

AAD GURU GRANTH SAHIB A JURISTIC PERSON

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ABSTRACT

The recent pronouncement of the Supreme Court of India that the Aad Guru Granth Sahib (AGGS) is a juristic person has attracted mixed reactions from the cross sections of society. The object of the present paper is to assess the impact of the judgment of the apex court. The court has taken into account the supreme and special status of the AGGS in Sikhism by distinguishing it from the sacred books of the other religions. The AGGS has also not been equated with Hindu idol for being the existing guru and guiding force for the Sikhs. The judgment will be helpful to save the property belonging to Sikh institutions which is owned by the AGGS as per revenue records and is occupied or is likely to be occupied by the usurpers. There is nothing in the judgment, which can be described as anti-Sikh or violation of Sikh principles.

INTRODUCTION

In a historic judgment delivered on 29th March 2000, the Supreme Court of India has declared the Aad Guru Granth Sahib as a juristic person. Before discussing the judgment and its likely impact, it will be worthwhile to know what meaning is attached in law to the terms ‘person’ and ‘juristic person’ and which other institutions are considered as juristic persons.

PERSON

The word ‘person’ is derived from Greek word ‘persona’ which meant actor’s mask through which his voice must be sounded. Later on it came to be used for the part played by the actor and then for the actor himself. In law, the word is used for those who could play part in the legal drama as holders of rights and duties and as parties in a court case. Legally, it denotes a being or an entity capable of bearing legal rights and duties. In the words of a jurist:

So far as legal theory is concerned, A person is a being whom the law regards as capable of rights and duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man [10].

The word ‘person’ has a technical meaning. It includes not only human beings but inanimate objects also. So a person is any, animate or inanimate, real or imaginary, being whom law ascribes rights and duties. All human being are not necessarily considered as persons such as

slaves in earlier times. A sanyasi who has renounced the world is deemed to be civilly dead. Legal personality of lunatics and infants is also restricted. On the other hand, there are legal persons who are not human beings such as corporation, university, idol, etc.

JURISTIC PERSON

Persons are classified into natural and legal (or juristic) persons. Natural persons are human beings. Legal (juristic) persons are any beings or things or objects which are treated as persons by law. For legal purposes, they are given the similar treatment as that to the human beings. “A legal person is any subject matter other than human being to which law attributes personality” [10]. It includes any object, a mass of property, an institution, a group of human beings etc. Law treats them as rights and duties bearing units or entities like a natural person. Though they are not (natural) persons, they are treated as such by a fiction of law [12].

The important characteristics of a legal person are that it is a holder of rights and duties, it can own property, it can receive gifts and it can sue and be sued in courts.

Being the arbitrary creation of law, legal persons can be of as many kinds as the law pleases. Amongst the distinct varieties of legal persons are: (i) corporations, namely those which are constituted by the personification of groups (corporation aggregate) or series of successive individuals (corporation sole); ii) some fund or estate like a charitable fund or a trust

estate or a particular property. The personality is bestowed either on the fund or estate itself or on the body of persons which administer the same; iii) the objects selected for personification are institutions. The law may regard a university, a library, a hospital, a church, a temple or a Hindu idol as person.

HINDU IDOL

Under Hindu law if an endowment is made for a religious or charitable institution, the object of which is pious, either religious or charitable, the institution is treated as a juristic person. The Privy Council observed:

Under the Hindu law, the image of a deity of a Hindu pantheon is, as has been called a “juristic entity” vested with the capacity of receiving gifts and holding property. Religious institutions, known under different names are regarded as possessing the same “juristic capacity [13].

The suits in the name of an idol or deity are allowed [3]. These are recognised as juristic persons [9]. Though a *pujari*, a *shebait* or somebody else act on its behalf.

MOSQUE

Whether mosque is a juristic person? The Lahore High Court (2) had held a mosque as juristic person. This was again the question before the Court in *Mosque known as Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee, Amritsar* to which reference in detail will be of interest and in order.

The Masjid alongwith courtyard of about 4 kanals was existing in Lahore since 1722. The place became a place of martyrs (*Shahid Ganj*) for Bhai Taru Singh and many other Sikhs including women and children were executed here by the Muslim rulers. The mosque and other land came into the possession of Sikhs when they occupied Lahore in 1762. A Gurdwara was built adjacent to the mosque. The Muslims were not allowed access to the place since then. After the British annexation, a criminal case and two civil suits by the Muslims failed in 1850 and 1855, respectively. The Sikh Gurdwaras Act, 1925 declared the mosque building and adjacent land as Sikh Gurdwara, ‘Shahid Ganj Bhai Taru Singh’. Various claims were filed before the Sikh Gurdwaras Tribunal by the Gurdwara Mahants and Muslims for having the rights therein. Their claims failed before the Tribunal, which held that Mahants hold possession on behalf of the Gurdwara and the case of Muslims failed due to adverse possession and previous decisions. Following this mosque building was demolished by the Sikhs in July 1935. Riots and disorder followed, the Muslims

expressing great resentment. The present suit was filed in October 1935 in the Court of District Judge Lahore against the SGPC. It contained no claim for possession of property or ejection of the defendants. The relief claimed was a declaration that building was a mosque in which all followers of Islam had a right to worship, an injunction restraining any improper use of building and mandatory injunction to reconstruct the building. The District Judge dismissed the suit. An appeal to the High Court was also dismissed by Young C.J. and Bhide, J.; Din Mohammed J. dissenting.

This suit was filed in the name of mosque and some others. It was motivated by the notion that if the mosque could be made out to be a ‘juristic person’, this would assist to establish that a mosque remains a mosque for ever, that limitation (adverse possession) cannot be applied to it. The Privy Council [6], dismissing the appeal, did not accept the mosque as a juristic person. The contention that ‘a Hindu idol is a juristic person and on the same principle a mosque as an institution should be considered as a juristic person’ was rejected. It was held that there is no analogy between the position in law of a building dedicated as a place of prayer for Muslims and the individual deities of the Hindu religion.

It is submitted that the Privy Council had correctly dismissed the appeal on the basis of very sound reasons such as adverse possession, (Art.144, Limitation Act), earlier decisions (S.11 CPC) and provision in the Sikh Gurdwara Act debarring all courts to pass any order inconsistent with that of the Sikh Gurdwaras Tribunal; but the mosque could be declared as a juristic person without accepting its claim of non-application of law of limitation. The Lahore High Court had recognized mosque as a juristic person in three earlier decisions [2], which the Privy Council brushed aside by saying that the decisions are confined to Punjab alone while there was no authority from any High Court on the other side. Besides, the mosque could be held as a juristic person on the analogy of Hindu religious deities. Rajasthan and Madras High Courts [7] have followed Privy Council in holding that mosque is not a juristic person.

GURDWARA

Gurdwara as an institution independent of its building and property is recognized as juristic person. The Punjab and Haryana High Court has held, “the word ‘Gurdwara’ in some parts of the (Sikh Gurdwaras) Act intended therein to refer to the institution of the Gurdwara and not to the physical Gurdwara of brick and mortar” [5]. The High Court later conclusively ruled that a Gurdwara is a juristic person which can own property and can bring a suit in its own name to

protect the property owned by it through its manager [11]. In another case the Punjab and Haryana High Court observed that “the appellant’s objection to the locus standi of Shri Gurdwara Sahib Madnipur to sue is untenable as it is now well settled that a Gurdwara is a juristic person” [8]. Thus the Gurdwara has been recognized as a juristic person by the legislature as well as the High Court.

AAD GURU GRANTH SAHIB

Neither the legislature has prescribed nor the higher judiciary had decided as to the independent juristic personality of the Aad Guru Granth Sahib till the recent judgment of the Supreme Court delivered on 29th March 2000. Whether the Aad Guru Granth Sahib is a juristic person? Whether it can hold property? Whether it can be a party in court cases, i.e. can it sue and be sued? All the questions are answered in the affirmative by the Supreme Court in this judgment.

It will be relevant to mention that Ruler of the erstwhile princely state of Patiala had issued *Farman-e-Shahi* (Royal Order) that the properties attached to the religious institutions, though standing in the names of their Managers, were to be mutated and entered in the name of the Aad Guru Granth Sahib of those institutions. Thus, it is abundantly clear that by the order of the Ruler of Patiala State, the Aad Guru Granth Sahib was recognized as capable of holding the property. Thus, the Aad Guru Granth Sahib was recognized as a juristic person by this royal order in the State of Patiala. And it continues to be so by virtue of Article 372(1) of the Constitution, which provides for the continuation of pre-Constitution laws unless, amended or repealed. Taking a cue from the order of the princely state, the precedent could be followed and extended easily elsewhere.

AGGS is not an idol.

In a case entitled as *Piara Singh v. The Aad (Sri) Guru Granth Sahib* [8] a person had executed a will of certain property in favour of the Aad Guru Granth Sahib installed in the Gurdwara Sahib Madnipur. The appellant got the mutation of the property sanctioned in their names. The validity of mutation was questioned and the suit was brought for possession of the property by three plaintiffs, namely, the Aad Guru Granth Sahib, Gurdwara Sahib Madnipur and one Gujjar Singh (perhaps Manager of Gurdwara). The appellants, after losing in lower Courts, contended in the High Court that the Aad Guru Granth Sahib, not being a juristic person is not capable of holding the property and the suit is not maintainable in its name. The High Court did not express its opinion as to the juristic personality of the Aad Guru Granth Sahib though the lower courts categorically declared that it is not a

juristic person. It was held that the suit was maintainable because the other two plaintiffs are capable of doing the same. The other contention as to the competency of the Aad Guru Granth Sahib to hold property for not being a juristic person was not permitted to be raised on the technical ground that the question was not raised before the lower courts.

It is submitted that it was a fit case for the High Court to hold that the Aad Guru Granth Sahib is a juristic person and is capable of holding the property. It need not have disposed of the case on the ground of not allowing a new plea to be agitated in the second appeal. It could have very well disposed it of on merit with the same result, especially, when *Farman-e-Shahi* of ruler of Patiala State of entering the mutation in the name of Guru Granth Sahib was brought to the notice of the Court and the case related to the territory falling under the erstwhile state of Patiala. An assertion that the Aad Guru Granth Sahib is a juristic person was expected from the Court at least in obiter dicta.

Shiromani Gurdwara Parbandhak Committee, Amritsar vs. Somnath Dass and Others [4]

This is a landmark judgment of far-reaching consequences and great significance from the Supreme Court of India delivered on 29th March, 2000. The verdict was handed down by a division bench allowing an appeal by the Shiromani Gurdwara Parbandhak Committee (SGPC) Amritsar against two judgments of the Punjab and Haryana High Court. The Supreme Court ruled that “Sri (the Aad) Guru Granth Sahib is a juristic person”. Therefore, it can hold and use property donated by the devotees. The Supreme Court held that the High Court “committed a serious mistake of law in holding that Guru

Granth Sahib was not a juristic person and in allowing the claim over the property in favour of respondents”. The dispute concerned land measuring 22 acres and buildings attached to Gurdwara Sahib Dharamsala at Village Bilaspur, District Patiala. The property was donated by way of *loh* (grant for food) to the Mahants to feed the devotees. By a Royal Order of Patiala State, the property was transferred to Guru Granth Sahib in 1921. The formal entry in revenue records (mutation) was made in the name of “Guru Granth Sahib Brajman Dharamshala Deh (Patiala District)” as far back as 1928. On merger of Pepsu in the Punjab, the Sikh Gurdwara Act became applicable in that area also. Some worshippers filed a petition under the Act and got the Dharamshala declared as Sikh Gurdwara and it came under the supervision and control of SGPC. Mr. Somnath Das and others defendants respondents in the

case, claimed that the properties attached to the Gurdwara were their ancestral properties which was contested by the SGPC whose plea was rejected by the High Court and the SGPC approached the Supreme Court in appeal. The respondents claimed that the Aad Guru Granth Sahib is not a juristic person and therefore cannot hold property because it is just a holy book like any other sacred book such as Bible, Koran, Gita. The Supreme Court rejected the argument.

The judgment is a beautiful discourse on Sikh history and Sikh principles. The Apex Court noted the following tenets of Sikhism :

i) No living Guru after Guru Gobind Singh: It was observed that “the last living Guru, Gobind Singh, expressed in no uncertain terms that henceforth there would not be any living Guru”.

ii) Guru Granth Sahib is the existing Guru: The Court noted that Guru Gobind Singh told the Sikhs that henceforth Guru Granth Sahib “would be your Guru from which you will get all your guidance and answer.” He “gave it the recognition of a living Guru”, It is with this faith that it is worshipped like a living Guru. “Though Guru Granth Sahib is sacred book, it cannot be equated with other sacred books in that sense”. It is revered “like a ‘Guru’ which projects a different perception. The reverence of Guru Granth Sahib on the one hand and other sacred books like Bhagwad Gita, Quran and Bible on the other is based on different conceptual faith, belief and application”. The wealth of teachings of all the Gurus is contained in Guru Granth Sahib. It remains not only a sacred book but is reckoned as a living Guru. It is a guiding force of the community”.

iii) Sacredness of a Gurdwara is due to presence of Guru Granth Sahib: The judges said when Guru Granth Sahib “is installed in any Gurdwara it becomes a sacred place of worship. Sacredness of a Gurdwara is only because of placement of Guru Granth Sahib in it and this reverential recognition of Guru Granth Sahib also opens the hearts of its followers to pour their money and wealth to it. Guru Granth Sahib is the very heart and spirit of a Gurdwara”.

iv) Sikhism Abhors Idol Worship: The judges noted, “Guru Granth Sahib cannot be equated with an idol as idol worship is contrary to Sikhism”. There is distinctive aversion to idolatry worship in Sikhism.

v) Sikhism is an Independent Religion: The judges observed with clarity that Hinduism and Sikhism are two different and distinct religions. The Court clearly

answered the current onslaught on the Sikh identity.

vi) Langar (free kitchen) is an inherent part of a Gurdwara.

These tenets of Sikhism are highlighted in this recent judgment. A lot of property is donated in the name of the Aad Guru Granth Sahib. The Royal order of 1921 of Patiala State had also ordained to affect the mutation of the property in the name of the Aad Guru Granth Sahib when it was in the possession of Mahants or Managers. Thus, a large amount of property is existing in its name and the same has been encroached upon by usurpers on the plea, that the Aad Guru Granth Sahib is not a juristic person, therefore, cannot be a holder of property and it cannot sue also to recover the property. The judgment has cleared the roadblock. Now property can be recovered from the encroachers and used for the welfare of the institutions, the community and the mankind. Encroachments upon the property worth *crores* (millions) of rupees inside and outside Punjab will be vacated with the help of this judgment. Encouraged from the outcome of the judgment, the Senior Vice President of the SGPC, S. Balbir Singh Pannu, informed that the SGPC will set up a special cell to collect information and get encroachments on property belonging to the Aad Guru Granth Sahib vacated in various parts of the country. He further informed that 400 cases of such encroachments had come to light in Amritsar alone.

Keeping this very fact in view, i.e., to get the unauthorized occupation of property relieved from the usurpers, a provision has been included in the All India Sikh Gurdwaras Draft Bill [1] which reads as under:

For removal of doubts, it is hereby declared that notwithstanding any judgment, decree or order of any Court, Sri Guru Granth Sahib shall be deemed a juristic person for all intents and purposes and where any property is donated or held in the name of Sri Guru Granth Sahib, however described, it shall not be open to question on the ground that at the time of such donation or acquisition of property Sri Guru Granth Sahib was not considered a juristic person.

Provided that notwithstanding His juristic position Sri Guru Granth Sahib shall not, by the said name, sue or be sued.

The proviso has been added to obviate the criticism that the holy Sikh Scripture which is the eternal Guru should not be subjected to the jurisdiction of mundane courts. The Sikhs do not relish that the holy name of their Guru should be irreverently dragged before the worldly courts just like ordinary property holders.

It is submitted that the huge property belonging to the eternal Guru cannot be left to be taken over by unauthorized, unscrupulous and dishonest people only on the plea that name of the Aad Guru Granth Sahib should not be mentioned at all in the Courts. Besides, there cannot be two opinions that it will be better if it could be avoided. Therefore, via media adopted by the Draft Bill seems to be correct.

There is an apprehension in the mind of some Sikhs that the declaration of Guru Granth Sahib as a juristic person will lead to filing of claims and suits against the Aad Guru Granth Sahib installed anywhere. In the judgment under discussion the Supreme Court has cleared by saying “*every Guru Granth Sahib cannot be a juristic person unless it takes a juristic role through its installation in a Gurdwara or at such recognized public place*”. The Aad Guru Granth Sahib installed at specific Gurdwaras and public places only will become entitled to the rights and subject to liabilities of a juristic person.

It is felt in some Sikh circles that declaration of the Aad Guru Granth Sahib as a legal entity has equated it with Hindu deity or idol. No doubt that the Aad Guru Granth Sahib is recognized as such just like as Hindu idol, it should not be understood that status of Guru Granth Sahib has in any way adversely affected by this judgment. As mentioned in the beginning, there is a wide variety of juristic persons, Hindu idol is not the only one; now the Aad Guru Granth Sahib has also been included. It does not mean that both are equated for all purposes. It can be said that the particular characteristic of being a juristic person is common to both just like some other characteristic, for example, venerability of both by the followers of respective faiths, then installation of both at the places of religious sanctity, etc. Peculiar identity of Guru Granth Sahib as eternal and living Guru of Sikhs has been specifically recognized and mentioned in the judgment. It is clearly mentioned in the judgment that “*Guru Granth Sahib cannot be equated with an idol as idol worship is contrary to the principles of Sikhism*”.

CONCLUSIONS

On the whole, the judgment is not in any way repugnant or antagonistic to Sikh principles or Sikh interests. On the other hand, it is quite laudable for upholding and highlighting the ideals of Sikhism. The judges specifically noted that Sikhism is an independent religion, it abhors idol worship, it has no living Guru after Guru Gobind Singh, the Aad Guru Granth Sahib (AGGS). is the reigning Guru of the Sikhs and its installation place (Gurdwara) becomes sacred because of its presence. The judgment also recognizes the Supreme and special status of the

AGGS. There is no doubt that it is a sacred book but it cannot be equated with other sacred books such as Gita, Quran and Bible because it is reigning Guru of the Sikhs and a guiding force for the community. Though the Aad Guru Granth Sahib has been recognized as a juristic person just like a Hindu idol, there is no equation or comparison between the two as idol worship is contrary to Sikhism. AGGS is not an idol

Even before this pronouncement by the Supreme Court, cases were filed in the courts for and against AGGS. Therefore this judgment cannot be criticized for allowing involvement of the AGGS in litigation. On the other hand declaration of the AGGS as juristic person will save the property of religious institutions from illegal occupation which the devotees has endowed in the name of the AGGS. There is hardly any scope of multiplication of court cases against the AGGS due to this pronouncement. The AGGS is a ‘person’ in law provided it is duly installed in a Gurdwara. Every copy of the scripture anywhere cannot be given that status. No adverse impact of this judgment can be perceived on any Sikh principle or institution. The judgment has correctly brought out the distinctive features of Sikhism besides holding the AGGS as a juristic person.

REFERENCES

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