

**Matter of Baba Makhan Shah Lobana Sikh Ctr. Inc. v  
Singh**

2011 NY Slip Op 31271(U)

April 18, 2011

Supreme Court, Queens County

Docket Number: 31308/2010

Judge: Augustus C. Agate

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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE  
Justice

IA Part 24

In the matter of:

BABA MAKHAN SHAH LOBANA SIKH  
CENTER INC., etc., et al.

-against-

PARMJIT SINGH, et al.

x

Index  
Number 31308 2010

Motion  
Date January 25, 2011

Motion  
Cal. Number 3

Motion Seq. No. 1

x

The following papers numbered 1 to 25 read on this motion by petitioners for an order pursuant to Not-For-Profit Corporation Law §§ 602, 618, 701 and 703 (1) dissolving the Management Committee of the Baba Makhan Shah Lobana Sikh Center Inc. (Sikh Center); (2) extending the term of the current Executive Officers until new elections can be held and vest them with the powers held by the said Management Committee, including the right to establish a bona fide membership list, provide for a bona fide membership drive, entertain nominations for an election of directors, and schedule elections for a governing body and officers; (3) directing that the current Executive Officers hold office until new elections are held; (4) permitting the Executive Officers to solicit motions from the membership, and prepare new amendments to the bylaws, to be voted on by the general body at the general election; (5) directing the Management Committee to turn over all books and records, financial information, membership records or list, and to account for the Sikh Center's assets for the past five years, including an audit of the construction of the Sikh Center's building and; (6) in the alternative, appointing a temporary receiver. Respondents cross-move in opposition, and seek an order (1) declaring that Gurmej Singh is the President of the Sikh Center, pursuant to the terms of its bylaws; (2) directing the Selection Committee to complete its duties of obtaining and certifying applications of members for positions on the Executive Committee and Board of Trustees of Sikh Center; (3) denying petitioner's motion and dismissing the petition and (4) awarding sanctions against the petitioners. Harbans Singh cross-moves for an order permitting him to intervene in this proceeding as a petitioner.

	<u>Papers Numbered</u>
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Upon the foregoing papers the motion and cross motions are determined as follows:

Petitioners, in their verified petition, seek to have the court review the Sikh Center's bylaws with respect to the election of directors and the legality of the Management Committee. Petitioners allege that since its formation on October 26, 1998, the governance of Sikh Center's elections, membership and hiring has been through its Management Committee. The Management Committee's members serve throughout their lifetime and it is asserted that this has hindered and prevented the Sikh Center's compliance with the Not-For-Profit Corporation Law relating to elections, the maintenance of membership lists, and financial reporting. It is alleged that the control of the Sikh Center by the Management Committee has led to abuses, including the failure to account for financial activities among a select group of members of the Management Committee. Petitioners seek to dissolve the Management Committee, and on a temporary basis, until new elections are held, to extend the current term of the Executive Officers and to vest in them all management powers that were held by the Management Committee, including the right to establish a bona fide membership list, provide for a bona fide membership drive, entertain nominations for an election of directors and schedule elections. Petitioners further seek to have the current Executive Officers solicit motions from the membership, and to prepare new amendments to the bylaws which conform to the Not-For-Profit Corporation Law. Finally, petitioners seek to have the present Management Committee turn over all books and records, financial information, membership records or lists, and to account for the Sikh Center's assets for the past five years, including an audit of matters related to the construction of the Sikh Center's building, and in the alternative, seek the appointment of a receiver.

Petitioners now seek an order granting the ultimate relief sought in the verified petition. In support of the within motion petitioners have submitted a copy of the Sikh Center's certificate of incorporation, which states that it was incorporated on October 26, 1998 pursuant to Section 202 of the Not-For-Profit Corporation Law. Petitioners also submitted a copy of the minutes of October 27, 1998, which establishes that the original members of the Management Committee adopted the Sikh Center's constitution on October 27, 1998. Petitioners have submitted a copy of what purports to be the Sikh Center's original bylaws. It is noted that this document is undated and begins at page 2. Petitioners Jagir Singh and Jarnail Singh have also submitted affidavits in support of the within motion.

Petitioners, in essence, are seeking summary judgment. In view of the fact that issue has not been joined, petitioner's motion is premature and, therefore, is denied (CPLR 3212).

Harbans Singh cross-moves for leave to intervene in this proceeding. CPLR 1013 permits intervention "when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party." "Whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1013, is of little practical significance since a timely motion for leave to intervene should be granted, in either event, where the intervenor has a real and substantial interest in the outcome of the proceedings." (*see Wells Fargo Bank, N.A. v McLean*, 70 AD3d 676, 677 [2010].) Here, the proposed intervenor, Harbans Singh, states that he has been a member of the Sikh Center since it was formed in 1998 and served on its Management Committee until he was removed in 2003, when he objected to the Management Committee's failure to comply with the bylaws and provide for the membership's general elections. He seeks to join in the claims raised in the petition and has submitted a copy of the proposed amended petition.

Counsel for Harbans Singh also represents the petitioners in this action. This cross movant's request to intervene would have been untimely had the court granted the petitioners' motion for complete relief on the petition. However, as petitioners' motion is premature, the request to intervene is granted.

Respondents, in support of their cross motion to dismiss the petition, assert that the Management Committee was abolished and the bylaws were amended on September 16, 2007, and that the members of the Sikh Center agreed to the method of selecting its President and other officers. Respondents Raghbir Singh, Pritam Singh, Mohinder Singh, and Himat Singh each state in their respective affidavits that they were a member of the Management Committee; that said Committee was abolished in 2007; that the Sikh Center's bylaws were amended in September 2007; and that the sole function of the

Selection Committee is to review applications of individuals seeking membership and to hold office in the Corporation, either as executive officers, members of the Executive Committee or members of the Board of Trustees, in order to ensure that they meet the legal and religious standards for participation, as set forth in the amended bylaws. These respondents each state that they are not involved in the day-to-day management of the Sikh Center, and that since 2007, no member of the Selection Committee has ever been a signatory on any bank account of the Sikh Center, or in any way involved in such matters. These respondents assert that the amended bylaws specifically provided the names of the individuals who would serve as President of the Sikh Center for calendar years 2008, 2009, 2010 and 2011, and was agreed upon by all members of the Sikh Center. It is further stated that the amended bylaws established a system for selecting the members of both the Executive Committee and the Board of Trustees. These respondents assert that petitioner Jarnail Singh was well aware of this procedure, and became President of the Sikh Center on January 1, 2010, pursuant to the specific terms of the amended bylaws; that his term ended on December 31, 2010; and that no basis exists for extending his term beyond that date. These respondents also assert that neither petitioner Jagir Singh, nor petitioner Gurcharan Singh, is a member of the Sikh Center.

Respondents have submitted documents dated September 9, 2007, whereby Manjit Singh, Raghbir Singh, Mohinder Singh, Kuldip Singh, Pritam Singh, Gurmej Singh, and Himat Singh each resigned from the Sikh Center's "Management and election committee," and agreed to withdraw from all managerial responsibilities.

Respondents have also submitted copies of the minutes of the Sikh Center, including the purported 2007 amendments to the corporation's bylaws. All of these documents are written in Punjabi and are accompanied by a "certificate of accuracy" from Harjinder Singh Duggal, who states that he translated the documents from Punjabi to English, "to the best of my knowledge of both languages. I got 18 years experience of translation of both languages and qualified for that in New York State. Mr. Duggal signed each "certificate" and affixed his stamp and raised seal, as a commissioner of deeds. These unsworn "certificate[s] of accuracy" are not in the form of an affidavit and do not set forth Mr. Duggal's qualifications as a translator, as required by statute (CPLR 2101[b]). Therefore, as the court cannot rely upon the translations provided, these documents are insufficient to establish that the Sikh Center's bylaws were amended in conformity with the prior bylaws and the Not-For-Profit Corporation Law.

Accordingly, petitioners' motion is denied in its entirety. Respondents' cross motion to dismiss the petition is denied. That branch of respondents' cross motion which seeks declaratory judgment is denied, as respondents have not served an answer and asserted a counterclaim for such relief. Harbans Singh's motion to intervene as a petitioner in this

proceeding is granted. Petitioners are directed to serve a copy of the amended petition within five days from the date of service of a copy of this order together with notice of entry. Respondents shall serve their answer within 20 days from the date of service of the amended petition.

Dated: April 18, 2011

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AUGUSTUS C. AGATE, J.S.C.