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UNION OF INDIA & ANR.

v.

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SHIROMANI GURDWARA PRABANDHAK COMMITTEE &
ORS.

AUGUST 5, 1986

[SABYASACHI MUKHARJI AND K.N. SINGH, JJ.]

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Transfer of suit—Power of Supreme Court to transfer suit for the ends of justice—Whether suit, claiming damages of Rs.1,000 crores for causing loss to movable and immovable properties of the various Gurdwaras against the petitioners is a fit case for transfer—Code of Civil Procedure section 25, explained.

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Respondents 1 and 2 filed a suit against the petitioners/defendants claiming damages of Rs.1,000 crores from the petitioners for causing loss to movable and immovable properties of the various Gurdwaras being administered and managed by respondent No. 1 under the provisions of the Punjab Sikh Gurdwaras Act, 1925 during the period from June to September 84. They also sought mandatory injunction directing the petitioners and their principal functionaries to tender unqualified apology before the Sikh Sangat for causing mental, sentimental, social and spiritual setback and also for causing deep sense of injury to the honour and self-respect of Sikhs who are law-abiding citizens. Besides, an application to sue as indigent persons under Order 33, Rule 1 and 2 of the Code of Civil Procedure was filed. It was alleged in the plaint that on 3rd June, 1984 the Martyrdom day of Shri Guru Arjun Devji, when a large number of devotees came to the Golden Temple complex at Amritsar to commemorate the said occasion the various units of the Armed Forces under the employment of the petitioners as well as Police units under the employment of petitioners and the Government of Punjab with malice launched an attack in the Golden temple complex by resort to indiscriminate and barbaric firing. The defence of the petitioners was that it was an Act of State necessary for the security and integrity of the State and that the action taken was an exercise of sovereign power in respect of sovereign acts. The petitioners in view of the extra ordinary situation prevailing in the State of Punjab in general and in Amritsar in particular moved the present transfer petition under section 25 of the Code of Civil Procedure, aver-

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ring that it is not possible to have a fair trial of the case in Amritsar or other parts of Punjab since the suit is an unusual one and filed at a critical time in Punjab. The question is whether the ends of justice requires the transfer of the suit from the State of Punjab to any other State.

Allowing the petition, the Court,

HELD:1. The power of the Supreme Court to transfer a suit or proceeding from one State to another State is a power which should be used with circumspection and caution but if the ends of justice so demand in an appropriate case, the Court should not hesitate to act. One of the highest principles in the administration of law is that justice should not only to be done but should be seen to be done. [476D-E; C]

2. In this case, in view of the nature of allegations regarding some of the respondents who have been added. strong feelings are likely to be roused in some section of community. In such an atmosphere to meet the ends of justice it would be desirable to have the case transferred to a calmer and quieter atmosphere. Justice would be done in such a way. To contend that no extra ordinary atmosphere exist in Punjab would be to contend for an unreality. The suit is also unusual and sensitive and the time is critical. Therefore, the Supreme Court should act by transferring the case outside the State of Punjab to meet the ends of justice. That is an absolute imperative in this case. [476D-F]

G.X. Francis & Ors. v. Banke Bihari Singh & Anr., AIR 1958 SC 309; *Hazara Singh Gill v. The State of Punjab*, [1964] (4) SCR 1; and *State of Assam v. Atul Vohra*, Transfer Petition No. 21/80 referred to.

(The Court directed the case to be transferred to Delhi High Court to be tried by a learned Single Judge on the original side.) [477D]

CIVIL ORIGINAL JURISDICTION: Transfer Petition No. 212 of 1986

Under Section 25 of the Code of Civil Procedure 1908.

M.K. Banerji, Solicitor General, A.K. Ganguli, R.D. Agarwala, and Miss Sushma Relhan for the Petitioners.

Hardev Singh, S.S. Sood, Bishamber Lal and R.S. Sodhi for the Respondents.

A The Judgement of the Court was delivered by

B **SABYASACHI MUKHARJI, J.** This is an application for transfer under Section 25 of the Code of Civil Procedure filed by Union of India seeking transfer of a suit instituted before the Court of Senior Sub Judge, Amritsar by Respondents Nos. 1 and 2 i.e. Shiromani Gurdwara Prabandhak Committee, Amritsar and Sardar Gurcharan Singh Tohra, President, Shiromani Gurdwara Prabandhak Committee, Amritsar. The suit claims damages of Rs.1,000 Crores for causing loss to movable and immovable properties of the various Gurdwaras being administered and managed by the Plaintiff No. 1 under the provisions of the Punjab Sikh Gurdwaras Act, 1925, during the period C from June to September 1984, by the defendants, their employees, servants and agents by making a deliberate, unprovoked, unwarranted, unannounced, wanton and catastrophic attack by the various D armed servants and employees of the defendants on the Gurdwaras in the Golden Temple, Amritsar and various other Gurdwaras in the State of Punjab. It also sought mandatory injunction directing the defendants and their principal functionaries to tender unqualified apology before the Sikh Sangat for causing mental, sentimental, social and spiritual setback and also for causing deep sense of injury to the honour and self-respect of Sikhs who are law-abiding citizens. There was also an application under Order 33 Rule 1 & 2 of the Code of Civil Procedure for permission of the Court to sue the petitioners E and the Respondent No. 3 herein as indigent persons.

F After receiving the summons, the Union of India made an application opposing the application under Order 33 Rules 1 & 2 made by the Respondents No. 1 & 2 and further alleging that it did not disclose any cause of action against the petitioners. There was an amendment application which was allowed in spite of opposition by the Union of India and additions were made of Respondents Nos. 4 to 37, some of them are Ministers, Officers and Members of Armed Forces, including the present Chief of the Army for their participation in what is known as 'Operation Blue Star' from June, 1984 to September, 1984. It is not G necessary to set out in detail all the allegations made in the Plaint. In the Plaint it has been alleged that the Shiromani Gurdwara Prabandhak Committee is a statutory organisation established under the provision of the Punjab Sikh Gurdwara Act 1925, for the purpose of administration and managing and looking after the affairs and property of the Sikh Gurdwara. On 3rd June, 1984, it is alleged in the H Plaint, which was the Martyrdom day of Shri Guru Arjun Devji, when

a large number of devotees came to the Golden temple complex at Amritsar to commemorate the said occasion the various units of the Armed Forces under the employment of the Union of India as well Police units under the employment of Union of India and the Government of Punjab launched an attack in the Golden temple complex by indiscriminate barbaric firing. It was alleged that the same was maliciously done. The defence of Union of India, as it appear from the petition is that it was an act of State necessary for the security and integrity of the State. The action taken, it is claimed, was an exercise of sovereign power in respect of sovereign acts.

Indubitably, this is an unusual suit at a critical time in Punjab. The basis of the Transfer Petition is that an extraordinary situation prevails in the State of Punjab in general and in Amritsar in particular for the trial of suit of this nature. There has been communal tension between different communities as well as between different sections of the same community. Anything connected with the Golden Temple is an extremely sensitive matter capable of arousing deep passions. It is, therefore, stated that it is not possible to have a fair trial of the case in Amritsar or other parts of Punjab and it is necessary that the case should be tried in a calm and quite atmosphere.

We have noted the nature of the allegations and have heard learned counsel for the parties, where it has been submitted on behalf of the respondents that there was no communal tension as such in the State of Punjab and that the judicial administration in Punjab is functioning normally and it would be possible to meet the ends of justice in Punjab. It is true, that the judicial administration is functioning normally in Punjab and it cannot be reasonably apprehended that the justice would not be done by the judiciary of Punjab, but what is stated is reasonable apprehension of the respondent Union of India and the said added respondents that in view of nature of the allegations and their consequences on the feelings of the sentiments of some sections of Sikh Community, justice may not be done. It is not denied that certain sections of the Sikh community felt very strongly on the operation of Blue Star, their feelings are bound further to be hurt when the trial of this case goes on.

This Court had occasion to deal with this aspect of the matter in *G.X. Francis & Ors v. Banke Bihari Singh & Anr.* A.I.R. 1958 S.C. 309 where it was a case for transfer from Madhya Pradesh. Justice Vivian Bose observed that there was ground for transfer from the area

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A because of the bitterness of the communal feeling and bitterness of the atmosphere. It was reiterated that the Public confidence in the fairness of a trial held in such an atmosphere would be seriously undermined, particularly among the section of the community, and there was apprehension that administration of justice would not be possible in such atmosphere.

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This was reiterated in *Hazara Singh Gill v. The State of Punjab*, [1964] 4 SCR 1 where Justice Hidayatullah as the learned Chief Justice then was, observed that the question was really whether the petitioner can be said to entertain reasonably an apprehension that he would not get justice. One of the highest principles in the administration of law is that justice should not only be done but should be seen to be done. In that case there was enough allegation to show that certain strong parties were opposed to the petitioner in various ways.

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In this case, in view of the nature of allegations regarding some of the respondents who have been added, strong feelings are likely to be roused in some section of community. In such an atmosphere to meet the ends of justice it would be desirable to have the case transferred to a calmer and quieter atmosphere. Justice would be done in such a way. The power of this Court to transfer a suit or proceeding from one State to another State is a power which should be used with circumspection and caution but if the ends of justice so demand in an appropriate case, this Court should not hesitate to act. The fact that an extraordinary atmosphere exists in Punjab cannot be denied. To contend otherwise would be to contend for an unreality. The suit is unusual and sensitive, and the time is critical. This Court should act by transferring the case outside the State of Punjab to meet the ends of justice. That is an absolute imperative in this case.

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Our attention was also drawn to a recent decision of this Court in the case of *State of Assam v. Atul Vohra*, Transfer Petition No. 21/80 where this Court transferred certain writ petitions from the Gauhati High Court to the High Court of Delhi.

G In the instant case there was some submission made on behalf of the respondents that the petition was not verified properly. But on reading paragraphs 3 and 15 of the present petition, we are of the opinion that there are certain allegations which can made ground for reasonable apprehension that justice would not be done in the suit of this nature.

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In view of that we are of the opinion that in the interest of justice this case should be transferred outside the State of Punjab. It has been contended that Delhi is not a safer place for trial of this suit. It has been contended both on behalf of Respondent Nos. 1 & 2 and State of Punjab that in view of recent happenings in Delhi, it is not a safe place for trial of this suit. After having considered all aspects, we are of the opinion that an extraordinary situation exists in the State of Punjab and not in Delhi. In view of the special features of the case and after considering the pros and cons, we are of the opinion that it should be tried in the interest of justice outside the State of Punjab. We may reiterate that this order shall not in any way be construed as a reflections on the independence and fairness of the judiciary of Punjab or on the ability of the Government of Punjab to maintain law and order in the State of Punjab.

Having regard to the nature of suit and the situation prevailing in the State of Punjab and having considered the submissions of all the parties about the alternative forum, we direct that the suit be tried by a learned Single Judge in the original side of the Delhi High Court. The suit shall stand transferred accordingly and begin from the stage where it is. The Chief Justice of the Delhi High Court will assign the learned Judge for hearing.

S.R.

Petition allowed.