by the* D *High Court are correct – All through the institution continued as an Udasi Institution.*

The Sikh Gurdwaras Tribunal held the institution known as Gurdwara Sahib Gurdwara Bhagat Bhawan to be a Sikh Gurdwara. On appeal, the High Court held the E **institution as a Dera of Bhagat Bhagwan and was in fact an Udasi Faquir Institution and as such was not a Sikh Gurdwara. Hence the appeal.**

Dismissing the appeal, the Court

HELD : 1. In view of the Exhibit R-10, it is clear that F **the Institution was established prior to 1665 A.D. by an Udasi Faqir Surat Ram, who had received donation from the Ruler of the then Patiala State and the said Institution then was governed by a chain of Udasi Mahants without break in the tradition of succession from Guru to Chela** G **and Mahant Mangal Dass was in the same tradition. [Para 44] [1143-C]**

2. The Institution was only known as a Dera or Dera

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A Sadhan or Mausooma Dharamshala Sadhan and it gave the impression that it was a charitable Institution for poor faqirs and travellers, as also offered shelters to them and the Mahants, who governed the Institution, were noble persons. [Para 44] [1143-D]

B 3. There is voluminous documentary evidence to show the grant of Muafi (remission) of revenue. The land was already granted to the Udasi Faqir in his personal capacity and he had become the owner thereof and the Institution was used by Udasi Faqirs and Sadhus, which C is clear from the reference in the revenue papers to the effect "Well of Sadhus or Well of Mahantawala" etc. [Para 44] [1143-F]

4. There is ample evidence to establish the pedigree D tables as Khandan Sadh Udasin and Patti Sadh Udasin. [Para 44] [1143-G]

5. There is no evidence that this was a Sikh Institution from its inception till today or the Sikhs had any say in the matter of appointment of Mahants. [Para 44] [1143-H]

E 6.Significantly, there is no evidence of there being a regular Granthi in the Institution, there existed even a Nishan Sahib. There was no further evidence that the Sikh religious ceremonies were ever held or there is Katha or Parvachan in a congregation. [Para 44] [1144-A)

F 7. It is established from the evidence that Guru Granth Sahib, though was kept, did not have a fixed place for its Parkash and the versions on the placement of Guru Granth Sahib is contradictory. [Para 44] [1144-B]

G 8. Even a single worshipper out of the original 57 applicants, ever turned up to support the cause of the appellant.[Para 44] [1144-C]

9. There was clear evidence that there was Gola H Sahib, Murti of Baba Siri Chand, Smadhs of earlier

Mahants and other objects of worship like photographs etc. and Guru Granth Sahib was only kept as a book of reverence.[Para 44] [1144-D] A

10. Baba Siri Chand, who was the son of the first Sikh Guru, was an Udasi and Udasi Sect grew up parallel with the Sikh religion. [Para 44] [1144-E] B

11. It is further established that all through, the Institution continued as an Udasi Institution.[Para 44] [1144-F]

Hem Singh & Ors. Vs. Basant Das & Anr. 1936 Privy Council 93; Uttam Das Chela Sunder Das Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar 1996 (5) SCC 71; Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Mahant Kirpa Ram & Ors. AIR 1984 SC 1059 and Pritam Dass Mahant Vs. Shiromani Gurdwara Prabhandhak Committee AIR 1984 SC 858 – referred to. C D

Mahant Lachhman Dass & Ors. Vs. State of Punjab, II L.R. 1968 (2) Punjab & Haryana 499; Lachhman Das & Others Vs. Atma Singh & Others AIR 1935 Lahore 666; Bishan Dass Vs. Gurbax Singh AIR 1934 Lahore 63, Prem Dass Vs. Labh Singh & Ors. AIR 1934 Lahore 130; Gulab Dass Vs. Fauza Singh AIR 1937 Lahore 826; Baba Ishar Das Vs. Dr. Mohan Singh and Others AIR 1939 Lahore 239; Ram Parshad & Ors. Vs. SGPC, Amritsar & Ors. AIR 1931 Lahore 161 and Brahm Das Vs. Tarlok Singh & Ors. AIR 1937 Lahore 273 – referred to. E F

Case Law Reference

II L.R. 1968 (2) Punjab & Haryana 499	**referred to**	**Para 4**
1936 Privy Council 93	**referred to**	**Para 15**
1996 (5) SCC 71	**referred to**	**Para 16**
AIR 1984 SC 1059	**referred to**	**Para 19**

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AIR 1935 Lahore 666	**referred to**	**Para 19**
AIR 1934 Lahore 63	**referred to**	**Para 22**
AIR 1934 Lahore 130	**referred to**	**Para 22**
AIR 1937 Lahore 826	**referred to**	**Para 22**
AIR 1984 SC 858	**referred to**	**Para 25**
AIR 1939 Lahore 239	**referred to**	**Para 26**
AIR 1931 Lahore 161	**referred to**	**Para 29**
AIR 1937 Lahore 273	**referred to**	**Para 29**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1767 of 2002

From the Judgement and Order dated 02.07.2001 of the Hon'ble High Court of Punjab & Haryana at Chandigarh in F.A.O. 45 of 74.

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Jaspal Singh, Sr. Adv. Mehul Sharma, Madhu Moolchandani, Advs. with him for the Appellants.

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P.K. Palli, Sr. Adv., A.V. Palli, Atul Sharma, Rekha Palli, Advs. with him for the Respondent.

The Judgement of the Court was delivered by

V.S. SIRPURKAR, J.

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1. An appellate judgment delivered by the Division Bench of Punjab & Haryana High Court, allowing an appeal under Section 34 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as 'the Act' for short), upsetting the judgment passed by the Sikh Gurdwaras Tribunal (hereinafter referred to as 'the Tribunal' for short) is challenged before us by Shiromani Gurudwara Prabandhak Committee (hereinafter referred to as 'SGPC' for short). While the Tribunal had declared an institution allegedly known as "Gurdwara Sahib Gurdwara Bhagat Bhagwan" to be a Sikh Gurdwara, by the aforementioned judgment of the High Court, the said Institution was declared

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not to be a Sikh Gurdwara. It was instead held that the Institution was used as a "Dera" of Bhagat Bhagwan and was, in fact, an "Udasi Faqir institution", and as such, was not a Sikh Gurdwara. It is this judgment, which is challenged before us.

2. One Hamir Singh and 57 others, residents of Village Ladda, Tehsil Maler Kotla, District Sangrur, Punjab, filed an application to the Punjab Government under Section 7 of the Act for a declaration that an institution allegedly known as "Gurdwara Sahib Gurdwara Bhagat Bhagwan", being a Sikh Gurdwara. It was alleged that the said Institution owned 389 bighas and 10 biswas of land, which was situated in villages Ladda and Dhuri and that some of the said lands were covered by the buildings. On the basis of this application, a notification No. 557-G.P.-61-H.G. dated 9.6.1961 was published in the Government Gazette by the Punjab Government in terms of Section 7(3) of the Act, and the notice of the same was also served on one Mahant Mangal Dass on 6.7.1961. This Mahant Mangal Dass was a Chela of Mahant Bishan Dass, who was claimed to be a hereditary office-holder. He moved a petition dated 25.2.1963 under Section 8 of the Act before the State Government of Punjab, claiming that the Institution was "Dera Bhagat Bhagwan" and was being wrongly described as "Gurdwara Sahib Gurdwara Bhagat Bhagwan" in the aforementioned application by Hamir Singh and 57 others. It was pointed out that the said "Dera Bhagat Bhagwan" was located at Revenue Estate Ladda, Tehsil Maler Kotla, District Sangrur, Punjab. It was asserted that it was not a Sikh Gurdwara as claimed in the application, but was an "Udasi Faqir institution". It was further claimed by Mahant Mangal Dass that after the death of his Guru Mahant Bishan Dass, he being the Chela, was appointed as Mahant of this Dera in accordance with the Udasi rites and, therefore, in charge of the Dera for the last 42 years and further that he was managing the Institution till that date. It was further alleged that out of the lands described in the original application, land admeasuring 32 bighas and 12 biswas comprised in Khasra Khewat No. 303/496 and 497 as detailed

A in Jamabandi for the year 1958-59, situated at Village Ladda and the house located at Dhuri town, was his personal property and did not belong to the "Dera Bhagat Bhagwan". It was also pointed out that the petitioner Hamir Singh & 57 others were mostly fictitious persons and had moved the application with B ulterior motives and, therefore, the notification issued under Section 7(3) of the Act by the State Government, was illegal and void. The State Government in turn, forwarded this application to the Tribunal for its adjudication under Section 14 of the Act.

C 3. The Tribunal served notice of the petition, bearing No. 164 of 1963 to SGPC and the other respondents in terms of the provisions under Section 15 of the Act. Very significantly, Hamir Singh and 57 other respondents, who had moved the original application, never turned up to support the application or oppose D the claim of Mahant Mangal Dass, Chela of Mahant Bishan Dass. The litigation was, therefore, carried on only at the instance of SGPC, who claimed the said Institution to be a Sikh Gurdwara. A written statement dated 29.7.1963 was filed by the SGPC and it was claimed that the said Institution was a E Sikh Gurdwara, as it was established for the use of Sikhs, and was used as a place of public worship by Sikhs all along in terms of the provisions of Section 16(2)(iii) of the Act. It was additionally claimed by way of amendment that the Institution was established in the memory of Sikh Guru Bhagat Bhagwan. F It was further claimed by way of subsequent amendment that the Institution was a Sikh Gurdwara because of the traditional visits of the first and sixth Gurus to the Institution, so that the Institution came within the purview of Section 16(2)(ii) of the Act. The last amendment was dated 1.6.1964. On 3.6.1964, G Mahant Mangal Dass also moved an application under Order 6 Rule 17 CPC for amendment of the petition under Section 8 of the Act, to the effect that he was a hereditary office-holder. However, by its order dated 4.8.1964, this application of amendment was rejected by the Tribunal. The Tribunal struck two Issues:

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"(i) Whether the petition is a hereditary office-holder?

(ii) Whether the institution is a Sikh Gurdwara under Clause (ii), (iii) or (iv) of Section 16(2) of the Act?"

The Tribunal treated Issue No. 1 as a preliminary issue and held vide order dated 9.3.1965, that the petitioner was a hereditary office-holder, there being sufficient oral evidence to support the same.

4. Mahant Prem Dass in his capacity as a Chela of Mahant Mangal Dass had filed a Writ Petition, being Writ Petition No. 367 of 1966 before the High Court, for quashing the notification dated 9.6.1961. However, that Writ petition was not pressed and was disposed of by the order dated 17.8.1971. It was conceded that the Petition was covered by the Full Bench Judgment of the High Court in ***Mahant Lachhman Dass & Ors. Vs. State of Punjab*** reported in ***II L.R. 1968 (2) Punjab & Haryana 499***. It was pointed out to the Court that an appeal against the said judgment was still pending in the Supreme Court and a clear statement was made that the counsel was not conceding regarding correctness of the Full Bench Judgment. However, since the High Court felt bound by the said Judgment, the Writ Petition was dismissed.

5. The Tribunal, thereafter proceeded with the trial in which the only issue was as to whether the institution is a Sikh Gurdwara under Clause (ii), (iii) or (iv) of Section 16(2) of the Act.

6. Regarding this Issue, the SGPC conceded that Section 16(2)(ii) was not attracted, and that claim was not pressed by the SGPC. The SGPC, however, persuaded its case under Section 16(2)(iii) & (iv) of the Act. The Tribunal came to the conclusion that the term "Dera" and "Gurdwara" were interchangeable terms and were used as such. The Tribunal further held in its order dated 10.10.1973 that the existence of Mahant and that Mahant was Udasi, was immaterial. The

A Tribunal, ultimately held that the Institution was a Sikh Gurdwara, considering its history, to the effect that Bhagat Bhagwan, in whose name the Institution stood, though was initially a Sanyasi, but had become a Sikh after meeting the seventh Guru, Guru Har Rai and continued to live as a Sikh Missionary preaching B Sikh religion. The Tribunal, therefore, came to the conclusion that since Bhagat Bhagwan himself was a Sikh, the Institution which was established in his memory, would remain a Sikh Institution, even if some of the Mahants deviated from Master's path and described themselves as Udasis. It was, therefore, C held that the Institution fell within the ambit of Section 16(2)(IV) of the Act, and as such, was a Sikh Gurdwara. The objection petition filed under Section 8 by Mahant Mangal Dass was, therefore, dismissed. The Judgment of the Tribunal was not unanimous, inasmuch as one of the three Members of the D Tribunal Shri A.L. Bahri had differed with the conclusions drawn by the majority and held that it was not proved that the Institution was ever used as the public place of worship of Sikhs or even at the time of issuing of notification in the year 1961. It was further held that the objection petitioner had successfully proved that E the institution was established by Shri Surat Ram and that the Muafi was also granted in the name of Shri Surat Ram and since times immemorial, the Institution had been under the management of Udasi Mahants, which had been so described in several documents. It was also held by Shri Bahri that the succession to the Office of Mahant had been from Guru to Chela F and idol of Baba Siri Chand, Ball of Ashes and Smadhs were the objects, which were being worshipped in the Institution. The Learned Member also further held that the mere fact that 'Guru Granth Sahib' was kept or recited in the Institution, would not make it a Sikh Gurdwara.

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7. A First Appeal No. 45 of 1974 came to be filed before the High Court by Mahant Prem Dass, who was a Chela of Mahant Mangal Dass and had succeeded him after his death. The Division Bench of the High Court rejected the Appeal and H held that Mahant Mangal Dass had never claimed to be

"hereditary office-holder" nor was there any averment regarding his being a "hereditary office-holder", and since the respondent Mahant Mangal Dass has failed to prove himself as "hereditary office-holder" and had also failed to state about the custom of inheritance, the petition under Section 8 itself, was not competent. It must be stated here that the High Court did not go into the merits of the matter.

8. A Special Leave Petition was preferred before this Court by Mahant Prem Dass, who had succeeded Mahant Mangal Dass. This Court by its order dated 8.12.1994 allowed the Civil Appeal and the matter was remanded to the High Court to dispose of original First Appeal No. 45 of 1974 on merits and in accordance with law. This order of this Court is extremely important and we would refer to the same in the subsequent part of this judgment. After the matter came back to the High Court, the same was dealt with in details by the High Court, and ultimately, the High Court allowed that appeal by the impugned judgment dated 2.7.2001. It was held by the High Court that the respondent Mahant was a hereditary office-holder. On merits, and on reconsideration of documentary and oral evidence, the High Court further came to the conclusion that the Institution was not a Sikh Gurdwara, but was a Udasi Dera, called "Dera Bhagat Bhagwan". It is this judgment, which has fallen for consideration before us, now.

9. Shri Jaspal Singh, Learned Senior Counsel appearing on behalf of the appellant, firstly, contended that during the pendency of the Writ Petition before the High Court, the SGPC had taken an objection that the Objection Petition filed by Mahant Mangal Dass under Section 8 was not maintainable, since in that Petition, Mahant Mangal Dass had not alleged that he was a hereditary office holder of the Institution in question. The Learned Senior Counsel pointed out that while the matter was pending before the Tribunal, Mahant Mangal Dass had applied for amendment of his Objection Petition under Section 8 and had tried to introduce following:-

A "The petitioner is a hereditary office-holder. The rule of succession in this Dera is that the Chela succeeds the Guru after his death. The custom of the Dera from the beginning is that the Guru has a right to nominate his successor out of the Chela and in the absence of such B nomination, the Chela succeeds with the approval of the Bhekh."

It is further pointed out by the Learned Senior Counsel that when this application was moved before the Tribunal, the Tribunal felt that there was no need to amend the Petition, since C the averments already made in the Objection Petition clearly indicated that Mahant Mangal Dass was claiming to be a hereditary office-holder and the mere absence of the specific expression in the averment, did not matter. However, when the matter came for the first time before the High Court, the objection D was taken by the appellant – SGPC that the Petition under Section 8 was not competent on account of absence of specific averment by Mahant Mangal Dass that he was a hereditary office-holder. The High Court had also dismissed the appeal, holding that in the absence of specific averment, Mahant Mangal E Dass had not locus-standi to file an Objection Petition under Section 8 of the Act. The Learned Senior Counsel, therefore, invited out attention to the order of this Court, whereby, the appeal filed by Mahant Mangal Dass was allowed. The Learned Senior Counsel then pointed out at the specific observations F made by this Court to the following effect:-

"If the High Court felt that the Tribunal was not right in refusing the amendment, the proper course was to allow the amendment and thereby, cure the defect and then decide the matter on merits, since the evidence was G already before it. We, therefore, set aside the order of the High Court by allowing this appeal and remit the matter to the High Court for disposal of the appeal on merits."

The Learned Senior Counsel further pointed out that when the matter went back to the High Court and High Court decided H

the matter, disagreeing with the majority view of the Tribunal by holding that the Institution was not a Sikh Gurdwara, the High Court, however, did not consider the question of amendment, which was refused by the Tribunal nor the issue regarding Mahant Mangal Dass being hereditary office-holder, was ever decided. According to the Learned Senior Counsel, if this Court had remanded the matter to High Court for disposal of appeal on merits, the High Court was, therefore, bound to decide the issue initially framed by the Tribunal regarding the hereditary office-holder's status of Mahant Mangal Dass. According to the Learned Senior Counsel, the order of this Court could not be treated to mean that the order of the Tribunal on that issue, was to be treated as final. It was pointed out that SGPC had specifically challenged the finding in the first round before the High Court and High court had allowed that objection and had dismissed the petition under Section 8 holding that there was no specific averment regarding the petitioner being a hereditary office-holder. The Learned Senior Counsel, therefore, contended very strenuously that even if this Court had allowed the Special Leave Petition against the order of the High Court and had directed the High Court to decide the appeal on merits, the High Court had to decide both the issues. According to the Learned Senior Counsel, this Court had left open the issue whether Mahant Mangal Dass was a hereditary office-holder. According to the Learned Senior Counsel, that issue, therefore, remained undecided and leaving that issue undecided, the High Court clearly had breached the remand order of this Court. The Learned Senior Counsel further argued that under Section 8 of the Act, the Objection Petition could be filed only and only if Mahant Mangal Dass was a hereditary office-holder and, therefore, the question of his status went to the very root of the matter. The Learned Senior Counsel urged that since the High Court has not given any finding on that issue, the matter needs a remand.

10. The Learned Senior Counsel further argued that Mahant Mangal Dass had not only filed the Objection Petition

A under Section 8, but had also filed a Writ Petition under Article 226 of the Constitution of India, challenging the validity of the notification and the said Writ Petition was dismissed by the High Court by a speaking order and after notice to the parties. The Learned Senior Counsel, therefore, argued that if the Writ B Petition was dismissed after notice to the parties by a speaking order, hence the order dated 17.8.1971 passed by the High Court, dismissing the Writ Petition operate as Res-Judicata and, therefore, the matter could not have been allowed to proceed further.

C 11. The Learned Senior Counsel then argued that though Mahant Mangal Dass had claimed to be hereditary office-holder on the basis of a custom, since there was no specific issue framed on the existence of the custom, the SGPC was gravely prejudiced, inasmuch as, it could not lead the evidence on the D issue.

12. As regards the second issue regarding the status of the Institution as a Gurdwara, the Learned Senior Counsel extensively criticized the appreciation by the High Court of the documentary, as well as the oral evidence. He pointed out that E the original donee Suram Ram was not mentioned as an Udasi Faqir in Exhibits P-1 to P-7 and R-10 to R-13 and, therefore, those documents could not be relied upon to hold that he was an Udasi Faqir. Similarly, the Learned Senior Counsel suggested that those who succeeded Surat Ram, could not be held to be F Udasi Sadhus. Exhibit P-2, P-4, P-5, P-6 and P-7 were extensively dealt with by the Learned Senior Counsel to show that these documents were self-serving documents, made during the lifetime of Mahant Mangal Dass and in none of them, the Sadhus mentioned in Exhibit P-5 Pedigree-table, were G described as Udasis. The Learned Senior Counsel, therefore, urged that that the appreciation of evidence by the High Court of the documentary evidence, was perverse. The Learned Senior Counsel, therefore, urged that mere description of a person as a Chela could not lead to the conclusion that he H succeeded his predecessor on account of his being a Chela.

13. Inviting our attention to the oral evidence, the Learned Senior Counsel urged that the evidence led on behalf of Mahant Mangal Dass PW-1, Kishan Singh PW-2, Mokand Singh PW-3, Kehar Singh PW-4 and Karam Parkash PW-5 was extremely suspicious and could not be relied upon by the High Court. Various so-called admissions and statements in the witness were relied upon by the Learned Senior Counsel to hold that the evidence could not have been relied upon. The Learned Senior Counsel pointed out that the use of the word "Dera" for the Institution was also of no use to the Mahant, as the word "Dera" was synonymous with the word "Gurdwara". He further pointed out that the holy book 'Guru Granth Sahib' was always kept open in the Institution, the land for which was donated by Maharaja Ala Singh. The Learned Senior Counsel further argued that Mahant Bishan Dass, in his application for being appointed as the Mahant of the Dera, had described himself as "Bihangam Sadh" and not "Udasi Sadh" and had assured the authorities that 'Guru Granth Sahib' was being recited in the Dera as before. The Learned Senior Counsel further suggested that in his statement, Mahant Bishan Dass had never suggested that there were any other objects of worship in the Dera besides 'Guru Granth Sahib'. It was further commented that there was no succession from Guru to Chela in this Institution and in fact, while recommending the appointment of Chela Bhagat Ram, it was emphasized that he knew "Gurumukhi" very well and was well versed in performing the 'path' (recitation) of Guru Granth Sahib. According to the Learned Senior Counsel, the High Court missed all these facts. The Learned Senior Counsel also urged that the documents did not show any reference to any other object of worship like Gola Sahib, Smadhs and pictorial images of Baba Siri Chand, and it clearly emerged from the documents that the 'Guru Granth Sahib' was the only object of worship there. He pointed out that even the evidence of Mahant Mangal Dass was silent on there being a Smadhs, Gola Sahib or pictorial images. Similar comments were made in respect of the evidence led on behalf of Mahant Mangal Dass in support of the objection. The Learned Senior Counsel heavily relied on

A the oral evidence led on behalf of SGPC and more particularly, on RW-8 Jang Singh, RW-9 Sadhu Singh, RW-10 Sarwan Singh, who were the local people and also the persons in authority and who had insisted that the only object of worship in the Institution was 'Guru Granth Sahib' and that the Sikh Festivals B Puranmashi and Kartik were celebrated there. Reference were also made to evidence of RW-11 Balwant Singh, RW-12 Chota Singh, RW-13 Inder Singh, as also RW-14 Nachhatar Singh, who all asserted about the Sikhs visiting the Gurdwara and celebrating the Sikh Festivals. Evidence of RW-15 Ishar Singh C was also relied upon to suggest the celebration of the birth and death anniversary of the first Guru of Sikhs and Shrads of the first and the tenth Guru of Sikhs took place in the Institution. It was urged that despite the unchallenged testimony of the witnesses from the village itself and the adjoining villages, the D High Court had erred in rejecting the evidence, on the ground that the mere keeping of 'Guru Granth Sahib', by itself, would not make the Institution, a Gurdwara. The Learned Senior Counsel further suggested that the High Court had misread the evidence of PW-6 regarding the placement of Smadhis.

E 14. Lastly, arguing on Clause (iv) of Section 16(2), the Learned Senior Counsel referred to the historical aspect and the six historical works such as :

(i) The Sikh religion by Max Arthur Mecauliffe

F (ii) Shri Gurpartap Suraj Granth

(iii) Twarikh Guru Khalsa

(iv) Udasi Sikhan Di Vithia

(v) Guru Udasis Mat Darpan and

G (vi) Mahankosh

Heavy reliance is placed on page 288 of the 4th Volume of the Sikh Religion by Mecauliffe, whereby, a Story appears about Bhagwan Gir. According to this Story :

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"Bhagwan Gir went to visit the Guru in Kiratpur, who advised him to proceed to Dehra Baba Nanak and join the Udasi there. It was suggested that Baba Siri Chand, the elder son of Guru nanak had established sect of Udasis. It reveals from the Story that the Mahant at Dera Baba Nanak Mihr Chand was the great grandson of Baba Nanak, who advised Bhagwan Gir and initiated him into Sikhism and gave him the name Bhagat Bhagwan. It was this Bhagwan Gir, who then traveled, but without any success. He came back to Mihr Chand to report his failure, when he was told by Mihr Chand that he should have received initiation from Guru Har Rai, who was the real Guru and advised him to go to the Guru and crave for his blessings. Thus, Bhagat Bhagwan went to Guru Har Rai and started weeping in repentance. He was then cheerfully pardoned by the Guru and he was directed to go the Hindustan and reform its people."

According to the Learned Counsel, this Bhagat Bhagwan was an inspiration behind the Institution, in whose name the Institution was named as "Dera Bhagat Bhagwan". Similarly, the Learned Counsel also relied on 'Gurpartap Suraj Granth', which also has given the history of Bhagat Bhagwan, originally known as Bhagwan Gir, Sanyasi. It gives similar history as given in Mecauliffe's book of history. The Learned Senior Counsel also relied on other text books and pointed out that the Tribunal had taken note of all these authorities to work in its majority judgment and had rightly held the Institution to be a Gurdwara. The Learned Senior Counsel also heavily relied on the evidence of two Sikh historians, namely, Dr. Ganda Singh RW-16, Shamsher Singh RW-17, as also on the evidence of Randhir Singh RW-18. The Learned Senior Counsel also commented upon the High Court, rejecting such weighty oral evidence.

15. As against this, Shri Palli, Senior Advocate appearing on behalf of the respondent, supported the judgment of the High Court and pointed out that initially, Issue No. 1 was *treated as* preliminary issue and on appreciation of evidence led by the

A parties, the Tribunal vide order dated 9.3.1965 had unanimously held that the succession to the Gaddi of Mahantship is proved from Guru to Chela and all the Mahants had been Udasi Sadhus, and SGPC had not challenged this order, though an appeal is provided under the Act. The Learned Counsel went on to argue B that SGPC possibly realizing the importance of the decision on Issue No. 1, then moved an application for amendment that the Institution was also a Sikh Gurdwara under the provisions of Section 16(2)(ii) of the Act, as having been established to commemorate the visit of the first and sixth Gurus of Sikhs, which C claim was given up. SGPC again moved a second application, seeking amendment to take up the plea tha the Institution had been established in the memory of Sikh Saint and historical person, namely, Bhagat Bhagwan and was used for public worship before and at the presentation of the petition under D Section 7 of the Act. The Learned Counsel pointed out that initially, the SGPC had claimed that the Institution had been established for use by Sikhs for the purposes of public worship and was used for such worship by the Sikhs before and at the time of presentation of the petitioner, however, the SGPC had E also to prove its continuous user from the date of its establishment till the date of notification, as held in ***Hem Singh & Ors. Vs. Basant Das & Anr.*** reported in ***1936 Privy Council Page 93***. According to the Learned Counsel, the SGPC had miserably failed to prove the same. The Learned Counsel suggested that the High Court was absolutely right in holding, F on the basis of documentary and oral evidence, that the SGPC had miserably failed to prove the continuous and present exclusive user by the Sikhs nor had it been able to prove that this Institution was established in the memory of any Sikh Saint.

G 16. The Learned Counsel pointed out that as regards the first argument by Shri Jaspal Singh regarding first issue of hereditary office-holder, the issue stood concluded by this Court's judgment and it could not now be reopened. The Learned Counsel also argued that this stand was not argued before the High Court nor was any application moved by the SGPC before H

the High Court to that effect, after the remand made by this Court and, therefore, this issue could not be gone into now. The Learned Counsel further suggested that in view of the ruling of this Court in ***Uttam Das Chela Sunder Das Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar*** reported in ***1996 (5) SCC 71***, the issue will not now be allowed to reopened.

17. As regards the establishment and user of the institution, the Learned Counsel took us through the documents, to which we have already made reference and urged that the High Court was correct in relying on the old records, wherein, there is a clear reference to Mahant Brahm Dass as a Faqir Udasi. The Learned Counsel pointed out that it was clearly established and rightly so followed by the High Court that there was a custom of succession from Guru to Chela.

18. Regarding oral evidence also, the Learned Counsel heavily relied on the evidence tendered by objector and assailed the evidence led on behalf of the SGPC. Lastly, the learned counsel asserted that the Judgment of the High Court dismissing the writ petition filed by Mangal Dass could not be held as Res Judicata.

19. The Division Bench of the High Court, in its well-considered judgment, went on to record the history of the Marathon litigation, which began right from 1960 by way of an application filed by Hamir Singh and 57 others. After dealing with the facts in general regarding the history, the High Court noted the basic two contentions on behalf of the respondent Mahant Prem Dass. These contentions were:-

(i) that the majority decision of the members of the Tribunal that Institution in question is a Sikh Gurdwara is not only against the weight of evidence adduced on record, but is based on conjectures drawn by misreading of the evidence; and

(ii) that the conclusion drawn in the *majority judgment* that both Bhagat Bhagwan and Baba Surat Ram

A were Sikh Saints is in conflict with their other findings recorded in the judgment.

Referring to a decision in ***Lachhman Das & Others Vs. Atma Singh & Others*** reported in ***AIR 1935 Lahore 666***, the High Court noted that before an Institution can be declared as a B Sikh Gurdwara, it must be proved:-

(i) that the Institution was established for the use of Sikhs for the purpose of public worship and was actually so used.

C (ii) that it was being used by the Sikhs for public worship, both before and at the time of presentation of the petition under Section 16(2)(iii).

The High Court was, undoubtedly, right in its observations, D since sub-Sections (iii) & (iv) has common factors and that is the establishment of the Institution by Sikhs for the purpose of worship and its continuous use by Sikhs for public worship. The High Court also referred to another decision of this Court in ***Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Mahant Kirpa Ram & Ors.*** Reported in ***AIR 1984 SC 1059***, E wherein, it was held that it must not only be established that the Institution was established for use by Sikhs for the purpose of public worship, but further it must be established that it was used for such worship by Sikhs before and at the time of presentation of the petition. The High Court then commented upon Section F 16(2)(iii). The High Court also noted that the burden to prove necessary requirement was on the person, who asserts the Institution to be a Sikh Gurdwara. The High Court also further noted that the original applicants, namely, Hamir singh & 57 Others had not entered the Witness Box, nor had they produced G any evidence, oral or documentary.

20. The High Court then went on to discuss, firstly, the documentary evidence regarding Muafi and the proceedings in respect of Muafi contended in Revenue Office Volume-VII of H the year 1932 B.K. (1875 A.D.), wherein, Surat Ram was shown

as a grantee, while Maharaja Sahbi Ala Singh is recorded as grantor. The total land donated to the Institution mentioned is 464 Bighas 16 Biswas and that the 44 Bighas and 15 Biswas of land, which was found in excess of the original grant, was recommended to be forfeited while the rest of the land measuring 420 Bighas 16 Biswas was suggested to be continued with "Dera" in question for its upkeep. The order passed by Dewan in this behalf was also referred to, along with the order of Wazir Sahib and the order of Hazoor Anwar. The other documents referred to were the Jamabandi (Exhibit P-2) for the year 1962-63 B.K. (1905-06 A.D.) of Village Ladda, Tehsil Maler Kotla, District Sangrur, wherein, under the Column of ownership, it was noted "Dera Bhagat Bhagwan Ba-Ihtmam (under the management of) Brahm Sarup Chela Brahm Basant Sadh Udasian". Exhibit P-4, which was a pedigree-table, was also referred to by the High Court along with Exhibit P-5, which is a copy of Revenue Inquiry File. Exhibit P-5 mentions the names of Muafidars, who had been in possession from the date of grant of Muafi. The names read thus:-

(i) Surat Ram

(ii) Bhola Ram

(iii) Sham Dass

(iv) Narain Dass

(v) Brahm Dass

(vi) Brahm Basant

(vii) Brahm Sarup

(viii) Bishan Dass

This document Exhibit P-5 is of date 23.6.1906 A.D. The High Court also noted Exhibit P-3, which was a mutation of inheritance sanctioned in favour of Mahant Mangal Dass Chela Bishan Dass on the death of Bishan Dass Chela Brahm Sarup. It was noted that this mutation was sanctioned on 28.6.1919

A A.D. This document clearly showed that for the first time, Mahant Mangal Dass Chela Bishan Dass took over the management of Institution, and it was he, who had find the objection under Section 8 of the Act. Thus, the High Court noted that he was the 9th Mahant in the order of succession. After his death, he was B represented by his Chela Mahant Prem Dass. It was further noted from Exhibit P-1 dated 13.1.1909 that it was during the regime of Maharaja Bhupinder Singh that Muafi was granted in favour of Dera Bhagat Bhagwan and at that time, the "Dera" was under the management of Mahant Bishan Dass. The High C Court also referred to the document Exhibit R-11, which is a Statement of Mahant Bishan Dass, wherein, it was maintained that his Guru had enjoyed the Muafi of the land in terms of the order dated 23.6.1906 of the Commissioner and that his Guru had died and had left behind two Chelas, namely, himself and D one other called Malook Dass, who was blind. He had also further undertaken to remain of a good character and carry on the conditions of the Muafi. It was in this Statement that the existence of Guru Granth Sahib, remaining open in the Dera, was mentioned. It was pointed out in the Statement further that the "Dera" was of celibate Sadhus. The High Court also further E referred to Exhibits R-12 and R-13, which were the Statements of some connected persons, wherein, it was wouchsafed that the Muafi land situated in Village Ladda belonged to Mausooma Dharmshala Sadhuans, and which was under the management of deceased Brahm Sarup. Exhibit P-6 was also referred to, F which related to the substitution of the new entry, being a mutation relating to the rights of Shamlat Deh Hasad Rasad Khewat/ Khewna Mazkoor. The mutation was in favour of Chela Bishan Dass. Exhibit P-7 another pedigree-table, which substantiated the case of the objections. The other document, which was G referred to by the High Court, was Exhibit P-8, which was the mutation in respect of the land gifted by Ralla Jat in favour of Dera Bhagat Bhagwan. Exhibit R-1 was also referred to, being Statement of Mahant Mangal Dass, who considered Amar Dass Chela Bhagat Ram to be fit person for the management of Dera H Ladda. Exhibit R-14, which was referred to later on was also a

pedigree-table, mentioning the name of Brahm Sarup followed by Bishan Dass Chela Mangal Dass. It was also noted by the High Court at that juncture that the Tribunal had not considered the documents R-4 to R-9. The High Court, therefore, deduced that the original Muafi was made to Surat Ram and secondly, the Muafi was given to Surat Ram in his personal capacity and it continued to remain in possession of his successor Chelas undisturbed without changing the character of Muafi and it is only for that reason, that the rights of Brahm Dass Faqir, who continued in possession of the Dera and the land, were not interfered with. Thirdly, the High.Court came to the conclusion that the Institution, throughout was described in Exhibit R-10 as Dera, which was established by Baby Surat Ram after the grant of Muafi in his favour. The High Court also noted that it was after the settlement in the year 1962 B.K. that the Dera was described as Dera Bhagat Bhagwan.

21. The High Court did note the arguments on behalf of the SGPC that there was a reference to the Sawara Guru Granth Sahib remaining open in this Dera. Relying again on ***Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Mahant Kirpa Ram & Ors.*** Reported in ***AIR 1984 SC 1059 (cited supra),*** the High Court held that the Tribunal had ignored the other evidence like the Statement of Mahant Mangal Dass made as Exhibit R-1 and had wrongly held that that factor alone could be held decisive in holding that the Institution was a Gurdwara. The High Court also noted that the documents referred to like Exhibit R-11, were very old documents, beginning from 1907 and in other documents like P-15 to P-17, the land was recorded as Dera Bhagat Bhagwan under the management of Mahant Bishan Dass. It was noted by the High Court that it is totally inconceivable that the authorities would have allowed to described it as a "Dera", if actually it was a Sikh Gurdwara. The High Court also went on to consider Jamabandi Exhibit P-18 for the year 1957-58 before coming to this conclusion. The High Court also held on the basis of Exhibits P-5, P-7 and P-14 that the succession was from Guru to Chela. Lastly, the High Court

A referred to the documents Exhibits P-1, P-2, P-3, P-4 to P-7 and R-10 to R-18 to establish that not only was original donee Surat Ram an Udasi Faqir, but, the subsequent Chelas also, who followed him and who were Mahants of the Dera in question, were Udasi Sadhus.

B 22. The High Court has considered the mutation record right upto 1976 and ultimately came to the conclusion that on the basis of the documentary evidence, it was clear that the Institution was a Dera of Udasi Mahants and was being consistently recorded as such. The High Court also refuted an C argument that it was a common feature in many Sikh Gurdwaras that Mahant of Udasi Sect were managing the same as held in ***Bishan Dass Vs. Gurbax Singh*** reported in ***AIR 1934 Lahore 63***, ***Prem Dass Vs. Labh Singh & Ors***. Reported in ***AIR 1934 Lahore 130*** and ***Gulab Dass Vs. Fauza Singh*** reported in D ***AIR 1937 Lahore 826***. However, the High Court held that for that reason, the Institution could not be held a Sikh Gurdwara. The second argument that there was a persecution of Sikhs by the Mohammdean Rulers and, therefore, the Udasi Mahants were managing the Sikh Gurdwaras, was also rejected by the E High Court, being against the weight of the evidence on record. The High Court ultimately held in respect of the documentary evidence that the cumulative effect of the documentary evidence, left no manner of doubt that the Institution was an Udasi Institution.

F 23. We must, at this juncture, refer to the findings of the High Court as regards the oral evidence led by the parties, as the major portion of the High Court's judgment is devoted to the appreciation of the oral evidence. We have already referred to the comments made by the Shri Jaspal Singh, Learned Senior G Counsel, appearing on behalf of the Appellant, as also Shri P.K. Palli, Learned Senior Counsel appearing on behalf of the respondent. We must appreciate that the High Court has gone into intricate details of the evidence. Commenting on the evidence of PW-1 Mahant Mangal Dass, the High Court noted H that his claim, i.e., 'Baba Surat Ram was the original founder of

the Dera and after Surat Ram, the succession had always been from Guru to Chela', has gone unchallenged. He had also asserted that he was nominated to the Gaddi one week before the death of Mahant Bishan Dass by the assembly of Udasi Bhekh and on the 7th day after the death of Mahant Bishan Dass, a turban was presented to him in token of installation by the Bhekh in the presence of village community. It must be noted that he remained a Mahant for good long 46 years. The tradition of appointing a Chela was also deposed to by PW-2 Kishan Singh, PW-3 Mokand Singh, PW-4 Kehar Singh, as also PW-5 Karan Parkash. As if this was not sufficient, Pritam Singh, who was examined as RW-1 on behalf of the SGPC, also supported the stand of the petitioner that Dera was of Udasi fraternity and the succession was from Guru to Chela. The High Court has appreciated the evidence of RW-2 Bahal Singh, RW-3 Hamir Singh and RW-5 Balwant Singh and ultimately recorded a finding that the Institution was an Udasi Dera and the succession to this Institution was from Guru to Chela.

24. Commenting on the evidence of PW-6 Nachhattar Gir Chela Sarasti Gir and PW-7 Chhota Singh, the High Court noted that there were Smadhs, Gola Sahib and Idol of Baba Siri Chand as objects of worship in the Dera and there used to be Gita Parkash and recitation of other books in the Dera. At the same time, there was no regular Parkash of Guru Granth Sahib, though it was kept in the Dera. The assertion by PW-7 Chhota Singh was also noted that there were 10 to 11 Smadhs in the Dera and that there used to be worships of Idols and Ashes in the Institution. This witness has also stated that Ashes in the form of Dhooni were collected at one place in that Dera. Similarly, PW-8 Mohinder Singh had testified that Dera of Bhagat Bhagwan was of Udasi Sadhus and that there was idol of Bhagat Bhagwan, Gola Sahib and Smadhs, which were being worshiped in that Institution. The High Court noted that this claim of PW-8 Mohinder Singh remained unchallenged. The High Court also commented upon the evidence of PW-9 Hira Singh, as also the evidence of PW-10 Lekh Ram, who were Brahmin by Caste.

A They both had deposed about bowl of Ashes in front of the Idol on a table. The High Court has also spoken about Smadhs located across the Phirney and also noted that Guru Granth Sahib was recited in the Institution occasionally. PW-9 Hira Singh had also asserted that there was no Nishan Sahib (Flag) B in the Institution. PW-10 Lekh Ram had specifically asserted, as noted by the High Court, that the Institution was not meant for display of Guru Granth Sahib, and PW-11 Mahant Sewa Ram Dass, who was the Mahant of Dera Jaswanda of Udasi Samprada of Bhagat Bhagwan, claimed that he had been C visiting the Dera for last 20 years and he saw the idol of Baba Siri Chand and also further asserted that Gola Sahib and Smadhs were being worshiped in that Dera. He also asserted that five other Smadhs were also located under one roof. He had also never seen Nishan Sahib (Flag) in the Dera nor he D had ever seen Guru Granth Sahib, being ever worshiped in that Dera. Evidence of PW-12 Bhagat Ram was also commented upon, which was to the same effect regarding 5-6 Smadhs, being there under one roof and there being no Nishan Sahib (Flag) in the said Institution. Similarly, evidence of PW-13 Kartar Singh, who was a Draftsman, was also referred to, who asserted E that there was one Smadh in Site Plan (Exhibit P.13-A) in respect of a separate building, which was only one feet away from the Dera. The witnesses, who were examined by the respondent, were then referred to by the High Court, who were RW-8 to RW-15, being RW-8 Jang Singh, RW-9 Sadhu Singh, F RW-10 Sarwan Singh, RW-11 Balwant Singh, RW-12 Chhota Singh, RW-13 Inder Singh, RW-14 Nachhattar Singh, and RW-15 Ishar Singh. One of these witnesses, PW-9 had never gone inside the Institution and could not give the details of the number of rooms. There was obvious contradiction in the evidences of G RW-10 Sarwan Singh and RW-11 Balwant Singh as regards the 'Parkash Asthan'. Significantly, PW-11 admitted the existence of Smadhs. One of the witnesses, RW-13 Inder Singh admitted in the cross-examination that he had visited the Institution-in-dispute only once and that the Parkash of Holi Guru H Granth Sahib was performed in a room located on the first floor,

which was the case of nobody. His evidence was in direct contradiction with the evidence of RW-14 Nachhattar Singh. The High Court then commented on the findings by the Tribunal by referring to those findings and ultimately, came to the conclusion that the majority members of the Tribunal had misdirected themselves while appreciating the oral evidence on record and had totally ignored the relevant evidence while arriving at conclusion that Institution was a Sikh Gurdwara within the purview of Section 16(2)(iii) of the Act. In support of this, the High Court went on to record its reasons, whereby, the High Court held that the evidence of the respondent, itself suggested that the Institution was an Udasi Dera and the succession to the Institution was from Guru to Chela. Regarding the Parkash of Guru Granth Sahib, the High Court noted that it was not a regular feature and it was only occasionally being done, but that by itself, would not establish that it was a Sikh Gurdwara. Commenting upon the evidence of RW-8 to RW-15, the High Court found that their versions could not be relied upon due to inter-se contradictions in their versions regarding the placement of Guru Granth Sahib. The High Court found that they have given their own versions, which are contradictory to each other. The High Court also found that some of the claims that there was an Idol of Baba Siri Chand, Gola Sahib and Smadhs in the Dera and they were being worshiped in the Dera, have gone unchallenged and, therefore, those claims deserved acceptance.

25. The High Court noted that in ***Pritam Dass Mahant Vs. Shiromani Gurdwara Prabhandhak Committee*** reported in ***AIR 1984 SC 858,*** the distinctive features of the Sikh Gurdwaras were described. They are that there is no idol worshiped in a Gurdwara and the central object of worship is Guru Granth Sahib. The pattern of worship is reading of the holy hymns followed by their explanation by some learned man and then singing of some passages from the holy Granth, the first being Katha and the second being Kirtan. The High Court noted the second feature to be the congregational worship such as Japji, Jaap, Rehras, Kirtan Sohila Sangat and that is normally

A done daily. The third feature of the Gurdwara is the Nishan Sahib (a yellow Flag of Sikhism flying from it), which serve as a symbol of Sikh persons. This Nishan Sahib enables travellers, whether they are Sikhs or not, to know that the hospitality is available at this place. There has to be a kitchen, where food can be B prepared (Langar). Sometimes, Gurdwara could also be a clinic. However, its pivotal point is the place of worship and the main room would be the one in which Guru Granth Sahib is installed and where community gathers for diwan. Therefore, in Para 14 in the said judgment, as noted by the High Court, this Court held C that the sine-qua-non for an institution being a Sikh Gurdwara is that there should be established Guru Granth Sahib and the worship of the same by the congregation, as also the Nishan Sahib. The High Court, therefore, noted that the claim of the SGPC could not be accepted on account of the four facts, they D being :

(a) There are Smadhs on the premises of the Institution.

(b) There are idols and photos of Hindu deities and also of Baba Siri Chand.

E (c) Bhai Bhathu was an Udasi Saint.

(d) Succession was from Guru to Chela.

It was on this account that the High Court ultimately recorded a finding that the respondent could not prove their case F under Section 16(2)(iii) to the effect that the Institution in question was established for the use of Sikhs for the purpose of worship and was used by the Sikhs for public worship, both before and at the time of presentation of the petition.

26. Regarding the claim under Section 16(2)(iv), the High G Court correctly noted that it was essential to prove that the Institution was established in the memory of Sikh martyr, Saint or historical person and further that the said Institution was used for public worship by Sikhs before and at the time of presenting the petition under Sub-Section (ii) of Section 7(1) of the Act. H The High Court had already held that it was not proved that the

Institution was used for public worship by Sikhs before and at the time of presenting the petition. In that view, the mere fact that the Institution was established in the memory of a Sikh martyr or a Saint, would not by itself, be enough to answer the issue under Section 16(2)(iv) in favour of the appellant. However, the High Court did not stop at that and discussed the historical aspect in great details. Insofar as that part is concerned, the High Court noted that it was a common case that this Institution was established in memory of Bhagat Bhagwan. The High Court, therefore, posed itself a question as to whether Bhagat Bhagwan was a Sikh Saint or an Udasi Saint. The High Court, therefore, went into the historical aspect, as was done by the Privy Council in the Case of ***Hem Singh & Ors. Vs. Basant Das & Anr.* (cited supra)**. The High Court made a reference to Page 288, Volume-IV of the book titled "The Sikh Religion" by Max Arthur Macauliffe and noted the story, which we had already referred to in the earlier part of the judgment. According to the story Bhagat Bhagwan met Mahant Mehar Chand at Dera Baba Nanak and got "Satnam Mantra" and Udasi Dress from him, but since he was unsuccessful in his mission, he returned to Baba Mehar Chand, who directed him to the 7th Guru, and after meeting the 7th Guru, he started preaching Sikh religion. The High Court also made a reference to the history given by the minority member of the Tribunal from a book known as "Udasi Sikhan di Vithya", published in 1959, and more particularly, Pages 185-216, as also another Book called "Mahima Parkash",written by Baba Sarup Dass Bhalla. It is suggested that the history given was almost the same, as given in the book "Suraj Parkash". The genealogical table of the family of Bhagat Bhagwan, as it appeared in "Udasi Sikhan di Vithya", was also referred to and a reference was also made to the book "Udasi Mat Darpan", compiled in the year 1953 by Baba Brhma Nand Udasi. A reference was made to Pages 91-98, giving the description of Bhagwan Gir. A story was then quoted as to how Bhagwan Gir was deeply impressed by miracle shown by Dharam Chand Ji and how he could see the Goddess 'Hinglaj' and that he decided to change his name and became a Chela

A of Dharam Chand Ji. The minority member found, as was noted by the High Court, that the pedigree table in "Udasi Sikhan di Vithya" did not tally with the pedigree table mentioned in the Revenue Record, which carry the presumption of correctness under Section 44 of the Land Revenue Act. The minority member B also noted that the book "Udasi Sikhan di Vithya" was published by SGPC in 1959 A.D. It was also noted by the minority Member that even in this Book, Bhagat Bhagwan was described as Udasi Sadhu. Secondly, the minority Member of the Tribunal found that the detailed account relating to Bhagat Bhagwan in C the books "Sikh Religion", published and compiled in 1883, "Suraj Parkash" and "Mahima Parkash", was similar, however, it was not indicated anywhere that he had become Sikh or a disciple of the 7th Guru. The minority Member had also found that in "Mahima Parkash" and "Suraj Parkash", there was nothing D to suggest that Bhagat Bhagwan preached Sikhism. It was also found from the book "Guru Tirath Sangrahey" compiled in 1883, that there was no reference to any Bakhshish, being given to Bhagwan Gir by Guru Har Rai Ji. The Learned minority Member also found that though, according to "Udasi Mat Darpan", Bhagat Bhagwan became a Chela of Baba Siri Chand, it might be not E a correct history, as Baba Siri Chand had already expired before 1644 A.D., when Guru Har Raj Ji got the Gaddi. However, the Learned Member deduced that from that alone, it could not be said that Bhagat Bhagwan became Sikh by meeting Guru Har Rai Ji. Lastly, the Learned Member held that the followers of F Bhagat Bhagwan had formed a separate Udasi Sect, which suggests that Bhagat Bhagwan did not preach Sikhism. The minority Member then referred to a decision of Lahore High Court in case of ***Baba Ishar Das Vs. Dr. Mohan Singh and Others*** reported in ***AIR 1939 Lahore 239,*** wherein, it was held G that the followers of Bhagat Bhagwan had claimed him to be Udasi, as far back as in the year 1938. The High Court accepted these findings of the minority Member of the Tribunal.

27. The High Court, then referred to the approach of the H majority Members of the Tribunal, which was based on the Books

"Siri Guru Panth Parkash" and "Twarikh Guru Khalsa". The High Court had given the whole story, which took place in 1707 B.K., according to which Bhagat Gir Gusain, Mahant of Bodh Gaya, while going for Darshan of Jawalamukhi alongwith his followers and other Mahants, heard about the fame of the Guru and met him. He saw Guru Ji as an exact figure of Vishnu Ji and fell at the feet of Guru Ji and prayed for being accepted as Sikh. A further reference was also made to the story that from that very moment, Bhagat Gir became to be known by the name of Bhagat Bhagwan and his companions all became Sadhus of Guru Ghar and that they had 360 Deras in Patna District and the main seat of Bhagat Bhagwan was in Danapur. Bhagat Bhagwan did not go to Jawalamukhi and then after meeting Bedi Mehar Chand, went back to his own country-side. The High Court, then quoted the finding by the majority Member, in which reference was made to "Mahan Kosh", wherein, it was mentioned that Baba Dharam Chand, the grandson of Baba Guru Nanak was borne in 1523 A.D. and died in 1618 A.D. The finding also makes a reference to Page 225 of the Book "Darpan" by Pandit Brahma Nand and goes on to hold in the following fashion:-

> "In other words, Bhagat Bhagwan and other members of his contingent all became converts to Sikh religion and, thereafter acted as preachers and missionaries of their new faith."

28. A reference is then made by the High Court to the finding by the majority members of the Tribunal, based on Sixth Bakhshishes mentioned by the author of "Guru Udasin Mat Darpan" stated at pages 521-524, where, a claim was made that the Bakhshishes were of the Udasi order. The Division Bench held that the conclusion was drawn despite the fact that no reference was made to the writers, who had provided the basis for the note. A reference was then made to the attempt made by the majority members of the Tribunal to explain the observations recorded to the effect:-

> "these Bakhshishes were conferred more or less indiscriminately".

A Lastly, the High Court recorded a finding that the conclusion drawn by the majority members of the Tribunal that Bhagat Bhagwan after receiving blessings from Sixth Guru, became a Sikh historical person and Sikh Saint, was based on misreading of historical data extracted from the books and B cases.

29. Thereafter, the High Court proceeded to consider a few cases like ***Ram Parshad & Ors. Vs. SGPC, Amritsar & Ors***. reported in ***AIR 1931 Lahore 161*** and held on the basis of the observations made therein that the conferment of the C Bakhshishes was not given any prominence to arrive at a conclusion as to whether the Institution was a Gurdwar established for the use of Sikhs. It was further noted that in this case, the Dera of Prithi Sahib was not a Sikh Gurdwara. The High Court, then considered the decision in ***Brahm Das Vs. D Tarlok Singh & Ors.*** reported in ***AIR 1937 Lahore 273*** and held that it had no similarity with the facts of the present case. The case of ***Baba Ishar Das & Ors. Vs. Dr. Mohan Singh & Ors***. reported in ***AIR 1939 Lahore 239*** was also considered with reference to the observations made in that case and also E the Privy Council decision in **Hem Singh & Ors. Vs. Basant Das & Anr.** reported in ***1936 Privy Council Page 93,*** and came to the conclusion that on the basis of what had been held in these cases, the present Institution was an Udasi Institution and Sikhs had nothing to do with it. The High Court further F commented:-

> "The significance of the above judgment cannot be ignored because it was judicially accepted as far back as in 1939 that the stand of the followers of Bhagat Bhagwan that he was an Udasi was correct."

G

Ultimately, the High Court came to the conclusion:-

> "Under the circumstances, we have no hesitation to hold that the historical date and above judicial pronouncement negate the conclusions arrived at by the majority members H of the Tribunal."

The High Court then again went on to consider the oral evidence led on behalf of the SGPC and that of RW-16 Dr. Ganda Singh, RW-17 Shamsher Singh and RW-18 Randhir Singh, who were claimed to be the experts in the Sikh history. The claim of RW-16 Dr. Ganda Singh was that Baba Siri Chand was the founder of Udasi Bhekh and Baba Gurditta was the only Chela of Baba Siri Chand, who was the eldest son of Guru Hargobind. The witness stated that Baba Guruditta had four Chelas, namely, Baba Phul, Baba Almast, Baba Gobind and Baba Hasna and that there were four Dhunas known after these Chelas. According to him, Baba Almast had established a Dera in Nainital District called as Nanak Matta, as Guru Nanak had visited that place, so also other Chelas of Baba Guruditta had established Deras in other Districts. Of course, the witness could not give the details of those other three Deras. The witness relied on the books, i.e., Glossory of Castes and Tribes Vol. III pages 479-80, Macauliffe's Sikh Religion Vol. IV Pages 288-89, Gurpartap by Bhai Vir Singh Vol. IX Pages 3574-79, Gurpartap Vol. V Page 1331 and Bhai Randhir Singh's work known as "Udasi Sikhan Di Vithia", published by SGPC. However, the High Court has referred to the cross-examination of RW-16 and noted his admission that he had not written any historical book on Udasis and had also not seen any painting of Baba Bhagat Bhagwan and, therefore, could not say whether Bhagat Bhagwan had long Kesh (hairs) and grew beard. He also admitted that Bhagat Bhagwan might have had Chelas, but, he could not come across their names in any book, except Bhai Randhir Singh's book, and he could not recollect the names of those Chelas. He categorically admitted that:-

> "I cannot say whether Bhagat Bhagwan was an Udasi by faith and I cannot give details how he received his spiritual perception from Guru Har Rai and Baba Mehar Chand and then again from Guru Har Rai."

He also admitted that he had not come across any writing of Bhagat Bhagwan nor did he know where Bhagat Bhagwan died. It is on this ground, that the High Court rejected the testimony of Dr. Ganda Singh.

A 30. Referring to the evidence of RW-17 Shamsher Singh, the High Court referred to the cross-examination, wherein, he admitted that he could not say if Bhagwan Bhagwan was going for Darshan of the Devi, when he met Baba Siri Chand. He claimed that Baba Siri Chand died before the time of the 7th B Guru and he could not refer to any history book in which the meeting of Bhagat Bhagwan with Baba Siri Chand was recorded. He also admitted that he had not seen the Institution in dispute nor he could say that who had established the Institution and when. The High Court, therefore, discarded his C testimony. As regards the evidence of RW-18 Randhir Singh, the High Court noted that he had not seen the Institution in dispute and further commented that he did not agree with the decision taken by the High Court that Udasis were Sikhs. This witness had also admitted that he had not seen any writings of Bhagat D Bhagwan and, therefore, the High Court refused to place any reliance on the evidence of this witness. As regards the other oral evidences led on behalf of the SGPC, namely, RW-1 to RW-7, none of them had stated that the Institution had any connection with Bhagat Bhagwan, excepting RW-8 Jang Singh, E who maintained that Bhagat Bhagwan had become Sikh and used to preach the doctrine of Sikh faith. Referring to the evidence of RW-9 Sadhu Singh, RW-10 Sarwan Singh, RW-11 Balwant Singh, RW-12 Chhota Singh, RW-13 Inder Singh, as also RW-14 Nachhatar Singh, the High Court rejected their evidences on merits. As regards the witness Nachhatar Singh, F his evidence was discarded on the ground that he was itself a member of the SGPC and was, therefore, an interested witness. The High Court again referred to the evidence of the witnesses examined on behalf of the petitioners and came to the conclusion that on the date of presentation of the petition, the Institution G was used as Dera of Bhagat Bhagwan and was an Udasi Institution and not a Sikh Gurdwara. The High Court, thus allowed the appeal.

31. We have deliberately noted the findings of the High H Court, as the High Court has gone into the details of the

documentary evidence, oral evidence, as also the historical background of the Institution. A

32. Shri Jaspal Singh, Learned Senior Counsel, appearing on behalf of the appellants SGPC tried to take us through the evidence, however, in our limited task, it would not be for us now to re-appreciate the whole evidence, oral, as well as documentary. The extent of evidence, which was led before the Tribunal and discussed by the High Court, was voluminous and in our opinion, the High Court has correctly appreciated the same. The High Court has also dealt with the logic and the reasonings given by the Tribunal and has pointed out as to how the majority opinion of the Tribunal went wrong in holding this Institution to be a Sikh Gurdwara. We must record our satisfaction at the detailed approach of the High Court to the evidence, both oral, as well as, documentary, as also the historical document, as was presented before the Tribunal. B C D

33. Referring to the oral evidence, the only complaint of the Learned Senior Counsel was that the evidence of scholars like Dr. Ganda Singh, Shamsher Singh and Randhir Singh was not given weight by the High Court. In our opinion, the criticism is not correct. The High Court has not only referred to the evidence of these three witnesses, but has dealt with, in great details and has given its reasons as to why the evidence of these three witnesses could not be accepted. The most important fact that strikes us is the total apathy shown by the original applicants (57 in Nos.), none of whom came in support of the application or for opposing the objection filed by Mahant Mangal Dass. Again, insofar as the oral evidence led on behalf of the respondent, the same was dealt with in details by the High Court and, therefore, we would not take up the task of re-appreciating the said evidence. Considering the overall treatment given by the High Court to that evidence, we are of the clear opinion that the High Court has not committed any error in drawing the inferences on the basis of oral evidence led on behalf of Mahant Mangal Dass. We are also satisfied with the approach of the High Court in appreciating the oral E F G H

A evidence led on behalf of SGPC and the reasons given by the High Court to reject the same. After all, as per the established law, the parameters of Section 16(2) (iii) and (iv) of the Act were bound to be proved. The High Court has gone in great details systematically in appreciating the evidence in the light of the B provisions of Section 16(2) (iii) and (iv) of the Act.

34. We would revert back to the comments made by Shri Jaspal Singh, Learned Senior Counsel, appearing on behalf of the appellant, specifically in relation to the appreciation of evidence aspect, in the further course of our judgment. However, C we do not find any reason to take a different view, in view of the detailed findings by the High Court on the evidence and we endorse the same.

35. This takes us to the specific points raised by the D Learned Senior Counsel, which we propose to deal with specifically. The Learned Senior Counsel urged that Mahant Mangal Dass had earlier challenged the notification dated 9.6.1961 under Section 7 of the Act by filing a Writ Petition under Article 226 of the Constitution of India, challenging the validity E of the said notification. That was Writ Petition No. 36 of 1966 and it was dismissed by the High Court by a speaking order and after notice to the parties. The Learned Senior Counsel, therefore, argued that the said dismissal judgment dated 17.8.1971 would operate as res-judicata and hence, the notification would become final. We do not agree with the F contention raised, firstly because this contention was not raised even before the Tribunal or thereafter, in the appeal filed before the Division Bench of the High Court. It is for the first time that the said contention is raised which is not permissible. This is apart from the fact that even on law, the contention is not correct, G as the challenge to the notification was not on merits. Under the scheme of the Act, under Section 7 (1), if a petition, seeking to have a Gurdwara declared to be a Sikh Gurdwara, comes by fifty or more Sikh Worshippers of a Gurdwara, the same is forwarded to the appropriate Secretary of the Government with H the necessary details of the property, as provided in the sub-

Section 2 thereof. The State Government publishes the same in the manner provided in Section 7(3) of the Act and is also obliged to serve notices to the persons shown in the list, who are in possession of the properties included in the list of properties under Section 7(2) of the Act. This is obviously with the purpose to provide an opportunity to the persons interested in the said property. It is then that Section 8 comes into play, under which a petitioner can raise objection, however, he has to be a hereditary office holder or such objection can be raised by twenty or more worshippers, who have to assert that the Gurdwara in respect of which the notification is published under Section 7(3) of the Act, is not a Sikh Gurdwara. Once such objection is raised by either a hereditary office holder or by twenty or more worshippers, then the further process begins of deciding the issue as to whether such Gurdwara or Institution is a Sikh Gurdwara, for which a Tribunal is provided in the Act. The Tribunal then gives an opportunity to lead the evidence and proceeds to decide after a full trial, as to whether a particular institution is a Gurdwara or not. That is on the basis of the evidence led before the Tribunal. The Writ Petition which was filed, was challenging the validity of the said notification. The notification was ultimately held to be valid on the basis of the Full Bench judgment of the Punjab & Haryana High Court, as decided in ***Mahant Lachhman Dass & Ors. Vs. State of Punjab*** reported in ***II L.R. 1968 (2) Punjab & Haryana 499***. Now, if the notification is held to be valid, that by itself, would not defeat the claim of the respondent because the said notification is merely a first step to decide as to whether a particular institution is a Gurdwara or not. A full fledged trial then proceeds and it is only then, an institution is declared as a Sikh Gurdwara. It is, therefore, obvious that even if the notification is held to be valid, that only legalizes the further procedure before the Tribunal. We are dealing with a situation, where the said notification was held to be valid in the sense that the State Government had validly and correctly issued the notification, but that by itself, did not confer the status of a Sikh Gurdwara on the institution covered in the said notification under Section 7(3) of the Act. The argument, therefore, must be rejected.

A 36. The Learned Senior Counsel then urged that on the question as to whether Mahant Mangal Dass was a hereditary office holder, no opportunity was given to the SGPC to prove that he was not such an office holder. The Learned Senior Counsel urged that on this issue, in the first round of litigation, B the Punjab & Haryana High Court had dismissed the whole objections raised by Mahant Mangal Dass on the ground that he had not claimed himself to be a hereditary office holder of the institution. The Learned Senior Counsel further pointed out that that judgment of the High Court was set aside by this Court C with the observations, which we have quoted in para 9 of this judgment. Even a cursory look at those observations would convince us that this Court had already closed that issue. In fact, when Mahant Mangal Dass had filed an amendment application, the Tribunal had felt that there was no need to amend the petition, D since the averments made in the objection petition had clearly indicated that Mahant Mangal Dass had claimed himself to be a hereditary office holder. It so happened that the High Court, however, took the view that Mahant Mangal Dass had not specifically claimed himself to be a hereditary office holder in precise words and, therefore, his objections under Section 8 of E the Act, were not maintainable. It is only on that short ground that the High Court had dismissed the appeal, which order was passed against the judgment of the Tribunal. On an appeal, this Court set aside that order and held that if the High Court had felt the Tribunal was not right in refusing the amendment, it should F have allowed the amendment and cure the defect and then decide the matter on merit, since all the evidence was available before the High Court. This Court, therefore, set aside the order of the High Court and remitted the matter for disposal of the appeal on "merits". It is, therefore, clear that this Court had G directed the High Court to decide the appeal on merits and not on the technical question as to whether there was a declaration by Mahant Mangal Dass of his status as a hereditary office holder. We are, therefore, convinced that the question of the status of Mahant Mangal Dass was put to the rest by this Court. H However, even if we were to accept the contention raised by

the Learned Senior Counsel for the appellant, we do not find such contention having been raised before the High Court that Mahant Mangal Dass was not a hereditary office holder or at least had not claimed to be the one. We have very carefully gone through the judgment of the High Court. It is totally silent about any contention. The Learned Senior Counsel very fairly conceded that such issue was not raised by the High Court, however, he pointed out that it was the duty of the High Court to go into that issue or at least give an opportunity to the appellant SGPC to oppose the amendment. There is not even a whisper before the High Court to that effect also. In fact, after the remand, it is clear that the SGPC had never bothered to raise the issue before the High Court. Shri Palli, Learned Senior Counsel appearing on behalf of the respondent pointed out that at no point of time was this contention ever canvassed before the High Court. It will, therefore, not be possible for us to entertain the contention raised by the Learned Senior Counsel for the appellant that any prejudice was caused to the SGPC by the High Court, not providing any opportunity to introduce an amendment in reply to the stand taken that Mahant Mangal Dass was a hereditary office holder since such opportunity was never sought for.

37. Shri Jaspal Singh, Learned Senior Counsel for the appellant also further contended that there should have been an issue on the custom, by which Mahant Mangal Dass claimed to be a hereditary office holder. The Learned Senior Counsel argued that there was no specific issue framed on the existence or otherwise of such custom. In our opinion, the criticism is incorrect. In fact, the question was well covered in the first issue. This takes us to the other contentions raised on the first issue. Shri Jaspal Singh contended that in effect, the first issue was not decided by the High Court at all. We fail to understand the implication of the argument. In fact, we have quoted the High Court judgment extensively only to show that the High Court has considered regarding the status of Mahant Mangal Dass being a hereditary office holder and a major portion of the High Court's

A judgment is devoted to that question. We are satisfied with the appreciation of the evidence on that question.

38. Opposing the contentions of Shri Jaspal Singh, Shri Palli, Learned Senior Counsel appearing on behalf of the respondent pointed out that the Tribunal, vide order dated B 9.3.1965, had unanimously held that succession to the Gaddi of Mahantship was proved from Guru to Chela and all the Mahants had been Udasi Sadhus and Mahant Mangal Dass had fulfilled the requirements of the provisions of the Act and was held to be hereditary office holder. Shri Palli pointed out C that this order was not appealed against. Shri Palli pointed out that it is then that the appellant SGPC introduced an amendment and claimed the institution to be a Sikh Gurdwara even under the provisions of Section 16(2)(ii) of the Act (which stand was of course given up later on). Not only that, but the SGPC moved D a second application, seeking amendment to take the plea that the institution had been established in the memory of Sikh Saint and historical person, namely, Bhagat Bhagwan and was used for public worship before and at the time of presentation of the petitioner under Section 7 of the Act. According to the Learned E Senior Counsel, this was necessitated because the finding that the succession to the Gaddi of Mahantship in the institution was from Guru to Chela and that Mahant Mangal Dass was a hereditary office holder, would have proved fatal to the claim of the SGPC that this institution was a Sikh Gurdwara. According F to the Shri Palli, it is, therefore, totally a new claim was made under Section 16(2)(iv) that this institution was in the memory of a Sikh Saint and historical person, namely, Bhagat Bhagwan. Our attention was drawn by Shri Palli to the decision of the Privy Council in the Case of **Hem Singh & Ors. Vs. Basant Das & G Anr.** reported in ***1936 Privy Council Page 93 (cited supra),*** holding that the burden to prove a particular institution a Sikh Gurdwara, lies on the person, who claims it to be a Sikh Gurdwara. The Learned Senior Counsel further rightly argued that thereby, the SGPC was seeking to change its initial claim H that this institution was established for the use of Sikhs for the

purpose of public worship and was also used for such worships by Sikhs before and at the time of presentation of the petition under Section 7(1) of the Act.

39. As regards the requirement of the strict pleading regarding the objector being a hereditary office holder, this Court in ***Uttam Das Chela Sunder Das Vs. Shiromani Gurdwara Parbandhak Committee, Amritsar (cited supra)*** in para 32, has held:-

> "32. ....The High Court fell into an error in construing the pleadings under Section 8 on the strict standards set out in Hari Kishan Case. When the appellant had placed the line of succession from Guru to Chela, he automatically meant that he was basing his claim on custom and usage, reflective from such long course of conduct and traditions."

This would water down the requirement of the strict pleadings and the question of a specific plea regarding the petitioner being a hereditary office holder, would also to be pushed to the background.

40. Shri Jaspal Singh, Learned Senior Counsel for the appellants then severely commented upon the findings of the High Court and tried to suggest that the documentary evidence was wanting or at least was not sufficient to hold in favour of the respondent on issue No. 2. The oral evidence led on behalf of the respondent was severely criticized by the Learned Senior Counsel along with the documentary evidence. The Learned Senior Counsel also urged that the evidence was not sufficient to hold that the succession in this Institution was from Guru to Chela and that it was an Udasi Institution. It was also tried to be urged that even if Mahant Mangal Dass or his predecessors were held to be Udasis, it could not be destructive for the case of the SGPC, since the Udasis have always been a feature common to many Sikh Gurdwaras. The Learned Senior Counsel then relied on the ruling in the case of ***Bishan Dass Vs. Gurbax Singh (cited supra).*** In that judgment, there is a clear finding that the Institution was founded by the inhabitants of the Sikh

A village for their own benefit and the same was carrying on religious and charitable tasks and further, the purpose for which the Institution was founded, was the worship of Granth Sahib. This authority would be of no consequence, since the factual situation is different and there are clear findings on the fact that B this was an Udasi Institute and that the succession was from Guru to Chela as per the proved custom. It was also tried to be impressed upon us that the High Court was swept away, as the Institution was described as a Dera and that it was contraindicative of the Institution being a Gurdwara. The Learned C Senior Counsel invited our attention to the judgment in the case of ***Shiromani Gurdwara Prabandhak Committee, Amritsar Vs. Mahant Kirpa Ram & Ors. (cited supra).*** In fact, this judgment was heavily relied upon by Shri Palli, Learned Senior Counsel for the respondent, also as this judgment is totally D against the appellant herein. Like in the present case, the two identical issues were framed in this case also, however the Court endorsed that there was no evidence to show that the Institution was established for the use of Sikhs for the purpose of public worship. It was also observed that Udasis formed an E independent Sect, they do venerate Sikh scriptures and, therefore, in the Institution of Udasi Sect, one can visualize reading of Granth Sahib or veneration of Sikh scriptures, but, that itself is not decisive of the character of the Institution. The High Court also observed that on the contrary, where the succession was from Guru to Chela and those Gurus were F followers of Udasis faith and the Institution was known as Dera of Udasi Bhekh and they followed some of the practices of Hindu traditional religion, such things were completely destructive of the character of the Institution as Sikh Gurdwara. In our opinion, the High Court had correctly relied upon this authority. There is G no doubt that there is a reference in Para 13 to the following effect:-

> "'Dera' in many cases was synonymous with 'Gurdwara', a description of the institution as Dera of Udasi Bhekh would certainly have a distinct connotation showing that it

H

was an Udasi institution as recognized by the highest State authorities." A

The contention that the High Court was swept away because of the reference of this Institution as a 'Dera', therefore, clearly appears to be incorrect. On the other hand, this authority would go long way in establishing that where Institution is established by Udasis, where there was a Guru and Chela Custom and where it is not proved that the Institution was established by the Sikhs for the Sikh worship and it continued to be so till the date of the Notifiction, the Institution could not be said to be Gurdwara. In the present case, all the factual material led before the Court suggests in favour of the respondent. B C

41. Shri Palli, Learned Senior Counsel invited our attention to the fact that before the High Court, it was conceded by the appellant that there was no evidence to indicate as to on which date and in which area, the Institution was established. He also invited our attention to the earliest document, which was Exhibit R-10, which was as old as 1932 B.K. = 1875 A.D. Shri Palli, therefore, pointed out that the subsequent documents also mention the word 'Dera' and sustain the case of the respondent that the Institution got the grants from the Maharajas and the record was as old as about 113 years, suggesting that it was an Udasi Institution. The other documents have also been referred to by Shri Palli in details, to which we have already made reference earlier. The voluminous documentary evidence, as also the oral evidence, which has been thoroughly discussed by the High Court, in our opinion, was sufficient to hold that the Institution was not a Gurdwara, but an Udasi Institution. D E F

42. Shri Jaspal Singh, Learned Senior Counsel for the appellant also extensively commented on the documentary evidence and tried to suggest that the High Court's treatment of this documentary evidence was not satisfactory in view of the detailed discussion by the High Court of the documentary as also the oral evidence and further, in view of the fact that we, ourselves, are convinced of the truthfulness of the claim by the G H

A respondent, we have no hesitation in accepting the plea put forward by the respondent. It was tried to be suggested that: (1) Guru Granth Sahib has been the only object of worship; (2) no documents made any reference to any other object of worship like Ball of Ashes (Gola Sahib), Smadhs and pictorial images B of Baba Siri Chand in the objection petition under Section 8 of the Act; (3) there is no mention of Ball of Ashes (Gola Sahib), Smadhs and pictorial images of Baba Siri Chand; and (4) Mahant Mangal Dass had nowhere stated as a witness that there were Ball of Ashes (Gola Sahib), Smadhs and pictorial images C and that those objects or anyone of them were the object of worship. We have already referred to the aforementioned oral evidence led on behalf of the respondent and we are convinced that none of these four factors can be said to be established in favour of the appellant. In our opinion, therefore, insofar as the D question of establishment of the Institution and the practices therein are concerned, the High Court is absolutely right in recording its findings. It would be only repetition on our part to refer to the oral evidence or for that matter, the documentary evidence all over again and we desist from doing it. In our E opinion, the judgment of the High Court is absolutely correct, insofar as this issue is concerned. Lastly, Shri Jaspal Singh urged that the Institution was clearly proved to be covered under Section 16(2)(iv) of the Act. The Learned Senior Counsel urged that there was no reason to disbelieve the historical facts contained in the 6 treatise, which were authored by the authorities F of Sikh religion. In fact, our attention was invited to a decision reported in the case of ***Ram Parshad & Ors. Vs. SGPC, Amritsar & Ors. (cited supra),*** wherein the book Sikh religion by Max Arthur Macauliffe has been described as the best authority of all in Sikh history. The story, which we have already G referred to in the earlier part of the judgment from Macauliffe treatise, as also the various incidents described in Gurpartap Suraj Granth were relied on by the Learned Senior Counsel, so also the incidents as described in Udasi Sikhan Di Vithia and Guru Udasis Mat Darpan were relied and reiterated by the H Learned Senior Counsel. The Learned Senior Counsel also

urged that the oral evidence of the scholars like RW-16 Dr. Ganda Singh, RW-17 Shamsher Singh and RW-18 Randhir Singh should not have been lightly set aside by the High Court.

43. As regards these oral evidences, Shri Palli, Learned Senior Counsel for the respondent, however, strongly urged that RW-16 had not made any research on the life and history of Bhagat Bhagwan nor he had written anything about him. He pointed out that in his evidence, RW-16 had admitted that he did not know who was Guru Bhagat Gir and he could not say whether Bhagat Bhagwan was Udasi by faith. He did not even know about the death of Bhagat Bhagwan. Insofar as RW-17 is concerned, Shri Palli pointed out that this witness had not visited the Institute, he did not even know about the 300 Kendras established by Bhagat Bhagwan. As regards the last witness RW-18, who was the author of Udasi Sikhan Di Vithia, the Learned Senior Counsel urged that this book was published by none else, but the appellant SGPC and it was authored by the witness in the year 1959 on the eve of the application of the Act to the concerned area. The Learned Senior Counsel, therefore, urged that insofar as the evidence of these three witnesses was concerned, the High Court was right. Though it will not be our task to re-appreciate the evidence, the approach by the High Court to the evidence of the witnesses is undoubtedly correct, therefore, we would not give more importance to the oral evidence led by these witnesses, claiming themselves to be the scholars of Sikh faith. At any rate, we would give more weight to the documentary evidence, which has been brought on record and which documents are as old as about 113 years. In fact, from those documents, a detailed discussion of which is to be found in the earlier part of this judgment, as also the judgment of the High Court, it is clear that this Institution was an Udasi Institution in the memory of Bhagat Bhagwan and owes its name to Bhagat Bhagwan. Even if that is so, there is no evidence to suggest that this Institution was in the memory of Bhagat Bhagwan. It may be that the Institution is called Dera Bhagat Bhagwan, but what is more important is the documentary

A evidence regarding the grant of land to Shri Surat Ram and thereafter, the succession from Shri Surat Ram right up to Mahant Mangal Dass, which has been painstakingly established by the respondent. Once the Institution is held to be an Udasi Dera with the features like Smadhs, Gola Sahib etc., being in B existence in the said Institution, further, once it is established that the order of succession was governed by a custom that is from Guru to Chela, there is no question of our going into the historical aspect and when we compare the historical aspect with the hard evidence led on the record, we would choose to C prefer the evidence so led. Insofar as the historical reference is concerned, Shri Palli pointed out that the High Court had not only discussed this aspect, but had given good reasons. It was pointed out that there were some incorrect references, for example, in Udasi Sikhan Di Vithia, it was mentioned that D Bhagat Gir, who later became Bhagat Bhagwan, had met 7th Guru. The Learned Senior Counsel argued that this cannot be historically correct, as Guru Har Rai, the 7th Guru was born in 1631 A.D. and died in 1666 A.D. and, therefore, Bhagat Bhagwan could not have been met him. Shri Palli also heavily relied on the authority reported in ***AIR 1939 Lahore 239 Baba*** E ***Ishar Das Vs. Dr. Mohan Singh and Others,*** which judgment was noticed by the High Court. We have seen the judgment. It undoubtedly supports the respondent. Shri Palli further urged that the High Court had relied upon the book Guru Tirath Sangrahey, which mentions that Bhagat Bhagwan was neither F a Sikh saint nor a historical person, rather he joined the Udasin Sect, got the Udasin dress and initiation from Mehar Chand, the great grandson of the first Guru. The Learned Senior Counsel pointed out that same account is given even in the book Sikh Religion by Macauliffe. The Learned Senior Counsel also G pointed out that the SGPC had miserably failed to bring on record any writing of Bhagat Bhagwan as a Sikh saint. It also had failed to point out any Institution, set up by Bhagat Bhagwan or his followers to be a Sikh Gurdwara, though in the historical accounts, it was stated that he had created about 300 Institutions. H From this, the Learned Senior Counsel urged that the High Court

was absolutely right in coming to the conclusion that the Institution was not a Sikh Gurdwara, but an Udasi Dera. A

44. In our opinion, Shri Palli is undoubtedly correct in his criticism. We have also gone through the details of the evidences, though it was not our task to re-appreciate the evidence. As we have already held, we are fully satisfied with the findings recorded by the High Court. To conclude the matter, we hold:- B

1. that in view of the Exhibit R-10, the Institution was established prior to 1665 A.D. by an Udasi Faqir Surat Ram, who had received donation from the Ruler of the then Patiala State and the said Institution then was governed by a chain of Udasi Mahants without break in the tradition of the succession from Guru to Chela and Mahant Mangal Dass was in the same tradition. C D

2. that the Institution was only known as a Dera or Dera Sadhan or Mausooma Dharamshala Sadhan and it gave the impression that it was a charitable Institution for poor faqirs and travellers, as also offered shelters to them and the Mahants, who governed the Institution, were noble persons. E

3. that there is voluminous documentary evidence to show the grant of Muafi (remission) of revenue. The land was already granted to the Udasi Faqir in his personal capacity and he had become the owner thereof and the Institution was used by Udasi Faqirs and Sadhus, which is clear from the reference in the revenue papers to the effect "Well of Sadhus or Well of Mahantawala" etc. F

4. that there is ample evidence to establish the pedigree tables as Khandan Sadh Udasin and Patti Sadh Udasin. G

5. that there is no evidence that this was a Sikh Institution from its inception till today or the Sikhs had any say in the matter of appointment of Mahants. H

A 6. Significantly, there is no evidence of there being a regular Granthi in the Institution there existed even a Nishan Sahib. There was no further evidence that the Sikh religious ceremonies were ever held or there is Katha or Parvachan in a congregation.

B 7. that it is established from the evidence that Guru Granth Sahib, though was kept, did not have a fixed place for its Parkash and the versions on the placement of Guru Granth Sahib is contradictory.

C 8. that even a single worshipper out of the original 57 applicants, ever turned up to support the cause of the appellant.

9. that there was clear evidence that there was Gola Sahib, Murti of Baba Siri Chand, Smadhs of earlier D Mahants and other objects of worship like photographs etc. and Guru Granth Sahib was only kept as a book of reverence.

10. that Baba Siri Chand, who was the son of the first Sikh Guru, was an Udasi and Udasi Sect grew up E parallel with the Sikh religion.

11. It is further established that all through, the Institution continued as an Udasi Institution.

45. We are, therefore, convinced that the appeal filed has F no merits and must be dismissed with costs. It is accordingly dismissed with costs.

G.N. Appeal dismissed.