

(1968) 11 AHC CK 0017
In the Allahabad High Court
Case No : S.A. No. 3376 of 1959

Mirajuddin

APPELLANT

Vs

Nanku and Others

RESPONDENT

Date of Decision : 13-11-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97
Mussalman Wakf Validating Act, 1913 — Section 3

Citation : (1970) 40 AWR 127

Hon'ble Judges : R.B. Misra, J;B.N. Lokur, J;B. Dayal, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

B. Dayal, J.—The main contention of learned Counsel for the Appellant is that by passing the Mussalman Wakf Validating Act (VI of 1913) the legislature intended to revert to the orthodox view propounded by Hon. Sir Amir Ali and others of his views. He contended that now a provision for the maintenance of the Waqif's family and children is itself a charitable and pious object and that no waqf can be invalidated on the ground of remoteness of the ultimate dedication to the poor etc. This is contrary to the clear indications in the said Act itself. The language and the very existence of the proviso added to Section 3 makes it quite clear that a Waqf providing for maintenance of the children etc. would not be valid unless the benefit is ultimately "reserved for the poor or any other purpose recognised by the Mussalman law as religious, pious or charitable etc.". It could not have been so provided if the legislature thought that a provision for the maintenance of family and children etc. was itself a charitable object recognised by the Mussalman law. Moreover, the very fact, that a Waqf providing for the maintenance of a specified class of persons only is saved, shows that the legislature recognised that Waqfs postponing the ultimate benefit to the poor etc. farther would be defeated. The words "No Waqf shall be deemed to be invalid merely because" etc. used in Section 4 signify clearly that in a case where there were other provisions which postpone the ultimate benefit still further, the waqf

shall be deemed valid.

2. Lastly, if the legislature intended to import the principle that a Waqf will not be defeated, as contended for by the learned Counsel for the Appellant, it was easiest for the legislature to provide that a Waqf would not be invalid by reason of remoteness of the ultimate dedication to the poor etc. No such provision having been made, the legislature obviously accepted the Mussalman law on this subject as interpreted by the Privy Council but only brought about a limited change as provided in Sections 3 and 4 thereof.

3. I entirely agree with my brothers who have dealt with the matter from all points of view.

R.B. Misra, J.

4. I have had the advantage of reading the judgment of my brother Lokur, J., with which I agree. He has dealt with facts and law in detail, but I would like to add a few paragraphs of my own.

5. The question referred to this Bench is an abstract question of law. It is--

Where the Waqif had postponed the ultimate benefit to the poor etc. by bringing in, as intermediate beneficiaries, a wide circle of persons and their descendants some of whom were persons not belonging to the family and their descendants, does the invalidity of the gift in favour of persons not belonging to the family and their descendants result in the destruction of the entire endowment as a whole or the Waqf could be treated as valid until the extinction of the lines of members of the family of the Waqif?

The question has to be answered in the light of the Mussalman Waqf (Validating) Act (Act VI of 1913; hereinafter referred to as the Act). It is necessary to notice the relevant provisions of the Act. "Waqf" has been defined in Section 2 of Act thus:

"Waqf means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable.

Section 3 of the Act specifies the purposes among others for which the waqf can be created. So far as is relevant for our purpose, Section 3 reads:

It shall be lawful for any person professing the Mussalman faith to create a waqf which in all other respects is in accordance with the provisions of the Mussalman law, for the following among other purposes:

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

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

Section 4 of the Act provides:

No such waqf 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 waqf.

The definition of waqf is wide and includes in its ambit all purposes recognised by the Mussalman law as religious, pious or charitable.

In view of Section 3 of the Act, a valid waqf must satisfy the following conditions:

- (i) A waqf must be created by a person professing the Mussalman faith;
- (ii) It must in all other respects be in accordance with the provisions of the Mussalman law;
- (iii) Among others, it may be for the maintenance and support, wholly or partially, of the Waqif's family, children or descendants; But in such cases the ultimate benefit must, either expressly or impliedly, be reserved for the poor or for any other purpose recognised by the Mussalman law as religious, pious or charitable purpose of a permanent character.

Section 4 of the Act saves such waqfs where the benefit, reserved for the poor or other religious, pious or charitable purpose, is postponed until after the extinction of the family, children or descendants of the Waqif.

6. Since Section 3 of the Act requires that the Waqf must in all other respects be in accordance with the Mussalman law, it leads us to the consideration of the question as to what was the law regarding waqf prior to the enforcement of Act VI of 1913. This, however, may not detain us long, as the Privy Council gave an authoritative interpretation on the subject of Waqf-Alal-Aulad before the enforcement of Act VI of 1913, in *Abul Fata Mahomad Ishak v. Russomoy Dhur Chowdhry* 22 IA 76. Two principles were finally settled there: (i) A dedication substantially for the maintenance of the family or descendants of the waqif was not a pious purpose which would support a waqf; and (ii) 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 descendants or the family if the Waqif, such a gift is too remote and so illusory.

7. A gift may be illusory either when it is too small or when it is too remote and uncertain. The Privy Council had taken into consideration conflicting decisions on the subject in India and also the precept of the Prophet Mohammad himself to the effect that "A pious offering to one's family, to provide against their getting into want, is more pious than giving alms to beggars. The most excellent of Sadakah is that which a man bestows upon his family". Lord Hobhouse, dealing with the said precept, observed:

Those precepts may be excellent in their proper application. They may, for aught their Lordships know, have had their effect in molding the law and practice of

waqf, as the learned Judge says they have. But it would be doing wrong to the great lawgiver to suppose that he is thereby commending 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 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.

The same view was expressed on the subject in other decisions of the Privy Council. Mussalman law on the subject, to my mind, will be deemed to be the law as expressed by the Privy Council in the aforesaid case.

8. The decision by the Privy Council in Abul Fatah Mahomed Ishaq's case (supra) was very much resented by the Muslim community in India and resulted in a wide agitation. Ultimately the legislature intervened and the Mussalman Waqf (Validating) Act (VI of 1913) was passed.

9. Now we have to examine how far the aforesaid view of the Privy Council on the subject has been affected by the said enactment of 1913.

10. In my judgment, that view still holds the field on the subject, but it has, of course, been restricted in operation. Section 4 of the Act puts the outer limit. It has prescribed the limit of remoteness to which the benefit to the poor and other religious and pious purposes can be postponed and no further.

11. The question referred to this Bench assumes that the Waqif postponed the ultimate benefit to the poor etc., by bringing in a wide circle of persons and their descendants, some of whom are outside the permissible range u/s 4 of the Act. It is, therefore, invalid. But it is argued that the waqf can be split up and held valid to the extent it is within the permissible range of Section 4 of the Act; that is to say, the doctrine of severability be applied and the good portion of the waqf be separated from the bad one. This, to my mind, will depend on the fact as to whether there is a valid and substantial charitable gift. If a valid waqf came in existence from the start, the bad portion may be separated from the good. But otherwise there can be no "salvage from the wreckage of a bad waqf."

12. It is no doubt true that once it is clear that a bonafide intention to create waqf exists, it should not lightly be allowed to fail. So that waqf may be constituted even (i) where the objects are not specified at all (ii) where objects fail as being impracticable and (iii) where the objects are partly valid and partly invalid. In cases (i) and (ii), the doctrine of Cypres maybe applied; while in case (iii) valid objects may be accepted and the rest rejected. But in a case where the dominant intention of the waqif is the aggrandizement of his family and the gift to charity is illusory, then no valid waqf comes into existence. In such a case there would be no question of applying the doctrine of severability.

13. In the case referred to us the waqf cannot be protected, as it has extended beyond the outer limit of the permissible range provided in S. 4 of the Act by including a large number of persons not permitted by the section and therefore, no valid waqf came in existence.

B.N. Lokur, J.

14. This second appeal was initially heard by Katju, J., who referred the following question to a larger Bench:

Where the Waqif had postponed the ultimate benefit to the poor etc. by bringing in as intermediate beneficiaries, a wide circle of persons and their descendants, some of whom were persons not belonging to the family and their descendants, does the invalidity of the gift in favour of persons not belonging to their family and their descendants result in the destruction of the entire endowment as a whole or the Waqf could be treated as valid until the extinction of the lines of members of the family of the Waqif?

The case was thereupon placed before a Division Bench consisting of Rajeshwari Prasad and A.K. Kirtu, JJ., who referred the question to a Full Bench. That is how the case has come before us.

15. The facts of the case are briefly these: Ghulam Mohammad alias Jhabri executed a Waqfnama on 29-7-1935, in respect of a house. The terms of the Waqfnama will be dealt with later. On 1-7-1942 Ghulam Mohammad and others mortgaged the house to Sheo Narain for Rs. 1400/-. Sheo Narain brought a suit in 1951 to recover Rs. 2,892/- due on the mortgage. A compromise decree was passed in the suit. In execution of the decree, the house was auctioned and was purchased by Nanku for Rs. 4,500/-. When Nanku attempted to recover possession of the house, Mirajuddin, who is the Mutwalli in charge under the Waqfnama, resisted and made an application Under Order XXI, Rule 97 of the Code of Civil Procedure. The application having been rejected, he instituted the suit out of which this second appeal arises. He contended that the house purchased by Nanku is Waqf property and the sale thereof is invalid. In addition to Nanku, the mortgagee Sheo Narain, Ghulam Mohammad alias Jhabri and other Mutwallis named in the Waqfnama, were added as Defendants in the suit. However, Nanku alone defended the suit. He raised various contentions but the only one which survived in this second appeal is whether the Waqf created by Ghulam Mohammad alias Jhabri is a valid one in view of the postponement of the dedication to charity by intervening beneficiaries and their descendants.

16. The trial court as well as the first appellate court, holding that the ultimate gift to charity was remote, declared the Waqf to be invalid, whereupon this second appeal was filed by Mirajuddin.

17. It will be convenient at this stage to set out the terms of the Waqfnama. The deed recites that its executant, Ghulam Mohammad, thought it necessary that man in his own life should so arrange the affairs of his property that the last part

of his life might pass satisfactorily in peace and comfort and after his death his heirs might lead their life in good condition and the property also might not be destroyed. It is then said that the Waqf, which is described as Waqfalalaulad, was, created from this point of view. The first beneficiaries of the Waqf are stated to be Ghulam Mohammad himself, his sister Mst. Anwar Jahan and Usman Ghani, the son of the executant's uncle. It appears that the house was subject to two mortgages for an aggregate amount of Rs. 600/- at the time of the Waqfnama and it is provided that three fourths of the profits of the house, after deducting all expenses of repairs, taxes etc., should be paid towards the liquidation of the loans and the residuary one-fourth of the income should be divided among the three beneficiaries. Mst. Mahmoodan, the aunt of Ghulam Mohammad, is appointed the Mutwalli and after her death, the Plaintiff-Mirajuddin, Sirajuddin, Shamsuddin, Qamaruddin (all sons of an uncle or aunts of Ghulam Mohammad), Ghulam Mohammad himself, his sister Anwar Jahan and his cousin Usman Ghani, are to be the Mutwallis jointly, Mirajuddin is to be the Mutwalli-in-charge and after him, each of the other Mutwallis, one after the other, is to be the Mutwalli-in-charge. In the event of the death of any Mutwalli, the other Mutwallis are to appoint a substitute so that the number of Mutwallis would always be seven. On the death of the three original beneficiaries, the benefit of the waqf is to be enjoyed by their descendants, generation after generation and in the event of the extinction of their lines, the Mutwallis and thereafter their descendants, generation after generation are to be the beneficiaries. If the lines of all the Mutwallis became extinct, the income from the Waqf property is to be spent over the poor Muslims and for other charitable purposes.

18. The contention of the auction-purchaser, Nanku, is that even though the provision in the Waqfhama for the settlement in favour of Ghulam Mohammad, Mst. Noor Jahan and Usman Ghani and the descendants of the Waqif might be justified in view of the Mussalman Waqf (Validating) Act, 1913 and although the ultimate benefit of the Waqf is to go to charitable purposes, the interposition of the descendants of Mst. Noor Jahan, Usman Ghani and their descendants as beneficiaries, renders the entire Waqf invalid. It may be noted in this connection that it is found as a fact that Mst. Mahmoodan, the Plaintiff Mirajuddin, Shamsuddin, Sirajuddin and Qamaruddin, who are amongst the Mutwallis named, are not members of the "family" of the Waqif Ghulam Mohammad within the meaning of Section 3 of the Mussalman Waqf (Validating) Act, 1913. It is also urged that the benefaction to charities being remote and illusory, the Waqf is void at its inception. On the other hand, it is urged on behalf of Mirajuddin that even if the settlement in favour of the aforesaid five Mutwallis and their descendants be invalid, the Waqf does not fail and the settlement in favour of charity is accelerated on the extinction of the line of the three original beneficiaries and that the Waqf cannot be invalidated on the ground that the ultimate dedication to charity is postponed or is illusory, in view of the aforesaid Act of 1913.

19. Shri Hyder, learned Counsel for the Appellant, in his lucid and well-prepared

argument, brought to our notice the views of well known text book writers on Mohammedan Law--Baillie, Ameer Ali, Tyabji and Mulla--and submitted that under the pure Mohammedan Law a Waqf can never fail on the ground that its aims and objects are repugnant to the canons of Mohammedan Law and that if any of the objects of the Waqf failed, the provisions for those objects in the Waqf have to be ignored and the benefaction in favour of other objects which follow are accelerated. He also drew our attention to the decision of the Bombay High Court in *Fatma Bibi v. Advocate General* ILR 6 Bom 42 in which West, J., held that should the intermediate purposes of the dedication fail, the rule of Mohammedan Law appears to be that the final trust for charity does not fail with them but is accelerated. Reference was also made to the observations of Ameer Ali, JJ, in his dissenting opinion in *Bikani Mian v. Shuklal Poddar* ILR 20 Cal 116 to the effect that to hold that a Waqf benefaction of which is bestowed wholly or in part on the Waqif's family and his descendants is invalid would have the effect of sweeping away an important branch of the Mussalman Law.

20. After the decision in the cases of *Fatma Bibi* and *Bikani Mian*, however, there have been a series of decisions of the Privy Council, where in the Mohammedan Law on Waqfs is interpreted as invalidating a Waqf if a perpetual family settlement is made by it and the ultimate gift to the poor is merely illusory.

21. It is sufficient in this connection to refer to the Calcutta case of *Abul Fata Mahomad Ishak v. Russomoy Dhur Chowdhary* 22 IA 76 in which a Waqf providing for a gift to the poor etc. after the total extinction of the blood of the settlers, whether lineal or collateral, was declared invalid by the Privy Council with the following observations:

In their judgment the Calcutta High Court have in this case rightly decided that there is no substantial gift to the poor. A gift may be illusory whether from its small amount or from its uncertainty and remoteness. If a man were to settle a crore of rupees and provide ten for the poor, that would be at once recognised as illusory. 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 legalize arrangements meant to serve for the aggrandizement of a family. (p. 89).

Following this decision, in *Mujibunnissa v. Abdul Rahim* 28 IA 50, the test of the validity of a Waqf was set out by the Privy Council in the following words:

It will be so if the effect of the deed is to give the property in substance to charitable uses. It will not be so if the effect is to give the property in substance to the testator's family.

(pp. 23 and 24).

This test was confirmed again by the Privy Council in *Ramanandan Chettiar v. Vava Lebbai Marakayar* 44 IA 21 and *Ballamal v. Ataullah Khan* 54 IA 372. It is significant to mention that Ameer Ali, was party to the decision in *Ramanandan Chettiar*'s case.

22. It is well known that the interpretation of the Privy Council which barred a Waqf making a settlement in favour of the Waqif and his descendants before the dedication to Charity took effect was deeply resented by the Muslims in India and as a result of agitation by them, the Mussalman Waqfs (Validating) Act, 1913, was enacted. Vide *Fazlul Rabbi Pradhan Vs. State of West Bengal*, . This Act legalised the creation of a Waqf for the maintenance and support of the Waqii's family, children or descendants, provided the ultimate benefit was reserved for the poor or for any other purpose recognised by the Mohammedan Law as a religious, pious or charitable purpose of a permanent character; the Act also provided specifically that no Waqf shall be deemed to be invalid merely because the benefit reserved therein for the poor etc. is postponed until after the extinction of the family, children or descendants of the Waqif.

23. The learned Counsel for the Appellant, conceding that the settlement in favour of the Mutwallis and their descendants is not protected by the Act of 1913, contends that the Act renders valid the Waqf under consideration at least to the extent of the settlement in favour of Ghulam Mohammad, Mst. Noor Jahan and Usman Ghani and the descendants of the Waqif and that the dedication to charity ought to take effect immediately after the extinction of the line of the Waqif.

24. The proposition enunciated by the learned Counsel for the Appellant derives direct support from the decision of a Division Bench of this Court in *Abdul Qavi Khan Vs. God Almighty through Asaf Ali Khan and Others*, , in which Manchanda, J., speaking for the Court, observed:

I would, therefore, hold that the failure of the Waqf in favour of intermediate beneficiaries has the effect of accelerating the Waqf in favour of the ultimate beneficiary i.e. the Charity.

In coming to this conclusion, reliance was placed on an earlier decision of another Division Bench of this Court in *Kazi Munir Uddin v. Sunni Central Board of Waqfs UP* 1959 ALJ 486. In that case the Waqf was created for the purpose, inter alia, of giving education in the art of painting to Muslim students--a purpose abhorred by the Mohammedan Law and the Court observed that even if this particular bequest be invalid it would not have the result of invalidating the Waqf as a whole and the Waqf could still be upheld by striking out this particular benefaction. In fact, reference to this Full Bench has been made on the basis that these two decisions might perhaps require reconsideration.

25. The principle of acceleration has been recognised and adopted in some other

decisions also after the enactment of the Act of 1913; vide *Sheikh Ramzan v. Mst. Rahmani* AIR 1932 Oud 71, AIR 1935 414 (Lahore) and *Ch. Mohammad Afzal v. Ch. Din Mohammad* AIR 1947 Lah 113.

Chagla, J., however, sitting singly in the Bombay High Court, held in *Ismail Haji Arat Vs. Umar Abdulla*, that if the dispositions are in favour of strangers, the ultimate disposition in favour of charity also would be void.

26. Though the rulings of the Privy Council after the Constitution are not binding on Indian Courts, reference may usefully be made to the decision of the Privy Council in *Riziki Binti Abdullah v. Sharifa Binti Mohammed* 1964 AC 12 in an appeal from Eastern Africa. The Waqf Commissioners Ordinance, 1951, of Kenya, like our Act of 1913, relaxed to some extent the principles laid down in *Abul Fata's* case and the Privy Council said:

Their Lordships are of the view that the statute was laying down the outer limits of the permissible range. In their Lordships' opinion an extension of this range by the addition of persons not covered by the section is riot permissible and the inclusion of such persons in the range specified in the Waqf deed would, therefore, render it invalid.... Their Lordships are of the view that in such circumstances the instrument must either be effective to create a Waqf in its entirety or if no such Waqf was created the instrument is totally void. (p. 39)

27. The Calcutta High Court decision in *Syed Mohiuddin Ahmad v. Sofia Khatoon* AIR 1940 Cat 501, on which the lower courts have placed reliance, may also be referred to at this stage. That High Court held thus:

The view of the Judicial Committee...has not, in our judgment, been completely done away with, but has only been restricted in operation. This is the effect of Section 4, which has defined the degree of the remoteness which is permissible. If the ultimate gift to the poor or to pious, religious and charitable purposes be postponed till after the extinction of the family, children or descendants of the Wakif, the Waqf would be valid although the ultimate gift to such purposes is remote. If such an ultimate gift is more remote, that is, if it is to take effect on the extinction of a more extended group of persons as for instance heirs how low so ever of the waqif, the dedication by way of Waqf substantially for the maintenance of the Wakif's family, children and descendants would not be valid under the Waqf Validating Act.

A review of these conflicting decisions raises the question whether a Waqf must necessarily be entirely valid or can be partially valid and whether the partial invalidity renders the entire Waqf invalid or advances the ultimate destination of the Waqf and further whether a Waqf is invalidated either by illusory dedication to charity or by indefinite postponement of dedication to charity.

28. It has been contended for the Appellant that if the dominant intention of the Waqif is to bestow the benefits of the Waqf ultimately on charity, the Waqf must be accepted as valid even though parts thereof are invalid.

29. It is unquestionable that the intention of the Waqif has to be considered in determining the validity or otherwise of the Waqf. In *Sheikh Mahomed Ahsanullah Chowdhary v. Amarchand Kundu* 17 IA 28, the Privy Council struck down a Waqf on the ground that the gift was not a bonafide dedication to charity and was "only a veil to cover arrangements for the aggrandisement of the family and to make their property inalienable." In *Ramanandan Chettiar v. Vava Levvai Marakyar* 44 IA 21, the Privy Council held the Waqf to be valid on the ground that, having regard to all the circumstances of the case, the dominating purpose and intention of the landlords was to provide for charity although the secondary and subsidiary object was to secure for the family and descendants. In AIR 1948 168 (Privy Council) , the Privy Council again observed:

It is, no doubt, the law that the validity of a Waqf involves that there was an intention to dedicate on the part of the wakif. Where there is evidence that a wakfnama has been retained by the wakif and never acted upon and that the property comprised therein has been dealt with by the Wakif as his own, such evidence may lead to an inference that no dedication to Wakf was ever intended and that the deed was designed merely to provide a shield against possible claims which the wakif anticipated might be made against him. (p. 172).

In *Ramanadhan Chettiar v. Vada Levvai Marakayar* ILR 34 Mad. 12, the Madras High Court stated that where a donor mentions several purposes as objects of charity and one of such purposes failed, then, if a general intention can be gathered of dedicating the property to charity, the entire property would be devoted to the lawful objects. The Lahore High Court also has held that an essential condition for the creation of a valid Waqf is a bonafide intention on the part of the Waqif to dedicate his property *Ch. Mohammad Afzal v. Ch. Din Mohammad* AIR 1947 Lah 117. This High Court also considered the intention of the Waqif in *Mohammad Sabir Ali Vs. Tahir Ali and Others*, .

30. In the present case, it has been found that the intention of Ghulam Mohammad was not to defeat his creditors; in fact, he has provided in the Waqf deed for the liquidation of his debts. It is also found that the Waqf property was actually delivered to the Mutwalli for management and administration. Nevertheless, we are of the opinion that the fundamental object of the Waqf was not charity but it was designed for the aggrandizement of the Waqif, his sister, his cousin, the Mutwallis and the descendants of all of them, from generation to generation and to keep the property perpetually in their hands. The Waqf deed itself mentions that the value of the Waqf property was Rs. 4,000/-; the property was purchased in the auction sale for Rs. 4,500/-. The Waqf property is a house which is subject to decadence and destruction in course of time. Having regard to these circumstances, I hold that the real intention of the Waqif was aggrandizement of the families and descendants of the three beneficiaries and the Mutwallis and not charity.

31. In my view, the Act of 1913 did not completely do away with the law of Waql's as interpreted by the earlier Privy Council decisions; it merely legalised

the provisions in the Waqf deeds for the maintenance and support of the Waqif's family, children and descendants, even though the benefit reserved therein for charity was postponed until after the extinction of these beneficiaries. The effect of the earlier decisions of the Privy Council in other respects was not affected by the Act. This is clear from Section 4 of the Act which states that no Waqf shall be deemed to be invalid merely because the benefit to charity is postponed until after the extinction of the family, children or descendants of the person creating the Waqf. The permissible departure from the law laid down by the Privy Council is only to the extent provided expressly by the Act and any further departure would be hit by its earlier decisions. If the Legislature intended to reverse to tally the views expressed in a succession of Privy Council decisions, the Act would have been differently worded. Referring to the definition of "Waqf" in the Act of 1913, the Supreme Court observed in *Fazlul Rabbi Pradhan Vs. State of West Bengal*, :

This gave a wider meaning to the word "Waqf" but only for the purpose of taking them out of the invalidity which would have otherwise existed and which was already authoritatively stated to have so existed. (p. 1727).

32. In the result, my answer to the question referred to us is that the Waqf is invalid in its entirety on the ground that the ultimate benefit to the poor etc. is further postponed indefinitely by the introduction of beneficiaries other than those permitted by the Act of 1913.

33. The answer to the question referred to us is as follows:

A Waqf is invalid in its entirety if the ultimate benefit reserved for the poor or for any other purpose recognised by the Mohammedan Law, as a religious, pious or charitable purpose of a permanent character, is further postponed indefinitely by the introduction of beneficiaries other than those permitted by the Mussalman Waqf (Validating) Act, 1913.