Shiromani Gurdwara Parbandhak Committee

Vs

Lt. Sardar Raghbir Singh and Others

Civil Appeal No. 11 of 1954

(Vivian Bose, B. P. Sinha, B. Jagannadhadas, T. L. Venkatarama Ayyar JJ)

24.03.1955

JUDGMENT

JAGANNADHADAS J., -

This is an appeal on leave granted by the High Court of Punjab against its judgment affirming the decree of the Sikh Gurdwara Tribunal dated the 19th December, 1940, dismissing the plaintiff's suit. The plaintiff in the appeal is the Committee of Management of Sikh Gurdwaras within the Municipal limits of Amritsar (except the Gurdwara Sri Akal Takhat Sahib, Amritsar). The plaint was filed under section 25-A of the Sikh Gurdwaras Act, 1925, (Punjab Act VIII of 1925) (herein after referred to as the Act) for possession of certain properties situated in Amritsar, marked and bounded as specified in the plaint and purporting to have been declared as a Sikh Gurdwara by the Government of Punjab under section 17 of the Act by means of the notification No. 9-G dated the 3rd March, 1937. The case of the plaintiff-Committee is that these properties were, and were determined to be, a Sikh Gurdwara by name Gurdwara Bunga Sarkar, by the Sikh Gurdwara Tribunal by its decree dated the 4th November, 1935 and confirmed on appeal therefrom by the High Court of Judicature at Lahore, on the 16th June, 1936 and the accordingly the Committee was entitled to possession of the properties. The facts as that have led up to the present appeal are as follows : After the Act was passed and within one year of its commencement the then existing non-statutory Shiromani Gurdwara Parbandhak Committee filed a list under section 3 of the Act claiming the suit properties and certain other items attached thereto as belonging to the Gurdwara Harmandir Sahib. These properties comprised two items called Bunga Sarkar and Bunga Mai Mallan and the shops appurtenant to each of them. Objections were filed to this list by way of two applications under section 8 of the Act claiming these as private properties. One was by Sardar Balwant Singh dated the 8th March, 1928 and other was by Sardar Raghbir Singh dated the 10th March, 1928. Sardar Raghbir Singh claimed the whole of Bunga Sarkar and its appurtenant shops as well as 1/3rd of the Bunga Mai Mallan and of the appurtenant shops. Sardar Balwant Singh's claim was confined to 1/3rd share in Bunga Mai Mallan and in the appurtenant shops. The other 1/3rd share in Bunga Mai Mallan was apparently treated by these claimants as belonging to some other person who was not a party to these proceedings. These two applications were forwarded under section 14 of the Act to the Gurdwara Tribunal for its decision. The parties to these proceedings entered into a compromise on the 6th February, 1930. There were two compromises one relating to each of the applications. The net effect of the compromises was that some out of the items claimed were admitted to be the private property of the respective claimants and the rest as wakf bungas for the Yatries to Sri Darbar Sahib, that the non-personal properties were to remain in the management of the claimants, their heirs and representatives as such wakf with certain stipulations as to how that management was to be carried on. The Tribunal disposed of the two applications before them in terms of these compromises. It may be mentioned that though the original list under section 3 of the

Act was filed by the then non-statutory Shiromani Gurdwara Parbandhak Committee, the compromises were entered into by the Managing Committee of the Gurdwaras within the limits of the Municipal Committee, Amritsar which presumably had already by then been formed under section 85 of the Act. Now, quite independently of these proceedings before the Tribunal, and prior to the filing of the list under section 3 and of the objections under section 5 above referred to, there had been filed a petition under section 7 of the Act, signed by the 55 Sikhs, claiming these very properties as being in themselves a Sikh Gurdwara by name Bunga Sarkar (Maharaja Ranjit Singh Saheb) and enclosing a list of properties as belonging thereto under section 7(2) of the Act. It does not appear that this petition was brought to the notice of the Gurdwara Tribunal when it passed the decree in terms of the compromise with reference to the objections under section 5 of the Act. The petition under section 7 was in the usual course followed by a notification issued by the Government on the 18th February, 1930, under section 7(3) of the Act. This resulted in (1) an objection under section 8 by the Granthis objecting that this was not a Sikh Gurdwara, and (2) two other objections by Sardar Raghbir Singh and Sardar Balwant Singh, already previously above referred to, under section 10 of the Act claiming the properties as their own and objecting to the claim made that they were Sikh Gurdwara. These objections were filed on the 5th April, 1930. It may be noticed that the notification under section 7(3) of the Act was within a few days after the compromise decrees in the proceeding under section 5 of the Act and it does not appear whether the compromises were brought to the notice of the Government or not. These objections under section 8 and 10 (and presumably also the petition under section 7) were forwarded to the the Tribunal for its decision under section 14 of the Act. The petition under section 8 filed by the Granthis was contested by the Shiromani Gurdwara Parbandhak Committee (Statutory) and after recording some evidence, the Tribunal came to the conclusion that Bunga Sarkar was a Sikh Gurdwara and declared it as such on the 28th August, 1935. On the objections under section 10, notices were given to the Committee of Management as well as to the Shiromani Gurdwara Parbandhak Committee but they declined to become parties to it. The contest under section 10 of the Act was only as between the claimants and some of the Sikhs who filed the petition under Section 7. At the hearing before the Tribunal both sides relied upon the previous compromises in support of their respective claims. The Tribunal by its decision dated the 4th November, 1935, decided that the properties which had been declared as the properties of Sardar Raghbir Singh and Sardar Balwant Singh respectively, should be declared to be their personal properties and that the rest of the properties claimed to belong to Bunga Sarkar and Bunga Mai Mallan should be declared to be Sikh Gurdwaras and as properties appurtenant thereto. It was also declared that these two Gurdwaras and the properties held to be appurtenant to them should vest in the management of Sardar Raghbir Singh and Sardar Balwant Singh by virtue of and as per terms of the compromises. As against these decrees two appeals were presented buy the Sikh worshippers to the High Court and the only question that ultimately appears to have been raised was that the direction given by the Tribunal to the effect that the properties should remain in the management of the claimants, Sardar Raghbir Singh and Sardar Balwant Singh, was illegal. The High Court without giving and decision on the legal question so raised was of the opinion that it was no function of the Sikh Gurdwara Tribunal to pass an order on an application made under section 10 by the claimants that the claimants should manage the properties appurtenant to the Gurdwaras by virtue of the compromises. They thought that the question of right of management should be left open in these proceedings and that the directions in the decree of the Tribunal relating to the management should be deleted therefrom and that the rest of the decrees of the Sikh Gurdwara Tribunals to stand. They expressed their conclusion in the following terms :

> "That portion of the decree of the Sikh Gurdwaras Tribunal which has declared the respondent's right to manage the Gurdwaras and the properties appended thereto shall

form no part of the decree granted by the Tribunal; the rest of the decree of the Sikh Gurdwaras Tribunal stands, that is to say, the property which have been declared to be the personal properties of Sardar Raghbir Singh and Sardar Balwant Singh shall remain their properties and the properties which have been declared to be appended to the two Gurdwaras shall remain the properties of the two Gurdwaras."

The High Court also added that, though the proceedings mentioned the existence of two Gurdwaras by name Bunga Sarkar and Bunga Mai Mallan, the real position seemed to be that there was only one Gurdwara viz. Bunga Sarkar, and that Bunga Mai Mallan had no separate existence as a Gurdwara but was a well-known part of Bunga Sarkar. This decision of the High Court was on the 16th June, 1936. This was followed by notification No. 9-G dated the 3rd March, 1937, under section 17 of the Act which is the foundation of the present suit.

On these facts a number of contentions were raised by both sides before the High Court as well as before us. The judgment of the High Court as well as the arguments before us have covered a wide range. On the merits, the case for the plaintiff is quite simple. The plaintiff says that whatever may be the position with reference to the earlier compromises arrived at between the parties in the proceedings with reference to those very properties under section 10 of the Act resulted in the judgment of the High Court dated the 16th June 1936, which is conclusive and binding. By virtue of the said judgment and the notification dated the 3rd March, 1937, following thereupon, the plaintiff is entitled to possession of the properties by virtue of section 25-A of the Act. On the side of the defendants various objections have been raised which may be summarised as follows : (1) The proceedings under section 10 did not result in any specific declaration in favour of the Committee that the properties in dispute in the present suit constituted a Sikh Gurdwara or belong to a Sikh Gurdwara. No such declaration can be gathered from the decision of the Tribunal date 4th November, 1935, or from that of the High Court on appeal dated 16th June, 1936. (2) The Tribunal had no jurisdiction in disposing of an application under section 10 of the Act, to give a positive declaration that the property in question is a Sikh Gurdwara. Its only function was to decide whether or not the properties claimed were the private properties of the claimants. Hence even if the decision of the Tribunal and of the High Court can be treated as a decision declaring the properties as a Sikh Gurdwara that is not valid and the notification issued thereupon in void. (3) Any such decision would be contrary to section 37 of the Act and also contrary to the principles of res judicata and would be, therefore, a nullity on that ground. (4) The conduct of the Gurdwara Parbandhak Committee and the concerned Committee of Management, in entering into the compromises in the proceedings under section 5 of the Act without disclosing the pendency of the petition filed by the 55 Sikhs under section 7 of the Act, followed up by their declining to be made parties in the section 10 proceedings and in virtually promoting the contest of the proceedings under sections 8 and 10, was fraudulent. They are accordingly estopped from relying on the decree obtained under section 10 proceedings and basing their right to relief thereon. (5) The suit under section 25A lies only where the decision on an objection under section 10(1) is reached after the notification that the Gurdwara is a Sikh Gurdwara is published since the section refers to a decision in favour of a "Notified Sikh Gurdwara" implying the pre-existence of such notification. (6) The suit under section 25-A was barred by limitation. (7) The whole appeal abated in the High Court inasmuch as one of the respondents, Sardar Balwant Singh died during the pendency of the appeal. His legal representatives were not brought on record in time and the High Court declined to excuse the delay and to set aside the abatement, as a result of which the entire appeal abated, the claim against both the respondents being joint and not being maintainable against one only in the absence of the other. In addition to these contentions which have been put forward before us and strenuously argued by both sides, the High Court also based its decision on the view that section 7 of the Act assumes the existence of a

Gurdwara and that a notification issued under section 7(3) without there being in fact a Gurdwara in existence would be ultra vires. In the present case, in view of the prior proceedings under section 5 and the compromises following thereupon the non-existence of the Gurdwara as claimed in the petition under section 7(1) must be taken to have been made out and therefore the notification and all the proceedings following thereupon are illegal and ultra vires.

Though we have heard elaborate arguments from both sides on these various contentions, it appeared to us ultimately that the plea of limitation is decisive against the appellants and that it is unnecessary to express any opinion on any of the other contentions raised. The question of limitation arises with reference to the terms of section 25-A which is as follows:

> "25-A. (1) When it has been decided under the provisions of this Act that a right, title or interest in immovable property belongs to a Notified Sikh Gurdwara, or any person, the Committee of the Gurdwara concerned or the person in whose favour a declaration has been made may, within a period of one year from the date of the decision or the date of the constitution of the Committee, which is later, institute a suit before a tribunal claiming to be awarded possession of the right, title or interest in the immovable property in question as against the parties to the previous petition, and the tribunal shall if satisfied that the claim relates to the right, title or interest in the immovable property which has been held to belong to the Gurdwara, or to the person in whose favour the declaration has been made, pass a decree for possession accordingly.
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> (2) Notwithstanding anything contained in any Act to the contrary, the court-fee payable on the plaint in such suit shall be five rupees."

This section provides, for the filling of the suit, the period of one year from the date of the decision or the date of the constitution of the committee whichever is later. Now the date of the decision in this case must be taken to be the date when the High Court on appeal disposed of the proceedings under section 10, i.e., the 16th June, 1936. The present suit has been filed on the 25th February, 1938, i.e., clearly beyond one year of the decision. The question for consideration, therefore, is whether the suit can be said to have been within one year from the date of the constitution of the Committee of the Gurdwara concerned. Now, one has to turn to sections 85, 86 and 88 of the Act to appreciate which is the Committee concerned with this Gurdwara and what the date of its constitution is. Section 85 is as follows (in so far as it is relevant) :

> "Subject to the provisions of section 88, there shall be one committee for the Gurdwaras known as the Darbar Sahib, Amritsar, and the Baby Atal Sahib, and all other Notified Sikh Gurdwaras situated within the municipal boundaries of Amritsar other than the Sri Akal Takht Sahib."

Section 86 is as follows (in so far as it is relevant) :

> "For every Notified Sikh Gurdwara other than a Gurdwara specified in section 85 a committee shall be constituted after it has been declared to be a Sikh Gurdwara under the provisions of this Act."

Section 88 is as follows (in so far as it is relevant) :

> "(1) The committees described in sections 85 and 86 shall be constituted as soon as

> may be after the constitution of the Board, provided that no committee shall be constituted for any gurdwara under the provisions of this Act unless and until it has been declared to be a Sikh Gurdwara under the provisions of this Act.
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> (2) When all the members of any committee described in section 85 have been elected or co-opted, as the case may be, according to the provisions of that section, the Provincial Government shall notify the fact that the committee has been duly constituted, and the date of the publication of the notification shall be deemed to be the date of the constitution of the committee."

Now, it is not disputed that the present plaintiff which is the Committee of Management for all the Gurdwaras situated within the Municipal limits of Amritsar, except the Gurdwara Shri Akal Takhat Sahib was constituted prior to the year 1930 and was in fact functioning at the date of the compromises in the section 5 proceedings dated the 6th February, 1930. It is also not disputed that by virtue of section 85(2) this committee also became the Committee concerned with the suit Gurdwara, which is admittedly located within the Municipal limits of Amritsar. But it is contended for the appellants that this Committee becomes concerned with the suit Gurdwara only from the date when the notification under section 17 is issued, i.e., from the 3rd March, 1937, and that, therefore, the plaintiff had one year from that date for the filing of the suit and that in the situation, section 25-A in providing the alternative period of limitation as being "one year from the date of the constitution of the committee," must be construed reasonably as being one year from the date of the notification in such a case and that for the purposes of this section, the pre-existing committee must be deemed to have date of the notification. In support of this contention it has been pointed out that the specific policy of the Act as disclosed in sections 86 and 88 is that no Committee is to be formed for a Gurdwara until after it has been declared a Sikh Gurdwara under the provisions of the Act. It is accordingly urged that the phrases "constitution of the committee" in section 25-A should be construed so as to indicate a point of time not earlier than the notification of the concerned Gurdwara and that in the circumstances and in such cases the date of the notification of the Gurdwara must be the date of the constitution of the concerned committee. It appears to us, however, that this contention is untenable. Section 86 in terms relates to a Notified Sikh Gurdwara other than Gurdwaras specified in section 85. Hence so far as our present purpose is concerned, the policy underlying section 86 does not necessarily apply to the Gurdwaras within the Municipal limits of Amritsar for which a Committee already exists. Moreover, sub-section (2) of section 88 provides with reference to Committees under section 85, that, as soon as all the members described therein have been elected or co-opted, the fact should be duly notified, and also, declares in clear and categorical terms that the date of the publication of the notification shall be deemed to be the date of the constitution of the Committee. In the face of this deeming provision relating to these Committees, it is not permissible to impute to such a Committee any other date as the date of its constitution for any of the purposes of the Act and to imply an exception and an addendum to the specific deeming provision. This would be legislating. We cannot, therefore, to accept the contention of the appellant that the date of the notification under section 17 in the present case should be deemed to be the date of the constitution of the Committee concerned for the purposes of section 25-A. It has been urged that this view deprives the Committee of the benefit of the longer alternative period of limitation and that in a cases where no notification under section 17 has been issued until after the expiry of an year from the date of the final decision that the Gurdwara claimed is a Sikh Gurdwara, the remedy under section 25-A would become inapplicable. It may be that an exceptional case of undue delay in the publication of the notification may be a causes omissus but such a delay need not be assumed to be a matter of course. That, at any rate, is not the present case where the notification was in fact issued within nine months of the decision of the High Court. The

Committee which should have been alert with reference to these matters, had, not only the whole of these nine months to take steps to get the notification published earlier, but, it had three months thereafter to come forward with the present suit. However this may be, we do not consider that there is any question of hardship, because obviously section 25-A is only enabling section proving a cheap remedy by way of a suit before the Tribunal itself. We are clearly of the opinion that the present suite under section 25-A is barred by limitation and on this ground the appeal must fail.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

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