

three months' rigorous imprisonment. He had, however, served six weeks and came out of jail last April. We think that instead of sending him back to jail he should pay a fine of Rs.100 or in default undergo one month's rigorous imprisonment. His license will also be suspended for one year commencing from the 13th of March, 1939.

A. N. K.

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THE KING-
EMPEROR

v.

ABDUL QAYYUM

APPELLATE CIVIL.

Before Young C. J. and Tek Chand J.

GURDIT SINGH AND OTHERS—(DEFENDANTS) Appellants,

versus

COMMITTEE OF MANAGEMENT, GURDWARA
NAVIN PADSHAHI—(PLAINTIFF) Respondent.

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Jan. 19.

Regular First Appeal No. 48 of 1939.

Sikh Gurdwaras Act (VIII of 1925), SS. 5, 6, 7, 8, 10, 11, 12, 14, 16, 25-A and 99 — Use of the word " shall " in S. 99 — Whether directory or imperative — Resolution passed at a meeting without seven days' notice — where all the members present — Validity of — Omission of S. 7 in S. 14 (i) — Legal effect thereof — Jurisdiction of Tribunal under S. 25-A.

A petition was originally filed under s. 7 of the Sikh Gurdwaras Act claiming that the Gurdwara Navin Padshahi in mauza Bichhuana was a Sikh Gurdwara, a list of property under s. 7 (2) of the Act being attached to the petition, which the petitioners claimed to belong to the Gurdwara. Two petitions, one under s. 8 and another under s. 10 of the Act, were received by the Government disputing plaintiff's claim. In the first it was decided that the institution was a Sikh Gurdwara, in the second that the property in dispute belonged to the Gurdwara. The present suit was instituted by the Committee of Management of the Gurdwara through its President under s. 25-A of the Act for possession of property in dispute and was decided by the Tribunal in plaintiff's favour.

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It was contended on behalf of the defendant (i) that the President was not competent to institute the suit as seven days' notice for the meeting, in which he was authorized to sue, was not given as required by section 99 and, therefore, the resolution passed in the meeting was null and void; (ii) that the suit was not governed by s. 25-A, as s. 7 is omitted in s. 14 (i) of the Act and therefore, the questions arising in petitions under s. 7 are at no time before the Tribunal for decision.

Held, (repelling both contentions)—

(i) that the provisions of s. 99 of the Act are directory and not imperative, that the fact that all the members of the Comitée were present when the resolution was passed, made the resolution in accordance with law and the absence of notice, under the circumstances, did not vitiate it;

(ii) that taking into consideration the provisions of the Act as a whole, and more specially ss. 10 (1) and 12, the Tribunal was competent to decide that the property included in the list attached to the petition under s. 7 in the case, belonged to the Gurdwara in question.

Shiromani Gurdwara Parbandhak Committee v. Jagat Ram (1), dissented from.

First appeal from the decree of Sikh Gurdwaras Tribunal, Lahore, dated 11th November, 1938, ordering that the defendant do put the plaintiff in possession of the property mentioned in the claim.

BEAGAT SINGH, for Appellants.

NARINDAR SINGH and HARNAM SINGH, WASU, for Respondent.

The judgment of the Court was delivered by—

YOUNG C. J.—This is a first appeal from a decision of the Sikh Gurdwaras Tribunal in a suit under section 25-A of the Sikh Gurdwaras Act by the Gurdwara of Bichhuana for possession of the *gurdwara* buildings and certain land belonging to the *gurdwara*.

The suit was brought by the Committee of Management of the Gurdwara of Bichhuana through its President *Sardar* Ajit Singh. The Tribunal framed three issues :—

1. Whether Ajit Singh has been fully authorised to institute the case against the defendants?
2. Whether the plaintiff is entitled to possession under section 25-A?
3. To what compensation, if any, are the defendants entitled?

The Tribunal decided that Ajit Singh was authorised to institute the suit; that the plaintiff was entitled to a decree for possession of the property in dispute and that there was no evidence of any improvements which would entitle the defendants to compensation. Against this decision the defendants appeal.

A petition was originally filed under section 7 of the Sikh Gurdwaras Act, claiming that the institution known as the Gurdwara Nawin Padshahi in Bichhuana was a Sikh Gurdwara. Under Section 7 (2) of the Act a list of property was attached to the petition which the petitioners claimed to belong to the Gurdwara. Two petitions were received by Government disputing the plaintiff's claim, one under section 8 of the Act and another under section 10. The first petition was decided in July, 1932, and in that petition it was decided that the institution was a Sikh Gurdwara. The petition under section 10 was decided by the Tribunal on the 10th of November, 1933. In that petition it was decided, on an issue properly framed, that the property in dispute belonged to the Sikh Gurdwara. The present proceedings under section 25-A were then instituted.

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In this appeal *Sardar* Bhagat Singh, on behalf of the appellants has pressed two points : firstly, that the President of the Gurdwara, i.e., *Sardar* Ajit Singh, had not been authorised to institute the suit, and secondly, that the suit was not governed by section 25-A, in that the Tribunal mentioned above, which decided that the property belonged to the *Gurdwara*, had no jurisdiction under the Act to try or decide any such issue. The question of improvements, and therefore, compensation to the defendants, was not pressed.

The objection that *Sardar* Ajit Singh was not authorised to bring the suit was based upon section 99 of the Sikh Gurdwaras Act. That section enacts that a meeting of the Committee shall be called by the President by seven days' notice in writing. It was agreed (i) that a meeting of the Committee was necessary in order to authorise any person to bring the suit, (ii) that no such seven days' notice was in fact given, and (iii) that in fact all the members of the Committee were present at the meeting. It was argued by *Sardar* Bhagat Singh that the meeting not having been properly convened under the provisions of the Act, the resolution passed by that Committee, authorising *Sardar* Ajit Singh to bring the suit was therefore null and void.

The question whether mandatory enactments ought to be construed to be directory only or obligatory, depends upon the general scope and object of the statute to be construed and these are the guides upon which a Court can decide whether the provisions are directory or imperative. It is thus that the intention of the legislature can be determined. The use of the

word 'shall' does not necessarily imply that a particular provision is imperative. In *Caldow v. Pixell* (1), also reported in 46 L. J. C. P. 541 at page 543, Lord Campbell, Lord Chancellor, remarked that the distinction between statutes creating public duties and those conferring private rights is that in general the provisions of the former are directory and of the latter imperative and that in the absence of an express provision the intention of the legislature is to be ascertained by weighing the consequences of holding a statute to be directory or imperative. In this case the Committee met together. They were concerned with public duties and not with private rights. It would appear to have been meticulous, almost amounting to absurdity, for the Committee having all met to issue orders for seven days' notice to be given in writing to each of those members then present, to abandon the meeting and hold it again after the expiration of seven days after each of them had received the notice in writing. We are satisfied on a consideration of the Sikh Gurdwaras Act as a whole, that the purpose of section 99 is to ensure that all members of the Committee had notice of any meeting, and under the circumstances of this case as given above that it was unnecessary to have issued notice under section 99 and that section 99 is directory and not imperative. The fact that all the members of the Committee were present when the resolution appointing *Sardar* Ajit Singh to conduct the suit was passed, makes the resolution in accordance with law.

With regard to the second point raised by counsel, it is necessary to look at the provisions of the Sikh Gurdwaras Act. Under Section 7 "any fifty or more

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Sikh worshippers of a *gurdwara* * * * * may forward to the Provincial Government * * * a petition praying to have the *gurdwara* declared to be a Sikh Gurdwara.' Under section 7 (2) the petition shall be accompanied by a list of all rights, titles or interests in immovable properties situated in the Punjab, *which the petitioners claim to belong, within their knowledge to the gurdwara.* Under section 7 (3) the Provincial Government is empowered thereafter to publish the petition and the accompanying list by notification in every district in which any of the immovable properties mentioned in the list is situated. Under section 7 (4) the Provincial Government must also send by registered post *a notice of the claim to any right, title or interest included in the list* to each of the persons named therein as being in possession of such right, title or interest. Under section 8 certain persons, mentioned therein, may forward a petition claiming that the *gurdwara* is not a Sikh Gurdwara. Under section 10 any person may forward a petition claiming a right, title or interest in any property included in the list published under section 7. If no claim is forwarded, the Government may publish a notification under section 10 (3) specifying the rights, titles, or interests in any properties in respect of which no such claim has been made. Under section 12 of the Act the Provincial Government has power to direct the constitution of a tribunal *for the purpose of deciding claims made in accordance with the provisions of this Act.* Under section 14 the Provincial Government shall forward to the tribunal all petitions received by it under the provisions of sections 5, 6, 8, 10 or 11, and the tribunal shall dispose of such petitions by order in accordance with the provisions of this Act. Under section 16 (1) it is provided that

if in any proceeding before a tribunal it is disputed that a *gurdwara* should or should not be declared to be a Sikh Gurdwara, the tribunal shall, before enquiring into any other matter relating to the said *gurdwara*, decide whether it should or should not be declared a Sikh Gurdwara. Under section 25-A it is provided that "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 the 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 the 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 * * * pass a decree for possession accordingly". This latter provision was inserted in the Act at a later stage in order to give a successful claimant before the tribunal a short and easy method of getting possession of the property declared to be his.

It has been argued by *Sardar* Bhagat Singh that the question of the right, title or interest of the *gurdwara* to the property in dispute cannot, by the Sikh Gurdwaras Act, be placed before the tribunal and that, therefore, the tribunal has no jurisdiction to decide whether the property belongs to the Sikh Gurdwara or not. This argument is based upon section 14 (i) set forth above. It is argued that the Provincial Government has only to forward to the tribunal the petitions received by it under the provisions of Sections 5, 6, 8, 10 or 11: that the petition under

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section 7 is omitted, and that therefore the questions arising in petitions under section 7 are at no time before the tribunal and therefore the matters raised in section 7 cannot be decided by the tribunal.

If this were the provision, it would appear to us that the whole purpose of the Act, which was to provide a convenient and easy method of deciding disputes relating to *gurdwaras*, would be defeated, and section 25-A would be without meaning as regards the Committee of Management of a Gurdwara. We think, however, that on a proper consideration of all the sections alluded to above it is clear that the Sikh Gurdwaras Tribunal set up by section 12 has authority to decide a petition under section 7, when a counter-petition under sections 8 or 10 has been filed and forwarded to the Tribunal. It is to be noted that under section 12 the tribunal is expressly constituted for the purpose of deciding *claims made in accordance with the provisions of this Act*. It is not constituted merely to decide matters arising in petitions received by it from the Provincial Government under sections 5, 6, 8, 10 or 11, in accordance with section 14 (1). These latter petitions are received by the Government and forwarded by them for decision, but the petition under section 7 is a claim and is also before the tribunal, when under section 10 (1) a counter-petition is forwarded to it for disposal; because under section 10 (1) the petition forwarded under this latter section is based upon a right, title or interest in any property included in the list attached to the petition forwarded to Government under section 7. The provisions of section 12 are also perfectly clear. The tribunal is set up for the purpose of deciding all claims made, and a claim under section 7 in connection with the

property said to belong to the *gurdwara* is a claim in accordance with the provisions of the Sikh Gurdwaras Act. Further section 25-A in plain words recognises the right of the tribunal to pass a decree for possession in favour of *any* person in whose favour a declaration has been made.

Taking, therefore, the provisions of the Sikh Gurdwaras Act as a whole, we have no hesitation in deciding that there is no foundation for the argument that the Tribunal had no jurisdiction to decide that the property included in the list attached to the petition under section 7 in this case belonged to the Gurdwara Bichhuana.

The appellants here relied upon a decision of Monroe and Currie JJ. in a case "*Shiromani Gurdwara Parbandhak Committee v. Jagat Ram and others* (1)". In that case there was no issue framed as to the claim of the *gurdwara* that the property belonged to it. A petition had been filed under section 10, but that had been withdrawn. It was clear, therefore, that it would have been impossible for the Tribunal in that case to have decided that the property belonged to the *gurdwara*. The learned Judges, however, in their judgment decided—although it was wholly unnecessary to the decision of that case—that there was no jurisdiction in the Tribunal to hear and decide such a claim. The remarks of the learned Judges were, therefore, *obiter* and are not binding upon us. In any event we would respectfully disagree with the decision of that Bench on this point. That decision was based on the omission in section 14 of the Act of any allusion to section 7. As we have pointed out above, however, in our opinion, the claim under section 7 (2) would be

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before the Tribunal in any petition filed under section 10, and if an issue was framed upon the point and the Court decided that issue, their decision would be, in our opinion, within their jurisdiction. The jurisdiction of the Tribunal is not confined to a decision of the petitions received by it under section 14. That section is not exhaustive. Its jurisdiction is, under section 12, to decide all claims made in accordance with the provisions of the Sikh Gurdwaras Act.

For these reasons, therefore, we must dismiss this appeal with costs.

A. K. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Tek Chand and Abdul Rashid JJ.

GHULAM MOHAMMAD (DEFENDANT) Appellant.

versus

RAJESHWAR (PLAINTIFF) Respondent.

Regular First Appeal No. 5 of 1939.

Mortgage — with possession — Mortgagor taking mortgaged property on rent and stipulating to make up deficiency in interest — Default in payment of rent — Whether mortgagor can plead limitation — Compound interest at 9 per cent per annum with six monthly rests — Whether excessive under Punjab Relief of Indebtedness Act (VII of 1934) — Interest payable at stipulated rate from date of suit to date of redemption.

The mortgage in suit was with possession but on the date of the mortgage the mortgagor took the mortgaged property on lease from the mortgagee executing rent deeds in his favour. It was stipulated that the mortgagee was not responsible if property remained unoccupied or rent was not recovered. The mortgagor undertook, in all circumstances, to be liable to make good the deficiency in the interest. The deed further provided that compound interest was to be paid on the principal sum secured at 9 per cent..

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 Jan. 23.