

APPELLATE CIVIL.

Before Monroe and Currie JJ.

SHIROMANI GURDWARA PARBANDHAK
COMMITTEE, AMRITSAR—Appellant
versus

JAGAT RAM AND OTHERS—Respondents.

Civil Appeal No. 415 of 1934.

Sikh Gurdwaras Act, Punjab Act VIII of 1925, section 10 — whether the Tribunal in deciding a claim under the section can make a declaration that the property belongs to a Sikh Gurdwara.

Held, that when a petition under section 10 of the Sikh Gurdwaras Act is forwarded to the Tribunal for disposal, the only claim before it is the claim of the petitioner who claims that certain property belongs to him, and the only way in which the Tribunal can dispose of the petition is by decreeing the claim (in whole or in part) or by dismissing the petition, leaving the effect of the order to be determined afterwards according to law, either the general law or the specific provisions of the Act. On the hearing of a petition under section 10, the Tribunal has, therefore, no power to make a declaration that the property in suit belongs to a Sikh Gurdwara.

First Appeal from the decree of the Sikh Gurdwaras Tribunal, Lahore, dated 5th December, 1933, dismissing the claim.

BHAGAT SINGH, for Appellant.

Nemo, for Respondents.

MONROE J.

MONROE J.—Jagat Ram filed a petition under section 10 of the Sikh Gurdwaras Act seeking a declaration that he was the owner of one-half of certain lands described in the petition, which had been included in a notification under the Act as claimed in a petition under section 7 of the Act to be the property of the Gurdwara Thamji Sahib. The petition came up for hearing before the Tribunal, but before any evidence

was taken, the petitioner stated that he did not wish to prosecute the petition and requested that it might be dismissed.

The objectors claimed that in the circumstances they were entitled to a declaration that the property in suit was the property of the Gurdwara. The Tribunal refused to make this declaration and dismissed the petition. For the refusal to make the declaration the learned President relied on the Judgment of Mr. Justice Addison in Civil Appeal No.1029 of 1930 (a petition under section 5). I do not think, however, that this decision is an authority for the proposition stated by the learned President, that if a petitioner does not prove his case his petition should be dismissed without going into the case set forward on behalf of the other side. Mr. Justice Addison, in referring to the question whether the property then in suit was dedicated to the Golden Temple, said, "This question, therefore, no longer remains to be decided." "The question does not arise, as it is settled by the compromise in the petition." The learned President referred also to another decision of the same learned Judge on appeal from a judgment of the Tribunal, in which a petition under section 5 relating to Bunga Mananwala, claimed as the property of the Golden Temple, had been dismissed. The decision of the Tribunal was upheld, but the appeal did not involve the question whether the Tribunal had fully discharged its function in dismissing the petition only: the only point decided was that the petitioner had failed to establish a claim. Mr. Justice Addison has no doubt in more than one case drawn attention to the difficulty which now arises, but as far as I have been able to ascertain, he has never expressed an opinion on the point now before us, nor has this point arisen in any

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appeal in this Court. The practice of the Tribunal has not been entirely consistent; Mr. Justice Shemp's view, as stated in the Judgment before us, has not been universally followed by other Presidents.

The question must, therefore, be treated as one not governed by authority: and it is to be regretted that it has come before a Court of appeal without any representation of the respondent. The grounds of appeal set forth fully, even tautologically, the position taken up by Mr. Bhagat Singh counsel for the appellants: and I would here particularly refer to the first ground as showing precisely what is the question before us: "that the Tribunal was wrong in not deciding the issue whether the property in dispute belongs to Gurdwara Thamji Sahib." The petition under section 10 of the Act, on which these proceedings were founded, was not the first step and in order to appreciate the appellant's case I find it necessary to refer to the earlier provisions, which lead up to section 10. Section 7 (1) authorizes the presentation of a petition to the Local Government by fifty or more Sikh worshippers of a Gurdwara, praying to have the Gurdwara declared to be a Sikh Gurdwara: section 7 (2) requires that any such petition shall be accompanied by a list of all rights, titles or interests in immovable properties situate in the Punjab inclusive of the Gurdwara and in all monetary endowments yielding recurring income or profit received in the Punjab which the petitioners claim to belong within their knowledge to the Gurdwara. Section 7 (3) provides for the publication by the Local Government by notification of the petition and the list of properties. Section 8 provides for a petition by certain persons in the nature of a counter petition claiming that the Gurdwara is not a Sikh Gurdwara and section 9 provides that in the absence of such counter petition the

Local Government shall publish a notification declaring the Gurdwara to be a Sikh Gurdwara. Section 10 (1) provides that any person may forward to the Local Government a petition claiming a right, title or interest in any property included in the list accompanying the original petition, and sub-section (3) provides for the publication of a list of property in respect of which no claim has been made: the publication is conclusive proof of the fact that no claim was made in respect of the right, title or interest specified. The value of this last provision to those who control the management of Sikh Gurdwaras appears from other provisions of the Act to which I shall refer later. Section 12 shows that the Tribunal exists "for the purpose of deciding claims made in accordance with this Act," and section 14 (1) requires the Local Government to forward to the Tribunal all petitions received under sections 5, 6, 8, 10, or 11 and the Tribunal to dispose of such petitions in accordance with the provisions of the Act: there is no reference to a petition under section 7. I may, here, note that the lands in suit were included in a list prepared in accordance with section 7 (2), which accompanies a petition under section 7 (1), and that on the publication of the petition and the accompanying list the present petition under section 10 was forwarded to the Local Government and thence to the Tribunal which disposed of the petition under section 10 by dismissing it. The advantages to the persons in control of a Gurdwara arising from the publication of a notification under section 10 (3) are created by section 28 (1): when such notification has been published, the Committee of the Gurdwara concerned can bring a suit for the possession of any property, a proprietary title in which has been specified in such notification, and the

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Court-fee payable on the plaint in such suit is five-rupees. No provision is made in this section for the recovery of possession of property included in a list prepared under section 7 (2) in respect of which a petition has been forwarded under section 10 and dismissed by the Tribunal: and there is no power given expressly by the Act to the Tribunal to make, on the hearing of a petition under section 10, a declaration that the property in suit belongs to a Sikh Gurdwara. When a petition under section 10 is forwarded to the Tribunal, its sole duty is to dispose of the petition in accordance with the provisions of the Act. The inclusion of property in a list prepared under section 7 (2) implies a claim that that property is the property of the Gurdwara mentioned in the petition which the list accompanies, but neither this petition nor the implied claim is before the Tribunal for adjudication: the only claim before it is the claim of the petitioner who under section 10 claims that certain property belongs to him: and, in my opinion, the only way in which the Tribunal can dispose of the petition is by decreeing the claim in whole or in part or by dismissing the petition, leaving the effect of the order to be determined afterwards, according to law, either the general law or the specific provisions of the Act. I am inclined to agree with Mr. Bhagat Singh's argument that the position is not logical: he asks with reason why the Gurdwara Committee should be in a worse position after defeating a petition under section 10 than if there had been no petition at all. I agree that provision might well have been made that the effect of failure of a petition under section 10 should be the same as if no petition had been presented. But though the position is illogical, it cannot be described as absurd. An amendment to the Act, which Mr.

Bhagat Singh uses as a support for his argument, is contained in the section numbered 25-A: this new section is not connected with section 25, but introduces additional provisions for the recovery of possession of property which has been the subject matter of a decision of a Tribunal. The section is as follows:—

“ 25-A. 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, whichever 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.

(2) Notwithstanding anything contained in any Act to the contrary, the Court-fee payable on the plaint in such suit shall be five rupees.”

Mr. Bhagat Singh argues that the opening words contemplate that a decision under the provisions of the Act may be given that a right, title or interest in immovable property belongs to a Notified Sikh Gurdwara; and the whole object of his appeal is to establish a foundation for proceedings under this section. To give effect to his view, requires in my opinion that we should interpret this section (25-A)

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as by implication extending the effect of section 14 (1) and reading that section as imposing on the Tribunal a duty not only to dispose of a petition under section 10, but also to hear and determine an additional question, whether the Gurdwara is the owner of the property claimed in the petition under section 10. The strength of Mr. Bhagat Singh's argument lies in the fact that the power given to a Gurdwara Committee to sue for possession by section 25-A can never come into play, unless the Tribunal has power on the hearing of a petition under section 10 to declare that a Gurdwara is owner of the property claimed in the petition. Mr. Bhagat Singh has shown very clearly that there is a hiatus in the Act, as it now stands: It may be that if this hiatus had been brought to the attention of the draftsman of section 25-A, that he would have added additional provisions, which might have been passed by the Legislature: but it is not our function to speculate on what might have happened to the section if this difficulty had been noticed at the proper time and as a result to give an unwarranted meaning to the words of section 14 (1) in order to arrive at a logical result. In my opinion, to give effect to Mr. Bhagat Singh's argument, we must be prepared to add to section 14 (1) a provision which it does not now expressly or impliedly contain; for as I have already said the power to dispose of a petition is a well-defined power and does not authorize the determination of a claim not contained in the petition itself.

I would dismiss this appeal.

CURRIE J. CURRIE J.—I agree.

P. S.

Appeal dismissed.