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Court : Punjab and Haryana

Decided On : Dec-10-1992

Reported in : AIR1993P& H131

Judge : A.L. Bahri, J.

Acts : Sikh Gurdwaras Act, 1925 - Sections 10, 25A, 86 and 87(1); [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 2

Appeal No. : F.A.F.O. No. 108 of 1976

Appellant : Gram Sabha, Dhade

Respondent : Shiromani Gurdwara Parbandhak Committee, Amritsar

Advocate for Def. : G.S. Gulani and; Gur Rattanpal Singh, Adv.

Advocate for Pet/Ap. : J.S. Chahal, Adv.

Judgement :

ORDER

A.L. Bahri, J.

1. On account of difference of opinion expressed by S. S. Grewal, J. and G. R. Majithia, J., the matter has come up before me.

2. Shiromani Gurdwara Parbandhak Committee (for short called 'the SGPC) filed a suit for possession of land in dispute against Gram Sabha. Dhade, under S. 25A of the Sikh Gurdwaras Act, 1925 (hereinafter called 'the Act'), inter alia, alleging that SiriGurdwara Sahib Burj-wala Dhada, Tehsil and District Bhatinda, was a notified Gurdwara and the petition filed under S. 10 of the Act by the Gram Sabha had been dismissed and the suit should be decreed against the Gram Sabha. The suit was contested by the Gram Sabha, inter alia, asserting that the Gram Sabha was not in possession of the property. The suit was time-barred and was not maintainable. On the pleadings the following issues were framed:--

1) Is the suit within time? OPP

2) Is the suit not maintainable? OPD

3) Does the suit not lie because the property declared to be the property of the . Gurdwara is already in possession of the Gurdwara and not in possession of the defendants? OPD.

3. IssueNo. 1 was decided in favour of theplaintiff. The suit was held to be within time.Under issue No. 2 the suit was held to be maintainable. Under issue No. 3 it was heldthat the Gurdwara was entitled to remain inits possession as dohlidar. Ultimately the suitwas decreed. The appellant Gram Sabha hascome up in appeal.

4. S. S. Grewal, J. held that since the income from the land did not exceed more than Rs. 3,000/- per annum, the SGPC was competent to take a decision to constitute itself as Managing Committee of the Gurdwara in dispute and file a suit and thus the suit was maintainable. It was further held that the 'G U R D W A R A' was entitled to remain in possession of the land in dispute as dohtidar. It was so held by the Sikh Gurdwara Tribunal in its judgment dated December 19, 1973 in petition No. 601 of 1966, Gram Sabha Dhade v. S.G.P.C., Amritsar Exhibit P. 2; and thus ordered dismissal of the appeal. With respect to the finding that the suit was within time he agreed with the view expressed by G. R. Majithia, J. On the

other hand G. R. Majithia, J., holding the suit to be within time, expressed the view that the suit was not maintainable as the income of the Gurdwara was more than Rs. 3,000/- and the SGPC was to nominate a Committee for Management of the Gurdwara in dispute under S. 87(I)(a) of the Act. Reference was made to the decision of the Division Bench in Jalaur Singh v. Shiromani Gurdwara Parbandhak Committee, Amritsar, decided on October 28, 1975, wherein it was observed that the income of the Gurdwara being virtually non-existent, the Committee was perfectly entitled to constitute itself as the Managing Committee under S.87(I) of the Act. This view was upheld by the Full Bench in Gurdwara Sahib Padshahi Daswin Tittarsar v. Mahant Kesar Singh Chela Tirath Singh of Gurdwara Sahib Tittarsar, AIR 1979 Punj & Har 166, and observed that the ratio of the decision aforesaid was that income of the Gurdwara was to be taken into consideration and since evidence was produced in the present case that the Mahant had let out the land of the Gurdwara for a sum of more than Rs. 3,000/- per annum, the SGPC was required to nominate Committee of Management for the Gurdwara in dispute and could not convert itself as Committee of Management of the Gurdwara in dispute and thus was not competent to file the suit.

5. On going through the evidence produced, it was observed by G. R. Majithia, J. that in the revenue records in the column of possession the entry was in the name of 'Dohli be Ehtmam Kishan Singh Mahant Dohlidar'. The defendant Gram Sabha was the owner of the disputed property, but the Mahant was the dohlidar entitled to remain in possession as such as long as he fulfils the conditions for grant of dohli. Thus decree for possession could not be passed in this case since on the facts proved Mahant was in possession as dohlidar. The appeal was to succeed while setting aside the judgment and decree of the Tribunal.

6. I have gone through the judgments of the two Hon'ble Judges, referred above, and I am of the view that the appeal deserves to be allowed while setting aside the judgment and decree of the Tribunal on the short ground that it was neither alleged in the plaint that Gram Sabha was in possession of the property in dispute nor the same was admitted by the defendant in the written statement to besa. The frame-up of the issue No. 3. as reproduced above also clearly indicates that defendant Gram Sabha was not in possession of the property in dispute. That

being the position it was unnecessary to refer to the evidence produced in the case as to who was actually in possession of the land which was owned by the Gram Sabha of which rights of dohlidar were being claimed either by the Gurdwara in dispute or by Mahant Kishan Dass, Learned counsel for the SGPC referred to the decision of the Tribunal made on a petition filed under S. 10 of the Act between Gram Sabha and the SGPC. A perusal of the judgment aforesaid does not indicate that Gram Sabha was in possession of the land in dispute. The entries in the revenue records, as already reproduced above, was interpreted to mean that Mahant as Mohamim of the Gurdwara was recorded as being in possession of the land. It is not considered appropriate in the present suit to make any comment with respect to such revenue records as Mahant Kishan Dass or his legal heirs are not parties in the present suit, It is argued by the learned counsel for the SGPC that a petition filed by Mahant Kishan Dass abated as his legal heirs were not brought on record. Be that as it may, no comment is considered necessary either with respect to the finding recorded by the Sikh Gurdwara Tribunal on the petition filed under S. 10 of the Act filed by Gram Panchayat against the SGPC or with respect to abatement of the petition filed by Mahant Kishan Dass. Suffice it to say that since in the present case there is no plea that Gram Sabha is in possession of the land of the Gurdwara obviously no decree for possession, against the Gram Sabha could be claimed or passed. In that view of the matter the final conclusion arrived at by G. R. Majithia, J. with respect to allowing of the appeal and dismissing the suit filed by the SGPC is correct.

7. With respect to the interpretation of S. 87(1)(a) of the Act, the view expressed by G. R. Majithia, J. is not in accordance with the view expressed by the Full Bench in the case referred to above. The following passage from the Full Bench decision may be reproduced (AIR 1979 Punj & Har 166, Para 33):

'It would thus be seen that the moment the provisions of Part III of the Act are made applicable to Sikh Gurdwara the stage is arrived for the constitution of the Committee keeping in view the provisions of Ss. 86 and 87(1)(a) and (b) of the Act. It is at that stage that the Board has to see whether a Committee should be nominated or elected one. For coming to that conclusion the Board has to take into consideration the gross annual income of the Gurdwara or Gurdwaras. The

income which actually is to fall in the hands of the Committee who has to administer the Gurdwara in accordance with the provisions of Part III can be the only basis for seeing whether the income of the Gurdwara exceeds three thousand rupees annually or not. The income from the property which has not passed hands along with the institution and regarding which the suit for possession or other litigation has yet to be fought cannot be taken into consideration for the purposes of S. 87(1)(a) and (b) of the Act for the simple reason that in that case the income which has not actually accrued will only be an estimated income which can be expected to have accrued or may accrue in future. Such an estimate is bound to be different in different situations.'

8. Learned counsel for the appellant argued that it was the income of the Gurdwara which was to be taken into consideration by the SGPC in order to decide whether it by itself was to act as Committee of Management or to nominate one. Since as per evidence produced that the land of the Gurdwara was being let out and income was more than Rs. 3,000/- per annum, the SGPC was to nominate a Committee for the management of the Gurdwara in dispute without taking into consideration as to whether any income was going to the coffers of the SGPC or the Committee to be nominated. Such an argument was also addressed before the Full Bench in the case (AIR 1979 Punj & Har 166) supra and Harbans Lal, J. accepted the same. However, the majority view did not accept the same. In para 33 of the judgment the contention was repelled by observing as under:--

'If the contention of the learned counsel for the respondent is accepted that the income has to be calculated from all the property to which the Gurdwara may have a claim that will frustrate the very purpose of the Act. Firstly, this conclusion is not warranted from the wording of the provisions of S. 87(1)(a) and (b) of the Act in which the word 'income' has been used in its ordinary sense. As in that case the estimate will not be that of the income of the Gurdwara but will be regarding the estimate income of the Gurdwaras which may or may not accrue at a subsequent period. Secondly, the relevant point of time for applying the determining test of provisions of S. 87(1)(a) and (b) of the Act will be when the provisions of part III are made applicable and the Committee of the Gurdwara shall have to be constituted on the basis of speculated income if the interpretation as put forth by

the learned counsel for the respondent is accepted at that juncture even though the same may not be the income. Thirdly, as observed, the estimate of the income may differ as property efficiently managed may bring larger income. The legislature never intended that the basis on which the Board has to form its opinion should be so flickering that different consequences may follow in different situations.'

9. After observing as above, it was held that the view expressed in Jalaur Singh's case will not become redundant. The contention of counsel for the appellant, therefore, cannot be accepted that the SGPC should have nominated Committee for management of the Gurdwara keeping in view the expected income from the land of the Gurdwara. Factually the possession of the land did not pass to the SGPC along with the Gurdwara hence no income was accruing to the SGPC i.e. Committee of Management of the Gurdwara and thus the SGPC in exercise of power under S. 87(1)(a) proviso could take a decision to constitute itself, a Committee of Management for the Gurdwara in dispute.

10. The SGPC thus rightly constituted itself a Committee for management of the Gurdwara in dispute while passing resolution Exhibit P-I as no land of the Gurdwara passed to the Committee and no income came into the hands of the Committee which could be more than Rs. 3,000/- to attract the provisions of Section 87(1)(a) to nominate the Committee of Management of the Gurdwara in dispute. In that respect the view expressed by S.S. Grewal, J. is correct and in accordance with the ratio of the decision of the Full Bench referred to above.

11. For the reasons recorded above, this appeal is allowed. The judgment and decree of the Sikh Gurdwaras Tribunal is set aside and the suit filed by the SGPC for possession of the land in dispute against the Gram Sabha, Dhada is dismissed. There will be no order as to costs.

12. Appeal allowed.