

MEMORANDUM

SUPREME COURT : QUEENS COUNTY

PART 6

NAND LAL, et al.,

X

INDEX NO.: 4629/08

Plaintiffs,

BY: CULLEN, J.

- against -

MOTION DATE: 5/27/08

SHRI GURU RAVIDAS SABHA OF NEW YORK
INC., et al.,

MOTION CAL. NO.: 9

MOTION SEQ. NO.: 1

Defendants.

X

In this action for a permanent injunction and other related relief, plaintiffs seek a preliminary injunction 1) enjoining defendants from taking any action to replace the religious word "Sohang" as the official symbol of Shri Guru Ravidas Sabha of New York, Inc. (Sabha) with any other symbol in the absence of compliance with Sabha bylaws, 2) mandating defendants engage the Honest Ballot Association to enroll members of the Sabha, provide adequate notice of a general meeting and to conduct an election of the Management Committee and 3) enjoining defendants from making any expenditures of the funds of Sabha other than those for the usual and necessary operations of the Sabha pending the election of the Management Committee.

In a prior proceeding entitled Matter of Santokh Singh, et al. v Gurdial Singh, et al. (Index No. 17426/04) various issues pertaining to the Sabha were raised including the validity of an April 2003 election. By order dated May 18, 2005, Justice

Marguerite A. Grays held, in part, that the challenge to the 2003 election was untimely and that under any interpretation of the Sabha constitution (referred to as bylaws by the parties in this action) the term for Management Committee members had expired. The parties were directed to compile a list of all eligible voters as of January 1, 2005 and to conduct new elections upon proper notice and in the manner specified by the constitution. On October 4, 2005 the parties executed a stipulation which was so ordered by Justice Grays outlining the measures to be taken with respect to conducting a membership drive, the requirements to qualify for membership and the necessity of compiling a membership list pursuant to N-PCL 601. A General Body Meeting and elections were set for February 2006. Due to continuing disagreements between the factions, a General Body Meeting and elections were not held until October 2006.

To the extent plaintiffs seek to raise any issues concerning the validity of the 2006 meeting and elections, these claims are time barred. (CPLR 217; Matter of Uranian Phalanstery 1st New York Gnostic Lyceum Temple, 155 AD2d 302 [1989]; cf., Sillah v Tanvir, 309 AD2d 674 [2003].) Moreover, the court notes the proper method to test the validity of an election is not within the context of an action but rather a special proceeding pursuant to N-PCL 618. (See, Esformes v Brinn, ___ AD3d ___, 2008 NY Slip Op 5036 [2008].)

The next General Body Meeting was not held until February 3, 2008. The Management Committee, as constituted by the 2006 election, presented resolutions to the General Body to change the symbol of the organization from "Sohang" to "Har" and the membership fee from \$51.00 to \$11.00. These resolutions were approved by 52 out of 53 members in attendance. The affidavits of Pinder Paul, Ram Saroop and Balbir Chand submitted in opposition indicate, however, that during the 2006 membership drive the cost of becoming a member was reduced from \$51.00 to a lower amount. Notice of the February 3, 2008 meeting was made by oral announcements from the stage of the Temple, postings, advertisements in newspapers and "by calling through the membership list."

Article IV, Section IV(2) of the bylaws provides, "The General Secretary, in consultation with the President, shall send a notice at least 30 days in advance to Sabha members intimating the date, time, place and agenda of the meeting of the General Body." At the General Body Meeting, which is to be held once a year in the month of February, business is to be conducted which includes the presentation of audited financial statements and a general election of the Management Committee. Under Section IV of Article II of the copy of the bylaws submitted to this court, the typewritten version provides that "[t]he term of the Management Committee member shall be one year." Above the phrase one year, two years has been

handwritten in. Any resolution of this discrepancy must await the presentation of authenticated bylaws and minutes pertaining to this matter. Article I, under Rules and Regulations of General Membership unambiguously sets forth the fee requirement for membership as \$51.00. Article VII provides the manner in which bylaws can be amended.

In light of the foregoing, it is apparent that serious challenges exist as to the noticing of the February 3, 2008 meeting and as to whether the members who voted there were enrolled in accordance with the existing Article I requirements for membership. Plaintiffs have, thus, established a likelihood of success in invalidating all resolutions passed at the February 2008 meeting. (Aetna Ins. Co. v Capasso, 75 NY2d 860 [1990]; Gerstner v Katz, 38 AD3d 835 [2005].) While this court does not endeavor to sanction the use of any religious/official symbol of Sabha or interfere with the internal affairs of the corporation (see, Nyitray v New York Athletics Club, 195 AD2d 291 [1993]), through the application of neutral principles of law, procedural disputes can be resolved in this forum. (See, Matter of Congregation Yetev Lev D'Satmar v Kahana, 9 NY3d 282 [2007]; First Presbyt. Church of Schenectady v United Presbyt. Church in the United States of Am., 62 NY2d 110 [1984].) The present record is inadequate to determine the manner in which the official symbol of Sabha can be changed. Under these circumstances, injunctive relief is warranted to

preserve the status quo and avoid further disruptions among the membership. (See generally, Ruiz v Melony, 26 AD3d 485 [2006]; Coinmach Corp. v Alley Pond Owners Corp., 25 AD3d 642 [2006].)

Accordingly, a preliminary injunction is granted to the extent of enjoining defendants from enforcing the resolutions passed at the February 3, 2008 meeting. Until such time as a valid membership drive under the current standards set forth in the bylaws has been completed, the calling of a General Body Meeting would be futile. The parties are, therefore, directed to conduct a membership drive and compile a list of eligible voters which shall be completed by October 31, 2008. At that time, more than two years would have elapsed from the last election for the Membership Committee. A General Body Meeting shall, thereafter, be properly noticed and held no later than February 2009. Defendants shall in the interim be restrained from using the funds of the Sabha other than for the usual day-to-day operations of the Sabha and the parties are directed to comply with corporate formalities, the statutory mandates of the Not-For-Profit Corporation Law and Sabha bylaws.

The foregoing injunctive relief is conditioned upon movants filing an undertaking pursuant to CPLR 6312, which amount shall be fixed in the order to be entered hereon. Upon settlement of the order, the parties may submit proof and recommendations as to the amount of the undertaking.

All other requests for relief are denied at this time.

Settle order.

Dated: August 7, 2008

LAWRENCE V. CULLEN, J.S.C.