

LAHORE HIGH COURT

Lal Chand Mehra

Vs

Local Committee of Management

(Addison, J.)

27.10.1936

JUDGMENT

Addison, J.

1. A claim under Section 10, Sikh Gurdwaras Act, was put in by Mr. Lal Chand Mehra, Advocate. He prayed that it be declared that the Dharamsala Mai Bhani is not a Sikh Gurdwara but a private Dharamsala and that other property entered in Schedule 2 was the private property of Dr. Gurdit Singh for which he had created a trust for charitable purposes. This petition is headed "*Lal Chand Mehra v. The Shromani Gurdwara Prabandhak Committee*" and is in English. At the place for signature, the signature of the petitioner is also given in English, but below the signature of Lal Chand Mehra comes another signature in Urdu, that of Autar Singh, without any indication that another signature was to be made there. In the petition no claim was made on behalf of Autar Singh and at the place where he signed there was no description showing that there was another petitioner, though such a description was below Mr. Lal Chand's signature. The signature is a short scrawl in Urdu.

2. It is clear from the proceedings before the Sikh Gurdwaras Tribunal that Lal Chand was treated as the sole petitioner though in the typewritten copies of the proceedings, on 28th June, it is written that Sardar Kharak Singh and Mr. Nihal Chand, Advocates for "petitioners", were present. Neither Mr. Nihal Chand nor Sardar Kharak Singh held a power-of-attorney on behalf of Autar Singh so that the plural 'petitioners' was obviously put in by mistake. It is not clear when this signature of Autar Singh was added as it could have been done at any time. It was certainly there before the petition for review was put in. This petition for review was dismissed by the Sikh Gurdwaras Tribunal.

3. Mr. Lal Chand claimed a right, title and interest in three properties under Section 10 of the Act. The first was an area of 18 kanals 4 marlas containing a kotha at Kot Said Mahmud. The second was an area of 71 kanals 18 marlas of land at Dhapai. The third was a building at Amritsar known as Dharamsala Mai Bhani or Bibi Bhani. It may be here mentioned that there

was a petition under Section 7 of the Act which was duly gazetted and there was no petition under Section 8, claiming that the institution was not a Sikh Gurdwara. This means that under Section 9 of the Act there should have been a gazette notification to the effect that the Gurdwara was a Sikh Gurdwara. Apparently this has not yet issued. A petition under Section 10 can only be to the effect that the property mentioned is the private property of the petitioner or that he has a right, title or interest in it.

4. Mr. Lal Chand claimed a right, title or interest by reason of a will dated 30th June 1920. It was executed shortly before Dr. Gurdit Singh died. The petitioner claimed as trustee under this will and that was the only claim which he put forward. The Tribunal has held that the building known as Dharamsala Mai Bhani is not disposed of by the will.

5. As regards the area of 18 kanals 4 marlas the Tribunal gave Mr. Lal Chand a declaration that he as trustee could manage and sell it and apply the proceeds to charity and that as regards the plot of land measuring 71 kanals 18 marlas he could sell it as trustee and apply the proceeds to meet the expenses of the Dharamsala Bibi Bhani in accordance with the provisions of the will. Against this decision Mr. Lal Chand and Autar Singh have preferred one appeal and the Local Gurdwara Committee, another appeal.

6. The will is the only document on which the claim of Mr. Lal Chand is founded. We agree that there is nothing in the will giving any right either to Mr. Lal Chand or Autar Singh with respect to the Dharamsala proper. With respect to the first area of 18 kanals 4 marlas, the provisions of the will are as follows:

I have given the kothi with the compound and the land attached thereto by way of dharmarth; the trustees are entitled to sell the same if they consider that proper and to spend the sale money in dharmarth.

7. Upto this stage in the will there is no mention of any trustees. Two trustees, however, are mentioned later on in the following words:

As regards the amounts in connection with mortgage deeds and lands due to me from debtors I appoint two persons, Mr. Lal Chand, Barrister, and Jetha Ram alias Jetha Mal, who is my relative, as trustees, and empower them to realize the abovementioned amounts from the debtors through the Courts or otherwise. The money will be spent as under.

8. Then follows the details as to how this money is to be spent. The will then proceeds:

Out of the remaining income they will start a langar (free kitchen) at the dharamsala in my name. The langar however must remain under the management of the Pujari unless he

is dishonest.

9. It is arguable whether these trustees appointed for the collection of debts, due on mortgages and otherwise, were specifically empowered to deal with the Immovable property which was given in dharmarth as their appointment appears to have been specifically made for the purpose of collection of debts. At the same time it is said earlier in the will, before the trustees were appointed, that the trustees could sell the area of 18 kanals 4 marlas if they considered that proper and to spend the sale money in dharmarth. Even this clause, however, does not give them power to manage the property: it only 'gives them power to sell. This question, however, need not be further considered as the trust is void, if it exists, by reason of indefiniteness. It has been held by the Privy Council and by all the Courts that a trust by way of dharmarth cannot be enforced. It follows that the claim of Mr. Lal Chand in respect of this area of 18 kanals 4 marlas must be dismissed as he has no right, title or interest in it. It is not for us to find in these proceedings who is the person interested and in fact there is no material before us to come to any such conclusion.

10. This leaves the area of 71 kanals 18 marlas at Dhapai. This is given by the will to the dharamsala and it is expressly ordered that the property shall be mutated in favour of the dharamsala. All that the trustees were allowed to do in connection with this property was to sell it if they saw that the dharamsala was not deriving any benefit from the land. Mahant Asa Singh, whose successor Autar Singh is, was given power to get the land mutated in favour of the dharamsala and it was stated that the property was dedicated to the dharamsala as long as it existed. Here again, therefore, the trustees had no power of management though they were empowered to sell the land if no income could be derived from it. There is no evidence that no income can be derived from it, so that the trustees cannot be said to have any connection with the land at present.

11. Apart from that, we are clear that such a claim does not lie under Section 10, Sikh Gurdwaras Act. A claim under that section must be a personal claim and not a claim by a trustee. It has already been shown that the property was dedicated to the dharamsala and it was ordered that it should be entered in the name of the dharamsala. It is therefore the property of the dharamsala. Provision is made for trustees in Section 27 of the Act. Once there has been a notification, declaring a Gurdwara to be a Sikh Gurdwara, the trustees come in under the provisions of Section 27, Sikh Gurdwaras Act, and can claim an order as to who should administer the trust. As the trust is entirely in favour of the dharamsala with respect to the 71 kanals 18 marlas of land, it would seem to follow under the provisions of Section 27(2) of the Act that the Tribunal would have to order that the Committee of the Gurdwara should manage the property but this question does not arise at the present time.

12. With respect to the appellant Autar Singh it was contended that his claim had not been disposed of. As already shown he made no claim though it was stated in para. 8 of Mr. Lal Chand's petition that after Bhai Asa Singh's death, which took place in 1926, his chela Bhai

Autar Singh, was appointed in his place to discharge the same duties as his Guru. There was no claim by Autar Singh, however, that the dharamsala was his. The only claim was by Mr. Lal Chand Mehra that it was a private dharamsala of which he was the trustee. As already held, however, the will gives him no power or control over the dharamsala. Nor is there any evidence that the dharamsala belongs to Autar Singh, who is only the Mahant at best.

13. For the reasons given we dismiss Appeal No. 126 of 1936, with costs and accepting Appeal No. 136 of 1936, with costs throughout, we set aside the decree of the Tribunal and dismiss the claim petition put in under Section 10 of the Act.

.