

APPELLATE CIVIL.

Before Mr. Justice Tek Chand and Mr. Justice Bhide.

DIAL SINGH (PLAINTIFF) Appellant

versus

GURDWARA SRI AKAL TAKHT, AMRITSAR,
(DEFENDANT) Respondent.

1928

Feb. 29.

Civil Appeal No. 692 of 1927.

Sikh Gurdwaras (Punjab) Act, VIII of 1925, section 6—Claim for compensation—locus standi—“past or present hereditary office-holder”—Section 2 (4) (iv) and (7)—“Presumptive successor”—heir presumptive—distinction—peculiar meaning—Statutes—interpretation of—anomaly—Civil Procedure Code, Act V of 1908, Order VI, rule 17—Amendment of pleadings—further and better particulars—application of rule to proceedings of Tribunal under Sikh Gurdwaras Act.

In an application for compensation under section 6 of the Sikh Gurdwaras Act, 1925, the applicant proved that his ancestors had held for generations the office of manager and lambardar of the *Akal Takht Sahib*, Amritsar; that succession had all along devolved in the male line from father to son; that on the first day of January, 1920, the applicant's father was the holder of that office; that he was unlawfully removed from it in 1922; and had died *after* such unlawful removal but *before* the issue and publication of the notification under section 3 (2) of the Act, declaring the *Akal Takht Sahib* to be a Sikh Gurdwara.

Held, that as the applicant had never held the “office” himself he could not claim compensation as a “past” or “present hereditary office-holder” as defined in the Act, but that he was entitled to it as the “presumptive successor” to his father, who was a “past hereditary office-holder”.

Held also, that in the Sikh Gurdwaras Act the expression “presumptive successor” does not mean an “heir presumptive” but has been given a peculiar meaning in the definition clause, and must be interpreted as such throughout the Act, unless there be anything repugnant in the context, and that no such repugnancy existed in section 6.

1928

DIAL SINGH
v.
GURDWARA
SEI AKAL
TAKHT,
AMRITSAR.

Held also, that under Order VI, rule 17 of the Civil Procedure Code, the provisions of which apply to the trial of cases before the Sikh Gurdwaras Tribunal, it is competent to the Tribunal to allow a party to alter or amend his pleadings in such manner and on such terms as it thinks just, and that such alteration or amendment can be made at any stage of the proceedings.

First appeal from the order of the Sikh Gurdwaras Tribunal, Lahore (consisting of Mr. Justice Coldstream, Rai Bahadur Munna Lal and Sardar Kharak Singh), dated 16th December 1926, rejecting the petition for compensation under section 6.

SARDHA RAM, for Appellant.

BHAGAT SINGH and MAN SINGH, for Respondent.

JUDGMENT.

TEK CHAND J.

TEK CHAND J.—This is an appeal under section 34 of the Sikh Gurdwaras Act (VIII of 1925) preferred by one Dial Singh against the order of the Sikh Gurdwaras Tribunal, rejecting his claim for compensation on the preliminary ground that he had no *locus standi* to apply under section 6 of the Act.

The relevant facts are, that by Notification No. 892, dated the 28th of April, 1926, the Punjab Government, acting under the provisions of sub-section (2) of section 3 of the Sikh Gurdwaras Act, declared *Akal Takht Sahib (Akal Bunga)*, Amritsar, as a "Sikh Gurdwara," and this Notification was published in the *Punjab Gazette* of the 30th of April, 1926. On the 23rd of July, 1926, the appellant Dial Singh presented to the Punjab Government through the Secretary, Transferred Departments, a petition under section 6 alleging that from the time of the Mughal Emperors his ancestors had held the office of Manager and *Lambardar* of *Sri Akal Takht Sahib* and had been enjoying the offerings and emoluments

connected therewith, that the said office had descended in the family from father to son, that in 1920 he (applicant) was unlawfully and illegally removed from the office by the *Akalis* and the possession of the *Gurdwara* passed into the hands of the *Shromani Gurdwara Prabandhak Committee*", that by such unlawful removal the appellants had suffered pecuniary loss to a very large extent for which he was entitled to be compensated under section 6 of the Act, and that he assessed the amount of compensation at Rs. 1,52,762/8/0.

On the application coming up for hearing before the Tribunal on the 16th of December, 1926, the appellants' counsel made a statement modifying the averments in the application in several material particulars. He stated that it was not the appellants but his father Sundar Singh, who had been forcibly removed by the *Akalis*, that the alleged removal took place in 1922 and not in 1920 as stated in the application, and that Sundar Singh had died on the 7th April, 1926. On these allegations counsel claimed that the applicant, Dial Singh, was entitled to apply for compensation under section 6, being a "past hereditary office-holder" as well as a "presumptive successor". He later on took up the somewhat inconsistent position that his client could also apply as a "present hereditary office-holder." The respondent does not seem to have objected to the applicant modifying his allegations in the manner above-mentioned, and the tribunal proceeded to decide forthwith, whether, on the case as put forward before it by counsel, the applicant had a *locus standi* to claim compensation under section 6. The President and the two members were agreed that the applicant was neither a "past" nor a "present hereditary office-

1928

DIAL SINGH

v.

GURDWARA

SRI AKAL

TAKHT,

AMRITSAR.

TEK CHAND J.

1928

DIAL SINGH

v.

GURDWARA

SRI AKAL

TAHHT,

AMRITSAR.

TEK CHAND J.

holder" as defined in the Act, but they differed on the question whether on the allegations made by him, he was a "presumptive successor" to such officeholder. Mr. Kharak Singh held that as the applicant's father had died before the date on which the application was made, he was not "a presumptive successor" but was "an actual heir" and, therefore, not entitled to apply under section 6. Mr. Munna Lal concurred with his learned colleague in this view and also expressed the opinion that the office to which the applicant lay claim could not be called a "hereditary office" within the meaning of that expression as used in the Act, "because it did not devolve upon him before the 1st day of January, 1920, when his father was himself admittedly alive." The President, Coldstream J., on the other hand, held that assuming the statement of facts as given by the applicant's counsel on the 16th December, 1926, to be correct, the applicant was a "presumptive successor" to a "past hereditary office holder" and as such had a *locus standi* to apply under section 6. He, therefore, recorded the opinion that the case should be proceeded with and the applicant's allegations enquired into on the merits. In accordance with the opinion of the majority of the Tribunal the application was, however, dismissed *in limine*.

At the hearing of the appeal Mr. Man Singh on behalf of the respondent raised the objection that the appellant should be confined to the claim as laid in his application of the 23rd of July, 1926, and that he should not be allowed to argue on the basis of the position taken up in the oral statement made before the Tribunal on the 16th December, 1926. There is no doubt that the allegations in the application materially differed from those subsequently made, in-

asmuch as the appellant originally alleged that it was *he himself* who had been unlawfully removed by the *Akalis* in 1920, whereas later on he stated that it was *his father* who was so removed and that the removal took place in 1922 and not in 1920. It would have been much more satisfactory if on the 16th December, 1926, when the appellant wanted to modify the allegations in the original application, he had been directed to present an amended application or to file a better and further statement as provided for in the Civil Procedure Code. If the respondent objected to the proposed amendment his objections should have been noted on the record, and a formal decision given. It is clear, however, that though this was not done, the Tribunal allowed the case to proceed on the basis of the allegations made in the statements, dated the 16th of December, 1926, and there is no doubt that the decision of the President and the members was given on those allegations. Under Order VI, rule 17, Civil Procedure Code, the provisions of which apply to the trial of cases before the Sikh Gurdwaras Tribunal, it was competent to the Tribunal to allow a party to alter or amend his pleadings in such manner and on such terms as it thought just, and this alteration or amendment could be made at any stage of the proceedings. By adopting the course it did, the Tribunal must be presumed to have acted under this Rule and to have allowed the amendment. The preliminary objection must, therefore, be overruled and the *locus standi* of the appellant determined on the allegations as put forward before the Tribunal on the 17th of December, 1926.

Before us it was very fairly and properly conceded by Mr. Sardha Ram for the appellant that as his client never held the "office" himself, he could

1928

DIAL SINGH

v.

GURDWARA
SRI AKAL
TAKHT,
AMRITSAR.

TEK CHAND J

1928

DIAL SINGH

v.

GURDWARA

SRI AKAL

TAKHT,

'AMRITSAR.

EK CHAND J.

not claim as a "past" or a "present hereditary office-holder" as defined in the Act, and that he was unable to support the case on these grounds. He, however, strenuously argued that on the case as put forward before the Tribunal, the appellant is a "presumptive successor" to a "past hereditary office-holder" and as such entitled to apply for compensation under section 6.

Now in order to bring his claim within section 6 the applicant must allege and establish:—

(a) that the *Sri Akal Takht* is a Sikh Gurdwara in respect of which a notification has been published under the provisions of sub-section (2) of section 3 of the Act declaring it to be a Sikh Gurdwara;

(b) that in this *Gurdwara* there was a "hereditary office";

(c) that this office was held by his father, Sundar Singh, on the 1st January, 1920, by hereditary right;

(d) that Sundar Singh was unlawfully removed from the office after the 1st day of January, 1920 and before the date of the publication of the notification mentioned in (a) above;

(e) that the applicant is the "presumptive successor" to Sundar Singh in the aforesaid office; and

(f) that he has suffered or will suffer pecuniary loss in consequence of *Sri Akal Takht* having been declared to be a Sikh *Gurdwara*.

There is no dispute as to (a), it being admitted that the required notification in respect of this *Gurdwara* has been properly issued by the Local Government. For the respondent it is also conceded that the allegations made by the applicant cover (c), (d)

and (f). But it is contended that the office to which the applicant lays claim is not a "hereditary office" within the meaning of the Act and that on the date when he presented the application he was not a "presumptive successor" to a "past hereditary office-holder." It is accordingly argued that (b) and (e) are not satisfied and consequently the applicant had no *locus standi* to file the application. In support of the first of these contentions the respondent's learned counsel has relied upon the opinion recorded by Mr. Munna Lal that this office "cannot be said to be a hereditary office because it did not devolve upon him (applicant) before the 1st day of January, 1920, when his father himself was admittedly alive." In my opinion this contention is unsound and is based on a misreading of the definition of "hereditary office" in section 2, (4) (iv) of the Act, according to which "hereditary office" is an office "the succession to which before the first day of January, 1920 devolved according to hereditary right or by nomination by the office-holder for the time being." This does not contemplate that the office should have devolved on the applicant himself according to hereditary right or by nomination as aforesaid, but what it means is that the office should have devolved on the person who was holding it on the first day of January, 1920 (whether he be the applicant himself or his ancestor or *guru*) by hereditary right or by nomination. The wording of clause (iv) of sub-section (4) is plain and explicit and cannot possibly bear the interpretation sought to be put on it by the respondent. The allegation on behalf of the plaintiff is that his ancestors held the office of a manager and *lambardar* of *Sri Akal Takht* from the time of the Mughal Emperors, that succession has all along devolved in the male line

1928

DIAL SINGH

v.

GURDWARA

SRI AKAL

TAKHT,

AMRITSAR.

TEK CHAND J.

1928

DIAL SINGH

v.

GURDWARA

SRI AKAL

TAKHT,

AMRITSAR.

TEK CHAND J.

from father to son and that on the 1st day of January, 1920, his father, Sundar Singh, was the holder of this office. If he succeeds in proving these allegations there can be no doubt whatever that Sundar Singh was a "hereditary office-holder" as defined in the Act.

The next question to be decided is whether the applicant is a "presumptive successor" to Sundar Singh who was *ex hypothesi* a "past hereditary office-holder." The expression "presumptive successor" is thus defined in section 2 (7) :—

"Presumptive successor, where the succession to the office devolves according to hereditary right, means the person next in succession to a hereditary office-holder, or, where the succession to the office devolves by nomination, made by the hereditary office-holder for the time being, means any *chela* so nominated before the first day of December, 1924." Now there can be no doubt that if the allegations of fact made by the applicant are correct, he is the person *next in succession* to his father Sundar Singh, and, but for the alleged unlawful dispossession of Sundar Singh and the declaration of *Sri Akal Takht* as a Sikh Gurdwara under the Act, he would have succeeded to the office on Sundar Singh's death. He is, therefore, clearly a "presumptive successor" to a "past hereditary office-holder," as defined in the Act and as such entitled to apply for compensation under section 6. The majority of the Tribunal seem to think, that as on the date on which the application was made Sundar Singh had died, and succession had opened out, the applicant had stepped into the shoes of his deceased father, and could no longer be regarded as a "presumptive successor" but had become an "actual heir." This argument is, how-

ever, fallacious and loses sight of the fact that the expression "presumptive successor" has been given a peculiar meaning in the Act. It is no doubt true that in common legal parlance an "heir presumptive" or a "presumptive successor" is a person, who, if the ancestors should die immediately, would be his heir, but whose right to the inheritance may be defeated by the birth of a near relation or by some other contingency (*Wharton's Law Lexicon*). But as pointed out already this is not the sense in which this expression is used in the Act. When a word or phrase is defined as having a particular meaning in an enactment, it is that meaning and that meaning alone, which must be given to it, in interpreting its section, unless there be anything repugnant in the context. No such repugnancy is pointed out in this case.

It is clear that the view taken by the majority of the Tribunal is supported neither by the plain and explicit phraseology used in section 6, nor by the general scheme of the Act. Indeed, it seems to me that the interpretation of section 6, which has commended itself to them, will lead to startling results. According to that interpretation, if Sundar Singh had been alive on the date on which the application was made, he and his son (appellant) would *both* have had the concurrent right to apply for compensation, the former as a "past hereditary office-holder" and the latter as his "presumptive successor." But as Sundar Singh died in the interval between the date on which the Act came into force and that on which the Notification under section 3 (2) was issued entitling him to apply for compensation, his death had the effect of not only putting an end to his own right to apply but also of depriving his son of the right

1928

DIAL SINGH

v.

GURDWARA

SRI AKAL

TAKHT,

AMRITSAR.

TEK CHAND

1928

DIAL SINGH

v.

GURDWARA
SRI AKAL
TAKET,
AMRITSAR.

K CHAND J.

which the latter formerly possessed to claim compensation. A construction, which leads to such an anomaly can be given effect to only if the words of the statute are clear and unambiguous and admit of no other interpretation. The Members of the Tribunal do not state that this is so, and the respondent's learned counsel has not been able to urge any valid ground to support this construction.

I have no doubt that if the allegations of fact, made by the appellant be, on enquiry, found to be correct, he would be a "presumptive successor" to a "past hereditary office-holder" and as such entitled to be compensated under section 6. He must, therefore, be given an opportunity to substantiate these allegations.

I would accordingly hold that the conclusion arrived at by the majority of the Tribunal (Messrs. Kharak Singh and Munna Lal) cannot be sustained, and upholding the view taken by the President (Coldstream J.) I would accept the appeal, set aside the order of the Tribunal and remit the case to it for decision in accordance with law. The Court fee on appeal shall be refunded and other costs shall be costs in the cause.

BHIDE J.

BHIDE J.—I agree.

N. F. E.

*Appeal accepted.**Case remitted.*