

# SUPREME COURT OF INDIA

Mehar Singh

Vs.

Shiromani Gurudwara Prabandhak

(M.J.Rao and A.P.Misra JJ.)

14.12.1999

## JUDGMENT:

**M.JAGANNADHA RAO,J.**

Leave granted in Special Leave Petition (C) No.12083 of 1984. The Civil Appeal No. 1921 of 1984 has been preferred by the appellants against the judgment of the High Court of Punjab & Haryana in FAO No.170 of 1972 dated 2.6.1982. The High Court, by the said judgment, confirmed the Award of the Sikh Gurudwara Tribunal, Punjab dated 20.1.1972 in Petition No.143 of 1963 whereby the claim of the appellants being successors of one Bhai Arjan Singh filed under section 5(1) of the Sikh Gurudwaras Act, 1925 (hereinafter called the 'Act') was partly allowed and partly dismissed.

The Civil appeal arising out of SLP(C) No.12083 of 1984 is filed against the order dated 10.7.1984 in FAO No.44/75 and that relates to possession under section 25 of the Act. It is admitted that it depends solely on the result of CA No.1921 of 1984. The Gurudwara Sahib Padshahi Chhemi was declared to be a Sikh Gurudwara, under the notification of the Punjab Government No. 1211 dated 20.7.59 and figures at Serial No. 325 in Schedule I of the Act. Thereafter, by notification No.162 Y.P. dated 19.1.1962, issued under section 3(2) of the Act, the list of rights, titles and interests were claimed as belonging to the Gurudwara. That notification contains a list of agricultural lands and other properties claimed by the Gurudwara. After the said notification was published, Bhai Arjan Singh (since deceased) put forward his claim by petition under section 5(1) of the Act. The petition was forwarded to the Tribunal constituted under the Act. The Tribunal after conducting an inquiry and receiving evidence, allowed it in part in respect of some properties and dismissed the petition in other respects. In the petition, the said Bhai Arjan Singh contended that one half of the land mentioned in Part No.2 (pp.212, 214) of Notification No.162 dated 19.1.62, entered in the revenue record in the name of Langar Ji Sahib, was owned by Sri Arjan Singh as trustee for the Langar,( the kitchen) while the other half was owned personally by him and Kartar Singh etc., according to shares specified in the Jamabandi. He contended that no part of this land standing in the name of the Langar belonged to the Gurudwara. The other contention was that in the Maufi in Part 3 of the

Notification and in the Langar in Part No.4, the Gurudwara had no rights (except in the Diwan Khana). It was further contended that the property mentioned in Para I-A of the Petition was donated by the petitioner's ancestors for the use of the Langar for members of "all communities" and that he and his ancestors were functioning as hereditary trustees. One half of the land which was in the name of the Langar Ji Saheb in the revenue record was set apart for running the Langar for the use and benefit of all and Sundry and that the Langar was not constructed for the benefit of the Sikh Community alone. The major portion of the property described as Langar comprised of the residential house, Bare and Khras owned and possessed by the petitioner, though the Langar was also being run in a portion of it. The petition traced his ancestry to Bhai Rup Chand who founded the village Bhai Rupa but contended that neither the petitioner nor his ancestors were ever Mahants of the Gurudwara. The Gurudwara was having a separate Mahant or Granthi. The petitioner, as trustee of the Langar, acquired title to the land. The Gurudwara and the Langar were separate entities. The Gurudwara never exercised any control over the Langar. The petitioner, Bhai Arjan Singh, therefore, prayed that the properties in Parts 2, 3 and 4(excepting the DiwanKhana in Part 4) be declared as not belonging to the Gurudwara. The Gurudwara, filed a written statement on behalf of the respondent Committee on 8.4.63, denying the above allegations and contending that all the properties -whether recorded in revenue accounts in the name of the Langar or in the names of the sharers, belonged to the Gurudwara, that the petitioner and his ancestors were holding the land and other property as Mahants of the Gurudwara Sahib and that the Langar and the Gurudwara were a single entity and both were being run by the Gurudwara. On the pleadings, the Tribunal under the Act framed the following point for consideration:

"Does the property in suit vest in the petitioner or in the notified Sikh Gurudwara?"

The petitioner Arjan Singh examined himself as PW6 and adduced evidence of PWs 1 to 5 and filed Ex. P1 to P20. The Gurudwara Committee examined RWs 1 to 10 and marked Ex. R1 to R12. The spot was inspected by the President and the two members of the Tribunal in 1966 and inspection notes were prepared on 5.9.66. The petitioner died pending proceedings before the Tribunal and the appellants were brought on record in his place. The Tribunal had also issued notice to the State of Punjab The Tribunal, in its award, went into the history of the Gurudwara from the time of Bhai Rup Chand as chronicled in Macauliff's Sikh Religion (Vol.41 pp.149-151) as to how upon the advice of the Sixth Guru, Guru Govind Singh, Bhai Rup Chand ( the ancestor of the appellants ) left the village Tukland and founded the new village Rupa. The Guru directed him to establish a congregation in village Rupa and asked him to spread Guru Nanak's doctrines. He also directed that a Kitchen be established for the Sikh devotees. At pages 152-153, it is stated that this Gurudwara was built by Bhai Rupa Chand and his father, to commemorate the visit of the 6th Guru. The guru laid foundation of the village on Baisakh Sambat 1688. The Tribunal also referred to Siri Gurpartap Suraj Granth (known as Suraj Prakash) at pp. 3129 to 3134 & 3139 to 3133, vol. 9 Ch II) written by Bhai Santokh Singh. Reference was made to Encyclopedia of Sikh Literature by Bhai Khan Singh at p.783. The petitioner, Arjan Singh as PW6 made various admissions in his cross-examination. The Tribunal referred to Ex. P6, (copy of Robkar of Regency Council, Nabte) dated 27 Har Sambat, 1937B.K. in File No.1487, Ex. P8 (Copy of extract from Register of Maufis pertaining to village Rupa, Exs. P12 to P13 the certified copies of the mutations 445 and 3464, Ex. P14 extract of Jamabandi for 1952-53 of the village, Ex. P15 Fard Intkhab for 1952-53, Ex. P16 and P17 being Jambandhis for Sambat 1984-85 of the village, and to Ex. P18 copy of Jambandhis for Sambat 1962. The Tribunal held that indeed the petitioner's predecessors-in-interest were the Mahants of the Gurudwara and that the petitioner's case to the contrary was false. Ex. R2 the pedigree included the names of Dargah Singh and Prem Singh described as Mahant Gadi Nashin. Ex. R3 is a copy of the

Tehquiquate Abadi, Ex. R4 is a copy of Joint statement of Bhai Dargah Singh and others, Ex. R5 is a copy of the Ishare Lambardarn dt. 16 Har Sambat, 1941, Ex. R6 is a copy of the report of the Naib Tehsildar attached to Maufi file No. 16 of Rupa Village. Ex. R7 and R8 relate to the Maufi and Ex. R8 is a report of the Asst. Settlement Officer, Ex. R9 copy of pedigree, and Ex. R-10 copy of Jamabandi of 1962-63, Ex. R11 of 1952-53. The Tribunal on the above evidence held that petitioner's ancestors were Mahants of the Gurudwara, that the Langar was also built at the direction of the guru and was an integral part of the Gurudwara, and that the Langar was mentioned in every document immediately after any reference to the Gurudwara. It observed that the Gurudwara and the Langar formed an integral unit. It observed:

"There is unanimity of opinion among the historians that the Sikh Gurus made the Langar an integral institution of the Sikh Church by insisting that any one high or low, who wanted to see them had first to accept Guru's hospitality by casting with his disciples in one row."

The Tribunal then observed that the mere description of the Langar as owner in the revenue records was of no help. It said:

"The mere fact that the land in dispute is entered in the revenue papers in the column of ownership as belonging to the Langar does not in any way establish that the Langar Ji Sahib was an independent separate entity."

The Tribunal further held that the Abadi intervened between the Gurudwara and the Langar building was not correct. Exs. P10, P11, P19, P20 did not support any such contention. On the other hand, it held that the wall was built by Bhai Arjan Singh separating the Gurudwara and the Langar. It observed:

"These entries clearly indicated that the Langar and the Gurudwara were located in one and the same number and that this Langar had nothing to do with the house of the then Mahant Dargah Singh which was admittedly situate in No.148."

The brick wall was put up in between the two, much later, sometime in 1960 by the appellants while previously there was passage from which one could reach the Gurudwara from the Langar. The Tribunal held that a claim could be made under section 5(1) claiming property as personal property and not necessarily as a trustee. The Tribunal also observed: "The object of the grant of the land and the Maufis had everything to do with the running of the Langar in perpetuity in the said Gurudwara." It accepted that land which in the revenue records was registered in the names of the appellants could not be treated as property of the Langar Ji or the Gurudwara but that other properties belonged to the Gurudwara. In the result, the Tribunal allowed the petition in part and dismissed it in other respects, holding as follows:

"In view of the discussion above, we hold that the petitioner has failed to prove that the property in dispute vests in him in any of his personal right or capacity. We further give a declaration that the building mentioned in Part No.1 and Part No.4 of the Notification No.162-GP, dated 19.1.1962 of which the plans appears at pages 25, 27 and 29 of the said notification and the agricultural land specified in terms 1 to 12 of part No.2 entered in the revenue record as being owned by Langar Ji Sahib of which details are given at pages 223 to 266 of the said Gazette, belong to the notified Gurudwara abovementioned and vest in its as such. This declaration will, however, not apply to the residential house of deceased Mahant Arjan Singh shown towards the west in the plan of the

Gurudwara building at page 25, nor this declaration will extend to the agricultural land, which stood in the personal names of Bhai Arjan Singh (deceased) and other share holders at the time of the publication of the said Notification. The Muafi claimed in Part No.3 also vests in the notified Gurudwara."

The petition was disposed of accordingly. It will thus be seen that in respect of land, said to be one half of the agricultural land, which stood in the personal names of Bhai Arjan Singh and other shareholders at the time of the notification, it was held that it cannot be covered by the declaration of title in favour of the Gurudwara under the notification.

Appeal was preferred to the High Court by Bhai Arjan Singh's heirs for an order in respect of the balance of the land or property. But no appeal was preferred by the Gurudwara. The Tribunal's findings were affirmed, on appeal, by the High Court and the appeal filed by the appellants was dismissed. It is against this judgment that this appeal, by special leave, has been preferred. In this appeal, it was contended by the learned senior counsel for the legal heirs of Bhai Arjan Singh Sri P.C. Jain that the property which was shown in the Jamabandi in the name of Langar Ji must also be declared as not belonging to the Gurudwara. It was contended that the Langar and the Gurudwara were independent entities and what was registered in the name of the former could not be treated as belonging to the Gurudwara merely by placing reliance on the historical background of the case. There was no material to treat the Langar Ji as an integral part of the Gurudwara. The Langar was independently established by Bhai Rup Chand, the original founder and his successors and the appellants should therefore be allowed to use that property as trustees of the Langar Ji.

On the other hand, Sri Hardev Singh, learned senior counsel for the Gurudwara contended that the Tribunal and the High Court rightly held that the Langar Ji was an integral part of the Gurudwara and that the properties standing in the name of the Langar Ji were rightly treated as the properties of the Gurudwara and notified as such. There was ample evidence in this behalf apart from admissions of the appellant's ancestors. The point that, therefore, arises for consideration is: whether the findings of the Tribunal and the High Court that the Langar Ji was part and parcel of the Gurudwara and that the properties standing in the name of the Langar Ji belonged to the Gurudwara are correct? At the outset, we may point out that normally, in exercise of this Court's Jurisdiction under Article 136 findings of fact concurrently arrived at by the Tribunal and the High Court will not be interfered with by this Court unless there is a clear error of law or unless some important evidence has been omitted from consideration. In the case before us, the Award of the Tribunal was passed by a panel of Members of whom the President was a retired Judge of the High Court (Sri Justice Gurdev Singh) and another was a senior bureaucrat (Sri Dev Raj Saini, P.C.S.). then was a third member Sri Joginder Singh Rekhi. We have already referred to the evidence relied upon by the Tribunal and those findings have been affirmed by the High Court.

Before referring to the evidence, we have to refer to the broad shift in the stand of the appellants by their learned senior counsel who appeared before us. The stand is in sharp contrast to the pleading of the petitioner Bhai Arjan Singh before the Tribunal and their case in the High Court. While in the petition, Bhai Arjan Singh asserted that none of his predecessors had any connection with the Gurudwara, it was conceded before us and rightly so that they did have connection with the Gurudwara but it was contended that that would make no difference. In our view, once this concession is made - and rightly made on the available material that the appellants' predecessors were Mahants of the Gurudwara, the appellants' case gets totally weakened. We shall elaborate this aspect. If Rup Chand and his successors have admittedly acted as Mahants of the Gurudwara and

when it is accepted that Rup Chand and his successors established the Gurudwara and the Langar (the kitchen) at the direction of the Sixth Guru, it is to be prima facie accepted that,- placed in a fiduciary position as they were,- it requires very strong evidence to prove that they kept or intended to keep the Langar, (the kitchen) as a separate unit distinct from the Gurudwara. It requires strong proof that while the Gurudwara was meant for those who followed the tenets of Sikhism, the Langar which was so near to the Gurudwara was constructed not exclusively for the Sikh community but was meant for all and sundry. In our view, if the Langar was constructed simultaneously with the Gurudwara or within reasonable proximity in point of time with the Gurudwara, - as directed by Guru Govind Singh, the Sixty Guru - a strong presumption arises that it was meant only for the devotees who would attend the Gurudwara and was not meant to be an independent unit for catering to the needs of all communities, - and not merely confined to the Sikh Community. In our view, there is no evidence to show that the founders contemplated two separate entities, the Gurudwara for the Sikhs and the Langar for everybody else. Further, once the appellant's counsel is compelled to give up the plea that those who managed the Langar Ji had nothing to do with those who managed the Gurudwara, the basis for treating the Langar Ji and its properties as separate from the Gurudwara becomes completely shaken. There is one more basic flaw in the appellant's contention. The appellants have already succeeded before the Tribunal to the extent of a large chunk of the agricultural property standing in revenue accounts in their personal names. This is said to be almost one half. Now the appellants want to claim the balance of the property as having been owned by the Langar Ji, and they want to claim that land as trustees of the Langar Ji. The result would be that the Gurudwara, the main Trust, would be left with no agricultural land whatsoever for its upkeep. In our view, the founders of the Gurudwara and their successors Mahants would never have intended to acquire all the property for the Langar Ji and none for the Gurudwara. In fact, the registration of some lands in the personal names of the trustees is a very recent event. Be that as it may, that part of the Tribunal's Award has now become final. But so far as the balance of the property is concerned, if the appellant now accepts that those who managed the Gurudwara and those who managed the Langar Ji were the same persons for several generations, then the case of the appellant that the same trustees acquired distinct properties for separate trusts requires very strong evidence particularly when, as a matter of history and custom, every Gurudwara establishes a kitchen to serve those devotees who come to the Gurudwara for worship and who stay over. At one stage, learned senior counsel for appellants wanted to contend that Langar Ji was a private Trust and not a public trust but this contention was given up. Such a plea would be totally unacceptable in view of the admissions in the petition itself that the kitchen was to serve the community at large. The limited plea was that the Langar was not confined to those who go to the Gurudwara but the kitchen was open to all and that it was not an appendage of the Gurudwara. Having referred to the serious weaknesses of the case of the appellants, we shall briefly refer to the material on which the findings against the appellants are based. We shall first refer to the oral evidence. The petitioner (Bhai Arjan Singh) admitted in his cross-examination that the village Rupa was founded by Rup Chand at the direction of the 6th Guru, and that thereafter the Gurudwara was constructed. This admission is in fact contrary to what PWs 1 to 5 stated. They asserted on the other hand that the kitchen was started not at the direction of the 6th Guru but was started independently by the heirs of Rup Chand, - Prem Singh & Mahant Singh. It was also admitted by PW 6 that the 6th Guru desired Bhai Rup Chand should start a free kitchen. PW-6 stated that only 'some land' was set apart for the kitchen (But now he says entire land is divided between the kitchen and the family and there is nothing for the Gurudwara). PW-6 admitted he was running the kitchen for over 50 years but was not maintaining any accounts of the income from the land attached to Langar Ji Sahib. He admitted that the 6th Guru appointed Bhai Rup Chand as Mahant of the Gurudwara.

The witnesses for the Gurudwara RWs 1 to 10 stated that the Gurudwara and the Langar Ji were being run by the same persons as one unit all along. Only about 5 years earlier (i.e. 1960) a wall was constructed by Bhai Arjan Singh to separate the Gurudwara from the Langar Ji. Coming to the documentary evidence, the strong evidence contained in the books of history, particularly, Macauliff's work which shows that both the Gurudwara and the Langar were built almost simultaneously at the behest of the Sixth Guru, goes against the appellants. The Gurupratap Suraj Granth also supports this view. These documents totally go against the appellants' case.

The appellant has placed reliance on Ex. P2 (Revenue decision of 13 Kartak 1970 Samvat) regarding the mutation of the Maufi as divided into shares. (Now, it is admitted Maufi was resumed in 1957). Ex.P3 also relates to Maufi. Ex.P4 is an order with regard to Abadi of Rupa village. Ex. P6 is the order in a suit for share of crop of the Maufi land (of course described as Dharam Arth.)(translated as Religious purpose). It shows the land was divided into three shares one for plaintiff(Mahtab Singh), another for defendant (Prem Singh) and a third share to Langar Ji (free kitchen). Prem Singh, defendant, brother of plaintiff, was described as Sajde Nashin (holding of office) and as managing the Langar. Ex. P7 is the copy of the Register Maufiat. It states that the Muafi was permanently granted by the Minister "till the Langar is in existence". Ex. P8 is the copy of Muafi, column 8 states that the holders of the Maufi are Bhai Ka, children of Bhai Rup Chand. Col.11 refers to the remarks of the Asst. Steeement Officer - that Maufi was given to the children of Bhai Rup Chand. Column 12 refers to Dharam Arth,(Religious purpose). It reads:

"Maufi is for Dharam Arth. and for Langar Sahib."

In our view, Col. 12 of Ex. P8 cuts at the case of the appellants for it describes that the Maufi land was granted jointly for religious purposes as also for purposes of the kitchen. Two points emerge from Ex. P-8, one that the Gurudwara and the Langar were treated as one unit and that the Maufi was granted jointly for the religious purposes of the Gurudwara and for the religious-cum-charitable purpose of the Langar Ji for feeding the devotees who visit the Gurudwara for religious purposes. Col.13 says the Maufi is permanent for Dharam Arth.(religious purpose) and that the Langar is still being run. Ex. P9 is an order relating to a dispute with the State of Nabhas. Ex. P11 is the Khasra, Ex. P12 is the Mutation register shows lands registered in name of Langar Ji as owner and referred to the possession of the heirs of those who died. But curiously, in Ex. P13, in the column 4 relating to the name of the owner, Langar Ji is omitted and the shares of the shareholders-appellant's predecessors are mentioned, while the cultivator's column 5 is shown as Langar Ji. Col.9 relating to owners says cultivation is by Langar Ji. Ex.P14 is the Fared Inttakeb and shows the name of owner of Langar Ji. Col. 5 shows Maufi property is in possession of owner. It says in the Jamabandi of 1952-53, that the shares are divided between the Langar Ji & Arjan Singh equally. Ex. P15 is the Fared Inthekhhab and describes the owners as Narain Singh etc. while it describes Langar Ji as cultivator. Ex. P16 is the Jamabandi of 1984-85 Samat and shows the name of Jang Singh as owner and Langar Ji as cultivator. Ex. P18 is the Jamabandi of Samat 1962, shows Jang singh as owner and Langar Ji as cultivator. Ex. P20 is Khasra giving details of the locations. Thus, Ex.P-8 runs contrary to the appellants' case while the other documents are inconsistent with Ex.P-8 and also inconsistent with each other. We shall next refer to the documents produced on behalf of the Gurudwara. Ex. R2 extract of file 453 contains the decision dt. 20 Katik Sambat 1941 BK. In that the pedigree was given and Bhai Dargah Singh, son of Prem Singh was described as Mahant Gaddi Nashin & Bhai Dargah Singh admitted that he was himself the Mahant Gaddi Nashin. He also "admitted that the Sarkarwale and built a Gurudwara in commemoration of the visit of the 6th Guru", Guru Gobind Sahib and that he was the Mahant of the Langar. Ex. R3 the Tehquiquate Abadi shows that the

Gurudwara was built by Rup Chand at the behest of the Sixth Guru and Bhai Rup Chand was the Mahant. Ex. R4 is a joint statement of Bhai Dargah Singh & others in file No.453 and there it is admitted that the "Sixth Guru came to village Bhai Rupa for the second time after the village was founded and stayed for 2 month, at the place when there is a Dharamshala of the Langer."

Ex. R5 is the copy of the Ishare Lambardarn dated 1941 and it shows that all the four Lambardarns stated that the Guru appointed Bhai Rup Chand as a Mahant of the Gurudwara and the entire land in the village went into his possession. Ex. R6 relates to the Maufi and states that it relates to the LangarJi of which Arjan Singh was Mahant, the grant was conditional upon the existence of the Langar Ji. Maufi is started in Col.12 to be for Dharam Arth. Ex. R9 is a pedigree showing Arjan Singh as Mahant. Ex. R10 Jamabandi to 1962-63 showed Langar Ji as owner. Ex. R11 Jamabandi to 1952-53 showed LangarJi as owner of 1/2 through Mahant. Ex. R12 shows LangarJi as owner. Thus, the above material produced by the respondents and, in particular, Macauliff's Sikh Religion (Vol.4, PP.149-151) prove that the plea in the petition that the ancestors of petitioner (i.e. upto Rup Chand) had no connection with Gurudwara was totally false and that the village was founded by Rup Chand, that at the direction of the Sixth Guru, the Gurudwara was built, then a Dharamshala and Langar were also built at his direction. In his second visit, the Sixth Guru came and stayed in the Dharamshala for two months. These facts clinchingly establish that the Gurudwara and the Langar came up almost contemporaneously and the same persons were in Management of both as Mahants for several generations. The only inference that could then be drawn would be that they both formed part of single unit and it was never the intention of the Sixth Guru or of Bhai Rup Chand that the Gurudwara and the Langar should be different entities. It was never their intention that each should have a separate Mahant - or each should have separate lands for their respective purposes. Evidence also proves that the Maufi was also a grant to the Langar Ji and not to any individuals.

It is true that in revenue accounts, the land is described as belonging to Langar ji or is shown as sub-divided but once it is established that Langarji is an appendage of the Gurudwara, then all these lands standing in the name of Langar Ji must be treated as coming under the purview of the Act. The evidence also shows that somewhere recently in 1960, Bhai Arjan Singh built a wall and closed the Arch through which devotees were going from the Gurudwara to the Langar. In our view, the Tribunal was right when it held as follows:

"The reason for claiming the Langar alone is quite obvious. It appears that as land in dispute throughout stood in the name of Langar ji Saheb in the revenue papers, the petitioner thought it expedient to claim the same with the motive of appropriating its income and produce. In view of the historical importance of the notified Sikh Gurudwara in question, it cannot be imagined that the same could be without an institution of the Langar which is so essential for such importance places of homage."

For the aforesaid reasons, we are clearly of the view that the award of the Tribunal was based on ample material - historical as well as other documentary and oral evidence. No relevant document was left out of consideration. The High Court was right in affirming the award. There are absolutely no merits in the appeals. Both appeals are dismissed. Civil Appeal No.1921 of 1984 is dismissed with costs quantified at Rs.10,000/-.