

(1974) 07 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jur. Case No's. 258 and 289 of 1974

Begum Asma Jafar Imam and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-07-1974

Acts Referred:

Waqf Act, 1954 — Section 3(1)

Citation : AIR 1975 Patna 48

Hon'ble Judges : Nagendra Prasad Singh, J;A.N. Mukharji, J

Bench : Division Bench

Advocate : Jadunandan Prasad Gupta, Lakshmi Narain Mishra, S.B.N. Singh, Fanish Singh, in C.W.J.C. No. 289 of 1974, K.D. Chatterji, Vijay Kumar Bhagat, S.B.N. Singh, Rajendra Sinha and Devendra Kumar Singh, in C.W.J.C. No. 289 of 1974, for the Appellant; Balabhadra Prasad Singh, General, Tarakant Jha, Standing Counsel No. 2, Jagdish Sahay, Abdus Salam and S.S. Asghar Hussain, in C.W.J.C. No. 258 of 1974, Balabhadra Prasad Singh, General, Shreenath Singh, Standing Counsel No. 1 and Guru Sharan Sharma, G.C. to S.C. I in C.W.J.C. No. 289 of 1974, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Prasad Singh, J.—The petitioners in these two writ applications challenge the authority of the Bihar State Shia Wakf Board, established u/s 9 of the Wakf Act, 1954 (Act No. 29 of 1954) -- hereinafter referred to as the "1954 Act" -- to interfere with the administration, management and affairs of Hasan Imam Wakf Estate, on the ground, inter alia, that the provisions of the 1954 Act are not applicable to the said estate. The petitioner in C.W.J.C. No. 258 is the daughter and the petitioner in C. W. J. C. No. 289 is the son of the said Mr. Hasan Imam. These two writ applications have, therefore, been heard together, with the consent of the parties, as common questions of law and fact are involved in them and this judgment will govern them both.

2. On the 28th April, 1931, the said Mr. Hasan Imam executed a deed of Wakf-alal-aulad in respect of his properties, and Mrs. Nattie Imam was the sole

Mutawalli of the 16 annas estate. In the different clauses of the said deed it has been indicated as to how one after the other the different family members of Mr. Hasan Imam were to be the Mutawallis. In the event of his line becoming extinct, the ultimate benefit was to go to the poor Muslims residing at Neora for their education and for maintenance of a mosque. A copy of the said deed is Annexure "1" to the writ application in C. W. J. C. No. 258 of 1974.

C. W. J. C. No 258 of 1974.

3. According to the case of the petitioner in C. W. J. C. No. 258 of 1974 (hereinafter referred to as the "petitioner") after the death of Mr. Hasan Imam in April. 1933, a dispute arose in respect of the Imam Wakf Estate between Mrs. Nattie Imam, on the one hand, and the other heirs of Mr. Hasan Imam, on the other. The matter was referred to the arbitration of Mr. Justice Macpherson and Mr. Justice Khwaja Mohammad Noor. Under their awards, dated the 2nd May, 1934, the 16th January. 1936 and the 6th May. 1936, 6 annas of the estate was made over to Mrs. Nattie Imam as the sole Mutawalli and in respect of the remaining 10 annas of the estate Mr. Mehdi Imam, the petitioner in C. W. J. C. No. 289 of 1974, became the sole Mutawalli. In respect of this 10 annas block the beneficiaries were Mr. Mehdi Imam and his two sisters, namely, the petitioner and Mrs. Sami, and their heirs.

4. In 1948, the Bihar Subai Shia Majlis-e-Awqaf was founded u/s 5 of the Bihar Wakfs Act. 1947 (Bihar Act VIII of 1948) -- hereinafter referred to as the "1947 Bihar Act". In the 1947 Bihar Act, "Wakf had been defined as follows:

"(m) "Wakf means the permanent dedication of any property, movable or immovable, for any purpose recognised by Muslim law as religious, pious or charitable, and includes a wakf-alal-aulad and a wakf by user such as masjid, idgah, imambarah, dargah, khankah, maqbara, graveyard, grave, takia, rouza, yatimakha-na, madrassa, robot, sarai shafakhana and mausoleum;"

As within the definition of "wakf, Wakf-alal-aulad was also included, the aforesaid wakf of Mr, Hasan Imam was registered as a wakf-alal-aulad in the registers of the Majlis.

5. In the year 1965, petitioner Asma Jafar Imam filed two applications under Sections 31 and 46 of the 1947 Bihar Act for setting aside the scheme framed by the Majlis on the 5th July, 1964, and for certain other reliefs, including rendition of account, in the Court of the District Judge, Patna giving rise to Title Suit Nos. 80 and 93 of 1965 In Title Suit No. 80 of 1965, the petitioner Asma Jafar Imam made a prayer for a direction on Mr. Mehdi Imam to pay her Rs. 1,000/- per month as allowance, and by an order, dated the 26th August, 1966, the District Judge appointed a receiver and directed him to make payment of Rs. 500/- per month to Asma Jafar Imam. Against the said order, Mr. Mehdi Imam filed an appeal before this Court, giving rise to Miscellaneous Appeal No. 260 of 1966, which was disposed on the 23rd February. 1967, on the basis of a compromise petition filed by and between Mrs. Asma Jafar Imam and Mr. Mehdi Imam. Under

the terms of the said compromise, the two suits in the Court below were also disposed of. The Bihar Subai Shia Majlis-e-Awqaf Board was respondent No. 3 to the said miscellaneous appeal. It appears from the order passed by this Court in the said miscellaneous appeal that the Majlis had no objection to the terms of the compromise. A copy of the order, together with the compromise petition filed in the miscellaneous appeal, is Annexure "2" to this writ petition. According to the said compromise. Mrs. Asma Jafar Imam and Mr. Mehdi Imam became Mutawallis of different blocks of the Imam Wakf Estate. It was also mentioned in the order of this Court that Mrs. Asma Jafar Imam had agreed not to transfer any immovable property of the estate without obtaining permission of this Court.

6. On the 7th April, 1971, the operation of the 1964 Act was extended to Bihar. Section 1 (3) of this Act provided that the Act shall come into force in a State to which the Act extends on such date as the Central Government may by notification in the Official Gazette, appoint in this behalf for that State. Section 69 (2) of the Act provides that, if immediately before the commencement of the Act in any State, there is in force in that State any law which corresponds to this Act, that corresponding law shall stand repealed. As an effect of this subsection, the aforesaid 1947 Bihar Act stood repealed with effect from the 7th April, 1973. On the 10th April, 1973, the Bihar State Shia Wakf Board (respondent No, 2) was established. On the 16th November, 1973, the Bihar State Shia Wakf Board (hereinafter referred to as the "Board") issued a notice to the petitioner, enclosing a copy of petition, dated the 27th July, 1973, filed by Master Mirza Amirullah Beg, asking her to show cause by the 24th November, 1973, as to why the reliefs sought in the said petition be not granted. It was further stated that the matter would be considered by the Board on the 25th November, 1973. A copy of the notice is Annexure "6" to the writ application and an extract from the petition filed by Mirza Amirullah Beg is Annexure "5" to the writ petition. The petitioner, in reply to the said notice, by a letter, dated the 21st November, 1973, informed the Board that she was the sole Mutawalli and sole beneficiary of Block B of the aforesaid Imam Wakf Estate under the decree of this Court, dated the 23rd February, 1967 passed in Miscellaneous Appeal No. 260 of 1966, in which the Bihar Subai Shia-Majlis-e-Awqaf was a party and the scheme given by the said Majlis had been incorporated in the order of this Court. It was further stated that the Imam Wakf Estate was a Wakf-alal-aulad estate and the Board had no jurisdiction to interfere with its affairs. A copy of the said reply is Annexure "7" to the writ petition.

7. According to the petitioner, in spite of the fact that the provisions of the 1954 Act are not applicable to the wakf-alal-aulad, the respondent Board published a notice in the two English dailies of Patna, namely, the Indian Nation and the Searchlight, in their issues of the 30th November, 1973, saving that in view of the resolution, dated the 25th November, 1973, it was being notified for general information of the public interested in wakfs-alal-aulad in general, and Hasan Imam Wakf Estate, in particular, that any agreement of sale or lease, or any sale or lease in respect of the said Hasan Imam Wakf Estate, without obtaining prior

sanction of the Board, would be illegal, void and inoperative, and that no such sanction had been given by the Board. A copy of the said publication is Annexure "4" to the writ petition. By a letter, dated the 5th December, 1973, the Board forwarded a copy of resolution No. 19, dated the 25th November, 1973, to the petitioner informing her that the Board had decided to entrust the Chairman of the Board to make an enquiry relating to the allegations made by Master Mirza Amirullah Beg. A copy of the said letter is Annexure "9" to the writ petition. By a letter, dated the 6th December, 1973, a copy of resolution No. 35 of the Board, dated the 25th November, 1973, was forwarded to Mr. Mehdi Imam, a copy whereof is Annexure "3" to the writ petition. From this resolution it appears that the Board, considering it expedient to ensure proper maintenance and security of the properties, appointed Mr. S.A. Abbas, a member of the Board, as the inquiry officer u/s 45 (1) (b) of the 1954 Act for furnishing an enquiry report.

8. The Board, by another letter, dated the 18th December, 1973, informed the petitioner that the Board had entrusted the Chairman of the Board with an enquiry under the Bihar Wakf Rules, 1973, framed by the State Government and the 29th December, 1973, had been fixed as the date of enquiry. A copy of the said letter is Annexure "6/a" to the writ application. The petitioner, by a letter, dated the 23rd December, 1973, challenged the jurisdiction of the Board to interfere with the affairs of the Imam Wakf Estate. A copy of the said letter is Annexure "7/a" to the writ petition.

9. According to the petitioner, the aforesaid communications, dated the 16th November, 1973 (Annexure "6/a") the 18th December, 1973, (Annexure "6/a"), Resolution No. 19, dated the 25th November, 1973 (Annexure "9"), and Resolution No. 35, dated the 25th November, 1973 (Annexure "3") amounted to unwarranted interference with the affairs and administration of the Imam Wakf Estate without any authority in law, because the provisions of the 1954 Act are not applicable to the said estate, and the respondent Board is liable to be restrained by a writ of mandamus from interfering with the management and administration of the said estate under its purported exercise of the powers conferred by the 1954 Act.

10. A counter-affidavit has been filed on behalf of the respondent Board saving that it has power and jurisdiction to supervise the affairs of the Imam Wakf Estate in exercise of the power conferred on it under the 1954 Act. In the said counter-affidavit it has been stated that Mr. Amirullah Bee had sent a petition making allegations against the petitioner and the said petition was considered by the Board and the aforesaid actions had been taken in the interests of the Imam Wakf Estate, It has also been asserted that the said Amirullah Beg was a necessary party to the writ application which is not maintainable in his absence.

11. A "Wakf", in its primitive sense, means a "detention". In the language of the Muslim Law, it signifies a dedication of a thing (corpus) in the implied ownership of the Almighty in such a manner that its profits (usufruct) may revert to, or be applied for, the benefit of the mankind; and that its validity is founded on the

Rule laid down by the Prophet himself, who declared "tie up title property (Aslcorpus) and devote the usufruct to human being; it is not to be sold or made the subject of gift or inheritance; devote its produce to your children or kindred and poor in the way of God". As such, a wakf extinguishes the right of the wakif or the dedicator and transfers the ownership to God. The Mutawalli is the manager of the wakf, but the property does not vest in him. The purpose for which a wakf could be created must be one recognised by the Mahomedan Law as religious, pious or charitable.

12. Under the Muslim Law, wakf could be of two types, viz., (i) public and (ii) private. A public wakf is one for a public religious or charitable object. A private wakf is one for the benefit of the settlor's family and his/her descendants, which is generally called wakf-alal-aulad. In some of the wakfs-alal-aulad there used to be a provision that, after the extinction of the family of the settlor, the benefit of the wakf was to be available to the poor or any other purpose recognised by the Muslim law as religious pious or charitable. Towards the close of the last century, a controversy arose as to whether a deed of wakf in which the beneficiaries are the members of the settlor's family and his/her descendants could be considered to be a wakf in its true sense. The Privy Council in *Sheikh Mahomed Ahsanulla Chowdhry v. Amarchand Kundu* (1889) 17 Ind App 28 (PC) held that a wakf-alal-aulad in which "there was a substantial dedication of the property to the charitable uses at some period of time or other" was valid. The Privy Council, however, in the case of *Abdul Fata Mahomed Ishak v. Russomoy Dhur Chowdry* (1895) 22 Ind App 76 (PC) had an occasion to consider a wakf-alal-aulad in which the income of the wakf property was to be applied, in the first instance, for the benefit of the settlor's descendants from generation to generation, and the trust in favour of charity was not to come into operation until after the extinction of the whole line of the settlor's descendants. Lord Hobhouse while holding that the gift to the charity was illusory and the sole object of the settlor was to create a family settlement in perpetuity, observed:

"As regards precepts which are held up as the fundamental principles of Mahomedan Law, their Lordships are not forgetting how far law and religion are mixed up together in the Mahomedan communities; but they asked during the argument how it comes about that by the general law of Islam, at least as known in India, simple gifts by a private person to remote unborn generations of descendants, successions that is of inalienable life Interests, are forbidden: and whether it is to be taken that the very same dispositions, which are illegal when made by ordinary words of gift, become legal if only the settlor says that they are made as a wakf, in the name of God, or for the sake of the poor. To those questions no answer was given or attempted, nor can their Lordships see any."

On the question as to whether such wakfs will be deemed to be pious and for charitable purpose on basis of the precepts of the Prophet. Lord Hobhouse observed:

"But it would be doing wrong to the great law giver to suppose that he is thereby

commanding gifts for which the donor exercises no self-denial; in which he takes back with one hand what he appears to put away with the other; which are to form the centre of attraction for accumulations of income and further accessions of family property; which carefully protect so-called managers from being called to account; which seek to give to the donors and their family the enjoyment of property free from all liability to creditors; and which do not seek the benefit of others beyond the use of empty words".

As to what is the effect to making the poor as the ultimate beneficiaries in such deeds, it was observed:--

"It is equally illusory to make a provision for the poor under which they are not entitled to receive a rupee till after the total extinction of a family; possibly not for hundreds of years: possibly not until the property had vanished away under the wasting agencies of litigation or malfeasance or misfortune; certainly not as long as there exists on the earth one of those objects whom the donors really cared to maintain in a high position, Their Lordships agree that the poor have been put into this settlement merely to give it a colour of piety and so to legalise arrangements meant to serve for the aggrandizement of a family."

13. The aforesaid decision of the Privy Council caused considerable dissatisfaction in the Muslim community in India because under the pure Mahomedan Law, a wakf exclusively for the benefit of the settlor's family and his/her descendants was being considered as valid. This resulted in the passing of the Musalman Wakf Validating Act. 1913 (Act 6 of 1913). In the preamble it was specially mentioned that a doubt had arisen regarding the validity of wakfs created in favour of the settlors and their families, children and descendants with ultimate benefit for the poor or for other religious, pious or charitable purposes. To remove such doubt, the Act was being passed. Section 3 of the said Act of 1913 read as follows:--

"3. It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman Law for the following among other purposes:--

(a) for the maintenance and support wholly or partially of his family, children or descendants, and

(b) where the person, creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated;

Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor or for any other purpose recognised by the Mussalman Law as a religious, pious or charitable purpose of a permanent character."

In Section 4 of that Act it was provided that no such wakf shall be deemed to be invalid merely because the benefit reserved therein for the poor or other religious, pious or charitable purpose of a permanent nature is postponed until

after the extinction of the family, children or descendants of the person creating the wakf. The effect of this Act was that all wakfs-alal-aulad, in which the ultimate benefit had been reserved for the poor or for any religious, pious or charitable purpose of a permanent character became valid, although the primary purpose of the dedication might be for the maintenance and support of the settlor's family, his children and descendants. This Act of 1913 was in the nature of a declaratory Act, the sole object, as mentioned in the preamble itself, being to validate certain wakfs-alal-aulad which were invalid in view of the aforesaid decision of the Privy Council in the case of Abdul Fata Mahomed (supra). Till 1923, there was no Act for control over, and management of the wakfs of any type. In 1923, the Mussalman Wakf Act, 1923 was enacted for better management of wakf properties. In the said Act "wakf" was defined to mean-

"..... the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman Law as religious, pious or charitable, but does not include any wakf, such as is described in Section 3 of the Mussalman Waqf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the waqf was created or by any of his family or descendants."

From a bare reference to the aforesaid definition of "wakf" in the 1923 Act it is obvious that wakf-alal-aulad, which had been described in Section 3 of the 1913 Act, was not covered by the provisions of the 1923 Act, and it could be said that the provisions of the 1923 Act were applicable to wakfs which were of public nature. To the wakf in question the provisions of the 1923 Act were not applicable. In the year 1947, however, 1947 Bihar Act was enacted for the purpose of better administration of wakfs in the State of Bihar. The definition of "Wakf" as contained in the said Act has already been quoted in paragraph 4 above. As wakf-alal-aulad was included within the definition, of "wakf", the provisions of the 1947 Bihar Act became applicable also to the estate. A Mailia was established to perform the functions assigned to it under that Act, that is to do all things reasonable and necessary to ensure that the wakfs are properly supervised and administered and the income thereof duly appropriated and applied to the objects of the wakf. Other States in India also enacted similar Acts.

14. As already stated, the 1954 Act was extended to Bihar with effect from the 7th April, 1973. In view of Section 69 (1) of the Act, the aforesaid Mussalman Wakf Act, 1923 would not be applicable to any wakf to which the 1954 Act applies, and in view of Sub-section (2) of Section 69, the 1947 Bihar Act stood repealed.

15. Section 3 (1) of the 1954 Act defines "wakf" in these words:

"(1) "Wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim Law as pious, religious or charitable and includes-

"(i) a wakf by user;

(ii) grants (including mashrut-ul-khidmat) for any purpose recognised by the Muslim Law as pious, religious or charitable; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim Law as pious, religious or charitable;"

There is no controversy regarding the applicability of the provisions of the 1954 Act to a public wakf; the controversy centres round the question as to whether this Act is applicable to a wakf-alal-aulad, and if at all, to what extent. While defining "wakf", if this Act had said that it will also include a wakf-alal-aulad, the answer would have been that a wakf-alal-aulad of any type, which is legal and valid under the 1913 Act, would be covered by the definition of "wakf" in the 1954 Act and the provisions of that Act will apply even to those wakfs. But, in the Act, a wakf-alal-aulad is to be included within the definition of "wakf" "to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable". According to the petitioner, the provisions of the 1954 Act would apply to properties which have been dedicated "for any purpose recognised by the Muslim Law as pious, religious or charitable". As in the wakf in question no property has been dedicated to the poor or for a purpose which is pious, religious or charitable, the provisions of the 1954 Act are not applicable to any property covered by the wakf in question. The ultimate benefit which has been reserved in one of the clauses of the wakf for the poor of Neora is to become available only after the extinction of the line, male or female, of the wakif, the said Mr. Hasan Imam.

16. It is apparent that the definition of "wakf" given in the 1954 Act is different from that given in the 1923 Act. The words "but does not include any wakf, such as is described in Section 3 of the Mussalman Wakf Validating Act, 1913, under which any benefit is for the time being claimable for himself by the person by whom the wakf was created or by any of his family or descendants", which occurred in the 1923 Act, have been omitted and it specifically says that it includes "wakf-alal-aulad to the extent to which the property is dedicated" for objects mentioned therein. In my opinion, on the aforesaid definition of "wakf" given in the 1954 Act, it can be said that the provisions of the 1954 Act are applicable also to a wakf-alal-aulad to a certain extent. But that extent has to be determined with respect to each wakf-alal-aulad. According to the petitioner, only those wakfs-alal-aulad will be included within the definition of "wakf" given in the 1954 Act in which the objects are two-fold--one for the benefit of the settlor's family and his/her descendants and the other for the benefit of the poor or for some other religious, pious and charitable purposes. Benefits to the settlor's family members and the public must be available simultaneously. Property to the extent dedicated for any purpose recognised by Muslim law as pious, religious or charitable would be governed by the provisions of the Act. In the wakf in question, no specific property is dedicated to any purpose recognised by the Muslim Law as pious, religious or charitable; only the poor of Neora are the ultimate beneficiaries after the line of the settlor becoming extinct. According to

the petitioner, the wakf in question will not be included in the definition of "wakf". In this connection reliance was placed on two Madras decisions, in *M. A. Bhaimia v. The Madras State Wakf Board* (1968) 1 Mad LJ 410 and *V. Mohamed Mohin Vs. Madras State Wakf Board*, . In the aforesaid cases the words "to the extent" have been interpreted to mean that the Act will be applicable only in respect of the properties which have been specifically dedicated by the wakf for pious, religious or charitable purposes. Mr. Jagdish Sahay, learned Counsel appearing for the Board, and the learned Advocate-General, appearing for the State of Bihar, however, contended that, under the definition of the word "wakf" in the 1954 Act, all wakfs-alal-aulad, of what-ever kind they may be, have been included and the provisions of the Act have been made applicable. According to the Board, the object of the 1954 Act is to provide for administration and supervision of "all wakfs", including wakfs-alal-aulad. In this connection reference was made to Section 2 of the Act, which says that, save as otherwise provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act. According to the respondents, the corpus of the property is dedicated to the Almighty in both types of wakfs. The only difference is that in a public wakf the public in general is the beneficiary whereas in wakf-alal-aulad the beneficiaries may be even the settlor himself and his family members. But, nonetheless, the ultimate benefit even in such wakfs expressly or impliedly has to be reserved for the poor or for any other purpose recognised by the Muslim law as religious, pious or charitable purpose of a permanent character. Thus, the dedication in both types of wakfs is for pious, religious or charitable purposes and, as such, it has to be held that the provisions of the 1954 Act are applicable to the wakf in question. It was also submitted that the making of a wakf for maintenance and support, wholly or partially, of the family, children and descendants is itself a pious, religious and charitable purpose under the Muslim Law.

17. Whenever a question arises as to whether a particular Act, which is meant for supervision and control over a particular type of institution or trust, is applicable to a particular institution or trust, it has to be ascertained from the definition given under the Act, along with the other provisions of the Act. In *Ram Saroop Dasji Vs. S.P. Sahi*, Special Officer-in-charge of The Hindu Religious Trusts and Others, , a question arose as to whether the provisions of the Bihar Hindu Religious Trusts Act were applicable to private trusts. The definition clause was examined along with the other provisions of the said Act and ultimately it was held that the definition clause did not include within its ambit private trusts and, as such, the provisions of that Act did not apply to such trusts. Similarly, if it is held that the definition of "wakf" given in the 1954 Act does not include the wakf-alal-aulad in question, then it has to be held that the Board has no jurisdiction over such a wakf. From a bare reference to the definition of "wakf" in the 1954 Act it is obvious that a wakf-alal-aulad has been specifically included; but by using the words "to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable" after the words "wakf-

alal-aulad" in Section 3 (1) (iii) of the Act, it appears that the provisions of the Act have been made applicable only to the properties which have been dedicated for any of the purposes mentioned above. If the intention of legislature was that the provisions should be applicable to all wakfs-alal-aulad and to all the properties covered by such deeds, it would have simply said, after defining "wakf", "and includes wakf-alal-aulad". If it is held that all wakfs-alal-aulad and every part of them are included in the definition of "wakf", then the words "to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable", will become surplusage and redundant. It is a settled canon of interpretation that a statute is not supposed to use words without a meaning and it is better to adopt the construction which would give some effect to the words, rather than that which will give none. In Craies on Statute Law, Seventh Edition, at page 103, under the heading "CONSTRUCTION UT RES MAGIS VALEAT QUAM PEREAT" this aspect has been fully discussed. In *Ditcher v. Denison* (1857) Moo PC 324 the Judicial Committee observed as follows:--

"It is a good general rule In jurisprudence that one who reads a legal document, whether public or private, should not be prompt to ascribe--should not, without necessity or some sound reason, impute -- to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use."

The principle is more applicable while interpreting a statute. In *R. v. Berchet*, (1690) 1 Show 108 it was said to be a known rule of interpretation of statutes that such a sense is to be made upon the whole as that no clause, sentence or word shall prove superfluous void or insignificant, if by any other construction they may all be made useful and pertinent. To the same effect is the view expressed in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, . In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, it was observed that in interpretation of statutes "the Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect."

18. Learned Advocate-General, however, contended that the words "to the extent" refer to the corpus of the wakf-alal-aulad, meaning thereby that the Board will have jurisdiction only over the corpus of the wakf-alal-aulad, whereas in a public wakf the Board will have jurisdiction over the corpus as well as the usufruct. A bare reference to the different provisions of the 1954 Act will show that this construction is not borne out.

19. Chapter I contains the definition. Chapter II relates to Survey of wakfs. There is nothing in this chapter to show that any different mode is prescribed regarding the survey of two types of wakfs. Chapter III relates to the Establishment of Boards and their functions. The functions of the Board have been specified in Section 15 of the Ad Sub-section (2) of Section 15, inter alia, provides the functions of the Board to ensure that the income and other property

of wakfs are applied to the objects and for the purposes for which such wakfs were created or intended, to give directions for the administration of wakfs, to direct utilization of the surplus income of a wakf consistently with the objects of the wakf to scrutinise and approve the budget submitted by Mutawallis and to arrange for the auditing of accounts of wakfs and to appoint and remove Mutawallis in accordance with the provisions of the Act. In this chapter there is nothing to show that the Board would exercise its power in respect of wakf-alal-aulad only to the extent of preserving the corpus of the wakf and is in no way concerned with the usufruct thereof. The provisions are applicable to all wakfs covered by the definition of "wakf". In that view of the matter, there is no indication that, in case of wakf-alal-aulad, the Board will simply supervise, whereas in case of public wakfs it will have full control. Chapter IV of the 1954 Act relates to the registration of wakfs. There is nothing in this chapter to show that in the register which is to be maintained by the Board any special entry will be made in respect of wakfs-alal-aulad. Chapter V relates to the powers of the Board vis-a-vis Mutawallis. Again, there is no indication in this chapter that the Mutawallis of wakfs-alal-aulad have some different powers in relation to the usufructs of the wakf property or in relation to the management thereof.

20. Apart from that, if it is held that the Board has jurisdiction only over the corpus in a wakf-alal-aulad, then what will be the position where in a deed of wakf-alal-aulad some properties have been simultaneously dedicated for the purposes mentioned in the said definition clause. In such cases, on the arguments advanced on behalf of the respondents, the Board will have jurisdiction over the corpus as well as the usufruct of such properties. In such a situation, the words "to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable" will have no meaning. In my opinion, in a wakf-alal-aulad if there is specific dedication of any property for any purpose recognised by the Muslim law as religious or charitable, to that extent it will be deemed to be a "wakf" within the meaning of the 1954 Act and the provisions of that Act will apply to that extent. The properties which have been dedicated for such purposes will be within the supervision and control of the Board. If this interpretation is adopted then effect is given to the words "to the extent to which the property is dedicated for any purpose recognised in Muslim law as pious, religious or charitable" occurring in Section 3 (1) (iii).

21. It was submitted on behalf of the respondents that making of provision for maintenance or support, wholly or partially, for the family, children or descendants of the settlor itself is a pious, religious or charitable purpose. In the aforesaid case of Abul Fata Mahomed Ishak (1895) 22 Ind App 76 (PC) (supra), in support of the validity of the wakf-alal-aulad, in which only the ultimate benefit had been reserved for the poor, it had been contended that a pious offering to one's family, to provide against their getting into want, was more pious than giving alms to beggars according to Mahomedan belief. But the said contention was not accepted and it was observed that those arrangements meant to serve for the aggrandisement of the family. Even in the 1913 Act it was never

said that making provision for maintenance and support of the family, children or descendants itself will be deemed to be either pious, religious or charitable purpose. In Section 3 it was mentioned that it would be lawful for any person professing Mussalman faith to create a wakf which in all other respects, is in accordance with the provisions of the Mussalman law, making provision for the family, children and descendants, provided the ultimate benefit is reserved for the poor or for any other purpose recognised by the Mussalman law as pious, religious or charitable.

22. In *Fazlul Rabbi Pradhan v. State of West Bengal* AIR 1965 SCC 1722 the Supreme Court had an occasion to consider the question as to whether wakfs-alal-aulad in question in that case were effected by the passing of the West Bengal Estates Acquisition Act, 1953 (Act 1 of 1954). It was being contended that those wakfs, being for charitable and religious purposes, had to be excluded from the provisions of that Act. In that context, the aforesaid decisions of the Privy Council reported in (1895) 22 Ind App 76 (PC) and (1889) 17 Ind App 28 (PC) were considered, along with the Mussalman Wakf Validating Act, 1913, and it was observed as follows:--

"(13) After the passage of those two Acts, wakfs, in which the object was the aggrandisement of families of wakifs without a pretence of charity in the ordinary sense, became valid and operative. But the intention of the Validating Act was not to give a new meaning to the word "charity" which in common parlance is a word denoting a giving to some one in necessitous circumstances and in law a giving for public good. A private gift to one's own self or kith and kin may be meritorious and pious but is not a charity in the legal sense and the Courts in India have never regarded such gifts as for religious or charitable purposes even under the Mahomedan Law. It was ruled in *Syed Mohiuddin Ahmed and Another Vs. Sofia Khatun and Others*, that neither the Wakf Validating Act, 1913 nor the Shariat Act, 1937 had the effect of abrogating the Privy Council decisions on the meaning of "charitable purpose" as such."

Similar view was expressed in *Thakur Mohd. Ismail Vs. Thakur Sabir Ali*, where it was observed at page 1728:

"Now what the wakf deed provides is that an insignificant portion of the income would be used for certain religious purposes; the rest of the income is to be used for the benefit of the wakif and his descendants from generation to generation and it is only when the line of the wakif is completely extinct that the whole of the income of the property could be utilised for what may be called charitable or religious purposes. It is urged however that even though the lion's share of the income of the property would be used for the descendants of the wakif, the wakf will still be a religious and charitable one for the property immediately vests in God Almighty and is to be used for the benefit of His creatures, which of course include the wakif and his descendants. Reliance in this connection is placed on the dissenting judgment in *Bikani Mia v. Shuklal Poddar* (1893,) ILR 20 Cal 116 (FB) in which Ammeerali. J., expressed the view that a wakf in favour of the

wakif and his descendants would be for charitable purposes under the Mahomedan Law. It is enough to say that this was not the view of the majority of that Court Further in Abul Fata Mahomed Ishak's case (1895) 22 Ind App 76 (PC) the Privy Council clearly held that a wakf under which the beneficiaries were the descendants of the wakif could not be treated as one for a charitable purpose even under the Mahomedan law."

It was further observed at page 1729:--

"In these circumstances it must be held that the wakf in the present case, though in theory it vests the property in God Almighty, is not for charitable or religious purposes. It must therefore be treated as a gift to God Almighty in which however for generations to come God Almighty would have no beneficial ownership. Nor do we think that the Wakf Validating Act of 1913 makes any difference to this position. That Act specifically provides by Section 3 that a Muslim can lawfully create a wakf-alal-aulad. This however does not mean that the purpose of such a wakf is a religious or charitable purpose. This is made clear by the proviso to Section 3, which provides that the ultimate benefit in such a case must be for a religious or charitable purpose. The proviso would have been unnecessary if the purpose of a wakf-alal-aulad was recognised as religious or charitable by this law. The same in our opinion will follow from the provision in Section 4."

From the aforesaid decisions of the Supreme Court it is obvious that the aforesaid Privy Council decision holding a wakf-alal-aulad as not relating to any religious or charitable purpose was approved.

23. Now the next question to be determined is as to whether making provisions for the maintenance of the family members and descendants of the wakif itself was a pious act. I have already mentioned above that the Privy Council in the aforesaid case of Abul Fata Mahomed Ishak (1895) 22 Ind App 76 (PC) also rejected the contention that making provision for the family members and descendants was a pious action the part of the settlor, making the said wakf a valid wakf in its true sense. This question was also considered by a Bench of the Calcutta High Court in Syed Mohiuddin Ahmed and Another Vs. Sofia Khatun and Others, and it was held that the maintenance and support of the family, children or descendants of the wakif was not to be regarded as coming within the phrase "other purpose recognised by Mussalman Law as pious". In this connection, the learned Judges observed at page 505 as follows:--

"In order that a wakf by way of family settlement may be valid under the Wakf Validating Act of 1913 an ultimate benefit must be expressly or impliedly reserved for the poor or any other purpose of a permanent character recognised by the Mussalman Law as religious, pious or charitable. This is the proviso to Section 3. We cannot accept the contention of the learned Advocate for the appellant that as the Mahomedan jurists considered the maintenance of one's family as a pious purpose the Legislature by using the phrase "any purpose

recognised by Mussalman law as pious" meant to validate all wakfs by way of family settlement irrespective of the fact whether there was any ultimate benefit reserved either for the poor, or for religious and charitable purposes. In our judgment whatever may be the notions of pious acts of Mahomedan jurists the Legislature clearly meant that maintenance and support of the family, children or descendants of the wakif is not to be regarded as coming within the phrase "other purpose recognised by Mussalman law as pious" used in the proviso to Section 3, for maintenance of these persons or class of persons is expressly mentioned in the body of that section."

It was also held in that case that the effect of the decision of the Judicial Committee holding that a dedication substantially for the maintenance of the family or the descendants of the wakif was not a pious purpose which would support a wakf has not been taken away by Section 4 of the 1913 Act. Section 4 has simply taken away the effect of that part of the judgment of the Judicial Committee where it had held that if the benefit reserved for the poor or for other pious, religious and charitable purposes is to take effect after the extinction of the line of the descendants of the family of the wakif, such gift was too remote and so illusory. After the 1913 Act, even if the ultimate gift to the poor or to pious, religious and charitable purposes is postponed till after the extinction of the family of the wakif, the wakf would be valid. The Supreme Court in the aforesaid case of *Fazlul Rabbi Pradhan Vs. State of West Bengal*, did not hold that a private gift to one's kith and kin was a Pious object. It simply, in my opinion, said for the purpose of that case, without deciding that question, that it "may be meritorious and pious but is not a charity in the legal sense". It has, therefore, to be accepted that making provision for the descendants can neither be a pious nor a religious or charitable purpose so as to cover it within the definition of "wakf". This view also finds support from the use of the words "to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable" after the words "wakf-alal-aulad" in the definition of "wakf". If making provision itself for the descendants was either pious, religious or charitable, there was no necessity of qualifying the definition of "wakf-alal-aulad" with those words, because in every wakf-alal-aulad the primary object is making provision for the descendants of the settlor. If the words to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable" have to be given some meaning, it has to be held that they do not relate to the mere act of making provision for the children and descendants in a wakf-alal-aulad. I am of the opinion that only such wakfs-alal-aulad in which simultaneously with the making provision for family members and descendants some property is dedicated for any purpose which is recognised as pious, religious or charitable by Muslim law, will be covered by the definition of "wakf". To that extent, the Board will have jurisdiction. This view is supported by the aforesaid two decisions of the Madras High Court in *M.A. Bhaimia (1968) 1 Mad LJ 410* and *V. Mohamed Mohin Vs. Madras State Wakf Board*, .

24. In the instant case, as will appear from a bare reference to the deed of wakf in question, there is no immediate dedication for any purpose which can be termed as pious, religious or charitable, Mr. Hasan Imam made provision for the maintenance of his wife, Mrs. Nattie Imam, for his son and daughters and their descendants who were to enjoy the usufruct of the properties which were covered by the said deed. In Clause 16 of the deed it has been mentioned that, in the event of the line of Mr. Hasan Imam becoming extinct, male or, female, the ultimate benefit of the wakf is to go to the poor Muslims residing at Neora for their education only and for the maintenance of the mosque. In Clause 18 it has been mentioned that it will be competent to such Mutawalli for the time being to allot out of the one twentieth of the gross income to public charity generally. This clause is only an enabling one and it does not dedicate any part of the property covered by the wakf for public charity, but leaves it to the discretion of each Mutawalli. Clause 19 of the deed reads as follows:--

"It is my desire that a mosque should be built at village Deori pargans Japla, District Palamau out of the Wakf Estate and the said mosque shall remain in charge of the Mutawalli for the time being and the repair and maintenance of the said mosque shall be according to the discretion of the Mutawalli for the time being."

Both parties have agreed that there was no dedication under this clause. It was put in the form of a desire which was left to the option of the Mutawalli. Therefore, from a reading of the aforesaid deed of wakf, it has to be held that there was no concurrent gift of any part of the property covered by the deed in question for any of the objects mentioned in the 1954 Act; only in certain contingency the benefit of the wakf was to go to the poor Muslims of Neora.

25. This is a typical wakf-alal-aulad as conceived by the Act of 1913 where the actual beneficiaries are the descendants of the settlor and only after the line of the settlor becoming extinct the ultimate benefit has been reserved for a purpose which is covered by the proviso to Section 3 of the 1913 Act. Generally, a Court is not concerned with the question as to what was the intention of the legislature in including within the purview of an Act particular types of objects and excluding the others which could have been easily included, had the scope of the Act been slightly enlarged by including those objects in the definition clause. However, it appears to me that the framers of the Act wanted to make provision for supervision and control of public wakfs and parts of wakfs-alal-aulad where properties have been dedicated for the benefit of the public in general.

26. On the question whether the mixed types of wakfs were covered by the 1913 Act and as such excluded by the 1923 Act, there was a controversy between the different High Courts in India. The decisions in *Ali Bakhtear and Others Vs. Khandkar Altaf Hossain and Others*, ; *Shabbir Hossein v. Ashia Hossein* AIR 1929 Oudh 225 (FB) and *Tyebhoy Essof-ally Thingna v. Collector of Ahmedabad*, AIR 1944 Bombay 91 on the one hand, were of the view that such mixed types of wakfs were not wakfs conceived by the 1913 Act and as such they were within

the purview of the 1923 Act, whereas in *Mt. Ruqia Begam and Others Vs. L. Suraj Mal and Others*, and *Syed Ahmed and Another Vs. Julaiha Bivi and Others*, the view taken was that even such wakfs were wakfs as contemplated by the 1913 Act. In view of the definition given in the 1954 Act, now mixed wakfs making concurrent provisions for public and descendants of the settlor will be covered by the said 1954 Act. The effect is that wakfs-alal-aulad which are strictly in terms of the 1913 Act shall be excluded from the scope of the 1954 Act. As I have already held that the wakf in question is a wakf-alal-aulad strictly in terms of the 1913 Act, where it is not possible to find out the extent to which the properties have been dedicated for purposes which are pious, religious or charitable, I am left with no option but to hold that the provisions of the 1954 Act are not applicable to the said wakf-alal-aulad and as such the respondent Board has no jurisdiction to interfere with the administration and management of the Imam Wakf Estate.

27. In view of the above finding, there is no necessity to decide the alternative point raised on behalf of the petitioner to the effect that, in view of the terms of the compromise decree passed by this Court in the aforesaid miscellaneous appeal, the respondent Board is estopped from interfering with the administration and management of the Imam Wakf Estate.

28. On behalf of the respondent Board another objection has been taken on the question of the maintainability of the writ application, that is, *Mirza Amirullah Beg* is a necessary party to the writ application in view of the fact that actions had been taken by the Board on his petition. In my opinion, when it has been held that the provisions of the 1954 Act themselves do not apply to the Imam Wakf Estate and the respondent Board has no jurisdiction in law to interfere with the management and administration of the said estate, any step taken by the Board, either on its own initiative or at the instance of the aforesaid *Mirza Amirullah Beg*, is a question which is not relevant or germane for the purposes of the present case no relief has been asked for by the petitioner against the said *Mirza Amirullah Beg*. In my opinion, therefore, there is no substance in the objection raised on behalf of the respondent Board.

29. In the result, C.W.J.C. No. 258 of 1974 is allowed and the respondent Board is restrained by a writ of mandamus from interfering with the administration and management of the Hasan Imam Wakf Estate and the impugned communications and resolutions are hereby quashed as having been issued and made without any authority in law. In the circumstances of the case, there will be no order as to costs.

C. W. J. C. No. 289 of 1974:--

30. In view of my findings in C. W. J. C. No. 258 of 1974, C.W.J.C. No. 289 of 1974, in which identical questions are involved, is also allowed and the impugned annexures quashed in terms of C. W. J. C. No. 258 of 1974. There will be no order as to costs in this case also.

Mukharji, J.

I agree.