

(1962) 04 KL CK 0002
In the High Court Of Kerala
Case No : Appeal Suit No. 328 of 1957

Mohammed Jacoo Sait

APPELLANT

Vs

District Collector of Trichur District and Others

RESPONDENT

Date of Decision : 06-04-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92, 92(1), 93
Religious Endowments Act, 1863 — Section 18
Waqf Act, 1954 — Section 55, 55(1), 55(2), 69

Citation : AIR 1962 Ker 343

Hon'ble Judges : T.K. Joseph, J;P.T. Raman Nayar, J;C.A. Vaidialingam, J

Bench : Full Bench

Advocate : V.K.K. Menon, for the Appellant; Govt. Pleader for 1st Respondent and K.J. Malavia, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Raman Nayar, J.—The appellant's petition under Article 226 of the Constitution for quashing the order of a Collector overruling his objection that in view of Section 55(2) of the Wakf Act (Central Act 29 of 1954) the Collector had no jurisdiction to proceed with the inquiry into an application made by respondents 2 and 3 for leave to institute a suit u/s 92 of the CPC against the appellant and other trustees of a Muslim Charitable trust, and for prohibiting the Collector from proceeding further with the inquiry, was dismissed by a single judge of this court, and his appeal therefrom has been referred to a Full Bench by the Division Bench before which it first came on for hearing.

2. Section 55 of the Wakf Act runs thus:

"55. (1) A suit to obtain any of the reliefs mentioned in Section 14 of the Religious Endowments Act, 1963 and in Section 92 of the Code of Civil Procedure, 1908 relating to any wakf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Board without obtaining the leave or consent referred to in those Acts.

(2) No suit to obtain any of the reliefs referred to in Sub-section (1) relating to a wakf shall be instituted by any person or authority other than the Board without the consent in writing to the Board :

Provided that no such consent shall be required for the institution of a suit against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules or orders made thereunder."

Obviously the learned single judge was right when he said with reference to what is expressly stated by the Section that "It should be clear therefrom that the necessity to obtain the leave referred to in the Religious Endowments Act, 1863, and the consent referred to in Section 92 of the Code of Civil Procedure, 1908 are dispensed with only in the case of suits "instituted by the Board" and not in the case of suits "instituted by any person or authority other than the Board". But it is said that in dismissing the petition on this score he has oversimplified matters and ignored the effect of Section 4 of the Code and the doctrine of implied repeal.

3. The question then is whether, in so far as suits relating to wakfs are concerned. Section 55 of the Wakf Act replaces, or only qualifies and supplements, the provisions of Section 92 of the Code. And, it seems to us, that whether we decide this question by applying the provisions of Section 4 of the Code or the doctrine of implied repeal, the tests are the same. They are:

(1) Whether so far as wakfs are concerned the provisions of Section 55 of the Wakf Act are plainly repugnant to those of Section 92 of the Code;

(2) Whether the two provisions standing together would lead to wholly absurd consequences; and,

(3) Whether the former provision takes away the entire subject-matter of the latter so far as Wakfs are concerned. (See Halsbury on "Repeal by implication", Vol. 31 pages 561, second edition). The Wakf Act is the later enactment and it is also a special law. The Code is earlier and is a general law. Therefore if any one of the three tests is satisfied the answer to the question must be that there is a replacement.

4. The general principles of a repeal by implication are thus stated in the latest edition of Halsbury, namely, the third edition at page 465 of Vol. 36:

"709. General principles. Repeal by implication is not favoured by the courts for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of law without expressing its intention to do so. If, however, provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that Parliament, unless it failed to address its mind to the question, intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms. The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that

the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done; and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the later statute are so detailed that failure to include the earlier provision amongst them be regarded as such an indication.

"710. Affirmative enactments. The repeal of one enactment by another is particularly difficult to imply where both are framed in the affirmative, or where they are negative in form but, this being so merely because the purpose of each is to subtract from an existing rule, are to be treated inter se as affirmative. This does not, however, mean that the relationship between affirmative, or quasi-affirmative, enactments is governed by some particularly stringent rule. The position is rather that, whereas the complete repugnance between two enactments, which is necessary in all cases to found an Implied repeal, may exist in other cases merely by virtue of the terms in which the enactments are framed, and without their being actually irreconcilable in matter, it can as between affirmative, or quasi-affirmative, enactments derive from their matter alone. In other words, it is only if the irreconcilability of their matter is such as necessarily to import a negative that one such enactment will be held to have repealed another by Implication."

5. So far as implied repeal is concerned, the third of the three tests mentioned above appears to be an over-statement based on an observation by Dr. Lushington in the India case having regard to what is said in the latest edition of Halsbury as also in English text books like Maxwell (page 160, tenth edition) and Craies (pages 337 to 353, firm edition) although American authors like Sutherland (page 475, Vol. I third edition) and Crawford (page 634) seem to accept that test albeit with some caution. The following footnote in the latest edition of Halsbury is interesting:

"For a slightly more generous statement of the rule see *The India* (1864) Brown and Lush 221, at p. 224, per Dr. Lushington ("The prior statute would be repealed by implication if its provisions were wholly incompatible with a subsequent one, or if the two statutes together would lead to wholly absurd consequences, or if the entire subject matter were taken away by the subsequent statute"). It is possible for two sets of enactments, covering much the same ground, to exist together without the later repealing the earlier; see, e. g., *Ridge v. Baldwin* (1961) 2 All ER 523 at p. 532."

We have however been content to adopt the third test from the earlier edition of Halsbury since that seems to us an apposite test when considering the application of Section 4 of the CPC although, in applying, the doctrine of implied repeal, every word of what we have extracted from the latest edition is important.

6. That the Institution with which we are concerned in this case is a wakf coming

within the ambit of the Wakf Act is not disputed. Nor is it disputed that by reason of Section 55(2) of that Act, the would be plaintiffs, respondents 2 and 3, will have to obtain the consent of the Wakf Board before they institute their contemplated suit seeking reliefs mentioned in Section 92 of the Code. The question is whether they have to obtain also the consent of the Advocate-General u/s 92 of the Code, in fact pf the Collector acting u/s 93, so as to give the latter jurisdiction to hold an enquiry on The application made by them for the purpose. One would have thought that they would be anxious to avoid this double burden, and that the appellant and the other trustees who are threatened with the suit would be eager to welcome what for them would be a double safeguard. But it is just the other way about. The appellant, it is, that maintains that consent u/s 92 of the Code is unnecessary and that consent u/s 55(2) of the WaKf Act is sufficient it is the would be plaintiffs, respondents 2 and 3, that maintain that consent under both enactments is required. If one may venture a guess, the explanation for this topsyturvydom lies in the hope of the one and the fear of the other that consent accorded by the Collector would probably persuade the Board into giving its consent as well.

7. Section 55 of the Wakf Act expressly refers to Section 92 of the Code, and expressly saves from the operation of that section, suits brought by the Board. There is thus an express repeal of that section although the word "repeal" is not used, in so far as a suit falling within that sub-section is concerned. A suit by a person other than the Board, like the suit that respondents 2 and 3 want to bring, is governed by Sub-section 2. There we find no reference whatsoever to Section 92 of the Code and no attempt made to save such a suit from the operation of that section. By Section 69 of the Wakf Act there is an express repeal of certain enactments, among them of a particular section of an enactment referred to in Section 55(1), namely, the Religious Endowments Act 1863. After all, the doctrine of implied repeal, like the implied term of a contract, rests in large measure on an assumption of inadvertence -- in the one case the failure of the legislature to advert, at any rate expressly, to the enactment it would repeal; in the other, the failure of the parties to advert to the particular matter to which the term relates, in both cases the endeavour of the courts is to ascertain and conform to the presumed Intention, the intention which would presumably have been expressed had the matter come to attention and been expressly dealt with. Therefore, where the matter is expressly mentioned, there is little room in either case to resort to the theory of implication. As we have seen from Halsbury, the presumption is strongly against an implied repeal, and in considering the question whether, an is the case for the appellant, Sub-section (2) of Section 55 of the Wakf Act impliedly repeals Section 92 of the Code, the presumption is certainly not weakened by the circumstance that the legislature expressly adverted to Section 92 of the Code in Sub-section 1 of Section 55 of the Wakf Act and expressly saved its operation, and that by Section 69 it set about expressly repealing those enactments which it did not want to apply to wakfs. The failure to expressly exclude the operation of Section 92 of the Code,

in so far as suits brought in relation to wakfs by person other than the Board are concerned, is therefore a strong indication that the legislature regarded the two enactments as compatible.

8. We shall proceed to apply the first of the three tests mentioned earlier, that is whether Section 55 of the Wakf Act is plainly repugnant to Section 92 of the Code, in other words, whether the two provisions cannot stand together. We are unable to find any repugnancy, it will be noticed that Sub-section (1) of both these sections is affirmative in form. It says that a certain thing may be done. Subsection (2) of both is negative. It says that a certain thing may not be done except in a certain way. The affirmative provisions can easily stand together. So can the negative, the effect being only cumulative. It is not merely the persons mentioned in Sub-section (1) of Section 92 of the Code that may institute a suit of the kind described therein; the Wakf Board also may in so far as wakfs are concerned. Likewise, when such a suit is brought by a person other than the Board there must be compliance not merely with Sub-section (1) of Section 92 of the Code but also with Sub-section (2) of Section 55 of the Wakf Act. It is only the reconciliation of the affirmative provision of the one section with the negative provision of the other that can present any difficulty. Regarding the affirmative provision in Sub-section (1) of Section 55 of the Wakf Act and the negative provision in Sub-section (2) of Section 92 of the Code, there is no difficulty. The two can stand together since, so far as wakfs are concerned, the former expressly excludes the operation of the prohibition in the latter.

What remains to be considered is whether the negative provision in Sub-section (2) of Section 55 of the Wakf Act can stand side by side with the affirmative provision in Sub-section (1) of Section 92 of the Code. We think it can -- in fact we are unable to see what difficulty there is in the way of its doing so. The latter provision says that the Advocate general or two or more persons with his consent may bring a suit for the reliefs mentioned therein. But the former says that no person or authority other than the Wakf Board may bring a suit for those reliefs in respect of a wakf without the consent of the Board. If the two are put together the former would be in the nature of a proviso to the latter, qualifying the permission given by the latter by saying that, so far as suits relating to wakfs are concerned, the persons permitted to sue under the latter provision must also obtain the consent of the Wakf Board. In fact it looks very much as if the word "authority" in Sub-section (2) of Section 55 of the Wakf Act is used with an eye to the Advocate-General on whom Sub-section (1) of Section 92 of the Code confers a right of suit. Even he, if he wished to institute a suit with regard to a wakf, must obtain the consent of the Board. It is difficult to see what other authority than the Advocate-General would be interested in bringing a suit of the kind. If there is any authority interested in a wakf other than the Advocate-General or the Board, it can only be as a beneficiary of the wakf, and, in that case, the suit it brings would be in its capacity as a beneficiary and not in its capacity as an authority.

9. We should think that the simplest way of testing whether Section 55 of the Wakf Act and Section 92 of the Code can stand together would be to read Sub-sections (1) and (2) of the former section as Sub-sections (3) and (4) of the latter after making the necessary, but, from our point of view, inconsequential verbal alterations. The composite section would then read thus:

"92. Public charities.

(1) In the case of any alleged breach of any express-or constructive trust created for public purposes of charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more, persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit, whether contention's or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate, to obtain a decree-

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust :

(f) authorising the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other reliefs as the nature-of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, or by any corresponding law in force in the territories which immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

(3) A suit to obtain any of the reliefs mentioned in Sub-section (1) relating to any wakf may, notwithstanding anything to the contrary contained therein, be instituted by the Board without obtaining the consent referred to therein.

(4) No suit to obtain any of the reliefs referred to in Sub-section (1) relating to a wakf shall be instituted by any person or authority other than the Board without the consent in writing of the Board:

Provided that no such consent shall be required for the institution of a suit against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules or orders made thereunder". Is there any inconsistency between Sub-sections (3) and (4) on the one hand and Sub-sections (1) and (2) on the other? We can find none.

10. It has been argued that Sub-section (2) of Section 55 of the Wakf Act although negative in form is really affirmative in content and that what it really means is that any person or authority may institute a suit of the kind described with consent of the Board. We have little use for an argument which, in order to create the desired inconsistency, would alter not merely the form but also the plain meaning of a statute; and we might add that, in determining whether there is a repugnancy between two statutes, their form is no less important than their content.

11. Now to apply to second and third tests, with regard to the second test, namely, whether the two provisions standing together would lead to wholly absurd consequences, there are only two consequences that can be of any possible relevance. One is that private parties like the present respondents 2 and 3 would have to obtain the written consent both of the Advocate-General and of the Wakf Board before launching a suit. (We do not think that leave of the court also will be necessary u/s 18 of the Religious Endowments Act, 1863. The prohibition therein applies only to the entertainment of suits under that Act and might not apply to a suit u/s 92 of the Code even if a relief claimed falls within Section 14 of that Act.

And if the view be taken that it does, there would be no difficulty in spelling an implied repeal of Section 18 of that Act so far as suits u/s 92(1) of the Code are concerned). The other is that even the Advocate-General, if he wishes to institute a suit relating to wakf, would have to obtain the consent of the Board. We are unable to find anything absurd or even anything inconvenient in these consequences, far less anything wholly absurd. Numerous instances can be found where the law requires a person wishing to do a particular thing to obtain the consent of more than one authority. Ordinarily the different authorities would have to regard the matter from different aspects, and we have no reason to think that that is not the case here, Presumably the intention of the law is that the Wakf Board should consider the matter from the point of view of Muslim laws and the sentiments and susceptibilities of the Muslim community and its own first hand knowledge gathered from the exercise of its powers of superintendence, while the Advocate-General would consider the matter from a general stand point as in the case of any trust. There is no special inconvenience or difficulty in a private party having to obtain the consent of both authorities, if either withholds consent, the suit cannot be brought; the consent of both is necessary. If one

grants and the other withholds consent, there is really no conflict between the two -- and the mere possibility of conflicting orders can scarcely be turned a wholly absurd consequence -- if, as we have assumed, the two authorities are to view the matter from different aspects.

12. That the Advocate-General should have to seek the consent of the Wakf Board for instituting a suit might seem queer but we would not characterise it as wholly absurd. Moreover, having regard to the functions and duties of the Board, the Advocate-General might well think that he is relieved of responsibility to bring a suit, in respect of 8 wakf.

13. The real object of Section 92 of the Code and Section 55 of the Wakf Act is clear. Under the pre-existing general law all persons interested in trust would have had to join in a suit of the kind described in these sections. That would, in many cases, be inconvenient or impracticable the provisions of Order 1, Rule 8 notwithstanding. Therefore, it was considered desirable that some of them might be enabled to sue without joining the rest; also that a responsible authority be empowered to sue. At the same time, it was necessary to protect trustees from an indefinite number of reckless and harassing suits by different persons interested in the trust; and hence the condition that, in the case of suits brought by private persons, there must be "the consent of a responsible authority.

Now, if we turn to Section 92 of the Code, we find that two or more persons having an interest in the trust must join to institute the suit; and once they have obtained the consent of the Advocate-General they need not join as parties the remaining persons interested in the trust. But in Section 55 of the Wakf Act we find no such enabling provision so far as suits by private parties are concerned unless we read Sub-section (2) thereof as we have already refused to read it, namely, as meaning that any person may bring a suit with the consent of the Board. Therefore, if we accept the view that, so far as wakfs are concerned, Section 92 of the Code stands repealed by reason of Section 55 of the Wakf Act, the position would be that, so far as wakfs are concerned not merely must the consent of the Board be obtained but all persons interested in the trust must also be joined as parties to the suit. On the other hand, if the construction which we have rejected is placed on Sub-section (2) of Section 55, it would mean that, in respect of wakfs, two or more persons need not join in bringing the suit. One person alone can do it, and he need not even be interested in the trust. And if the suit falls within the proviso, being against the board, he need not obtain anybody's consent even if he seeks relief falling within Section 92 of the Code. It seems to us that it is the acceptance and not the rejection of an implied repeal or of an exclusive procedure that leads to anomalous results.

14. As the preamble thereto shows, the purpose of the Wakf Act is to provide for the better administration and supervision of Wakfs. Section 2 of the Act says that, save as otherwise expressly provided under the Act, the Act shall apply to all wakfs whether created before or after the commencement of the Act. But that does not mean that other laws like the CPC shall not apply. By Section 15, the

general superintendence of all wakfs in a State is vested in the Board established for the State, and it is the duty of the Board to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and that the income thereof is duly applied to the intended objects. To this end this section and other sections of the Act give the Board extensive powers, and, almost all the reliefs enumerated in Sub-section (1) of Section 92 of the Code are within the power of the Board. With regard to what is beyond its powers, Section 55(1) enables the Board Itself to file a Wit without obtaining the consent of any other authority. A private party can therefore move the Board for reliefs which the Board itself can grant; for reliefs beyond its competence he can persuade the Board to institute a suit. Therefore, it is only in cases where the Board itself declines to act either by granting the relief sought, or by instituting a suit for the purpose, that it will be necessary for a private party to institute a suit. That being so, it would not be surprising if the legislature thought it wise to curtail a private party's right of suit by requiring him to comply with both Sub-section (2) of Section 55 of the Wakf Act and with Section 92 of the Code. The very fact that the legislature armed the Board with very extensive powers so far as the administration of wakfs was concerned, inclusive of the power to bring a suit without complying with Section 92 of the Code, is good reason for thinking that, so far as suits by private parties are concerned Section 55 of the Wakf Act was intended to supplement and not to replace Section 92 of the Code. In other words, the entire subject-matter of Section 92 of the Code is not taken away by Section 55 of the Wakf Act.

15. In our view the appellant's petition was rightly dismissed. Therefore we dismissed his appeal with costs.

Vaidialingam, J.

16. With great respect, I regret, I am not able to agree with the view expressed just now by my learned brother Mr. Justice P. T. Raman Nayar, on behalf of himself and Mr. Justice Joseph.

17. The short point that arises for decision by this full Bench is, as to whether the application filed by respondents 2 and 3 in this appeal, before the District Collector, Trichur, for sanction, u/s 92 of the Code of Civil Procedure, to sire the appellant and the other trustees Respondents 4 to 9, is maintainable, in view of Section 55(2) of the Wakf Act, 1954, Central Act XXIX of 1954. The circumstances under which the appeal arises may be briefly indicated. Respondents 2 and 3 filed an application before the District Collector of Trichur, u/s 92 of the CPC to sue the trustees, including the appellant, as representing the Abdul-sathar Haji Moosa Dharmasthapanam Trust, claiming certain reliefs.

18. The appellant, and the 5th respondent in this appeal, took a preliminary objection before the District Collector regarding the maintainability of such an application, and also questioning the jurisdiction of the District collector to proceed further in the matter.

19. The District Collector, by his order dated 23-1-1957 overruled the preliminary objection raised regarding the maintainability of the application and also his jurisdiction to proceed further with the enquiry. According to the District Collector, whose order has been extracted in the judgment, which is under attack in this appeal, his jurisdiction u/s 92 of the CPC has in no way been abrogated by the provisions of Section 55(2) of the Wakf Act. It is the further view of the District Collector that in addition to the sanction referred to in Section 92 of the Code of Civil Procedure, the persons or authority referred to in Section 55(2) of the Wakf Act, have in addition, to take also the consent in writing of the Wakf Board.

20. The appellant challenged this decision of the District Collector, by filing a writ petition in this Court, under Article 226 of the Constitution, namely, O. P. No. 257 of 1957. Our learned brother, Mr. Justice M. S. Menon, as he then was, by his order dated 26th June 1957 agreeing with the view of the District Collector dismissed the writ petition, even at the admission stage. According to the learned Judge the necessity to obtain (a) the leave referred to in the Religious Endowments Act, 1863, and (b) the consent referred to in Section 92 of the Code of Civil Procedure, 1908, are dispensed with only in the case of suits instituted by the Board, and not in the case of suits instituted by any person or authority, other than the Board.

21. The appeal appears to have come in the first instance, before the learned Acting Chief Justice Mr. Sankarant and Mr. Justice Varadaraja Iyengar and as they were of the view that the matter required to be considered by a Full Bench this appeal has accordingly come before us.

22. As the main stand taken by the appellant's learned counsel, Mr. V. K. K. Menon, is that there is an implied repeal of the requirement for obtaining leave under the Religious Endowments Act and for obtaining sanction under the Code of Civil Procedure, the scheme of the Wakf Act becomes very material.

23. Before I advert to some of the provisions in the said Act, it is necessary to refer to the relevant provisions in the Religious Endowments Act, Act XX of 1863, as well as Section 92 of the Code of Civil Procedure.

24. Section 14 of the former Act is as follows:

"Any person or persons Interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively; and the Civil Court may direct the specific performance of any act by such trustee, manager, superintendent or member of a committee, and

may decree damages and costs against such trustee, manager, superintendent or member of a committee, and may also direct the removal of such trustee, manager, superintendent or member of a committee".

Section 18 again which deals with leave of court being obtained, is as follows:--

"No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit.

The Court, on the perusal of the application shall determine whether there are sufficient prima facie "grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

If the Court shall be of opinion that the suit has been for the benefit of the trust and that no party to the suit is in fault, the Court may order the costs of such portion as it may consider just to be paid out of the estate".

Section 92 of the CPC as it now stands, is as follows :

"92. Public charities -- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an Interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree-

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, or by any corresponding law in force in the territories which immediately before the 1st November 1956 were comprised in Part B States no suit claiming any of the

reliefs specified in Sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section".

25. u/s 93 of the Code of Civil Procedure, it is provided that the powers conferred by Sections 91 and 92 on the Advocate General, may, outside the presidency-towns, be, With the previous sanction of the State Government, exercised also by the Collector or by such officer as the State Government may appoint. Therefore, the reliefs that can be asked for even in an application that may be filed before the Collector u/s 93 must be those reliefs referred to in Sub-section (1) of Section 92 of the Code of Civil Procedure.

26. This is a convenient stage to note some of the relevant sections in the Wakf Act, 1954. The Act, as the preamble shows, is to provide for the better administration and supervision of wakfs. The relevant part of Section 2, excluding the proviso, is as follows:

"Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act."

From that it will be seen that except otherwise provided under the Act itself, the provisions of the Act shall apply to all wakfs. Sections 3 (c) and 3 (1) defines respectively, the expressions, "Board", and "Wakf".

27. Chapter II relates to survey of wakfs, and chapter III deals with establishment of Boards and their functions. Section 9 occurring in Chapter III deals with the establishment of a Board of Wakfs by the State Government; and the constitution of the Board is laid down in Section 10. Section 10 will show that the Board is to consist of 11 members in the case of a state and the union territory of Delhi and of five members in the case of any other Union territory. u/s 11, dealing with the appointment of members to the Board, it will be seen that the Board will comprise of members of the State Legislature and members of Parliament representing the State, persons having special knowledge of Muslim law and representing associations referred to therein, persons having special knowledge of administration, finance or law, and mutawallis of wakfs situate within the State.

28. Section 15 deals with the functions and powers of the Board. In particular, u/s 15 (1), it will be seen that the general superintendence of all wakfs in a State shall vest in the Board, established for the State, and it is also the duty of the Board to exercise its powers under the Act to ensure that the Wakfs under its superintendence, are properly maintained, controlled and administered and the income thereof is duly applied to the objects for which the wakfs were created. Sub-section (2) also enumerates certain other functions, which the Board is to discharge. A glance at the various matters provided therein will show that the Board has got jurisdiction to give directions for the administration of wakfs, to settle schemes of management for wakfs, to scrutinise and approve budgets, to appoint and remove mutawallis, to institute and defend suits and proceedings in

courts and to do all such acts as may be necessary for the proper administration and superintendence of a wakf.

29. Chapter IV deals with registration of wakfs and Chapter V deals with Mutawallis and wakf accounts. Chapter VI deals with finance of the Board.

30. Chapter VII deals with "judicial proceedings", and in that chapter is to be found the group of sections, beginning from Section 55 and ending with Section 61. The relevant provision, with which we are now concerned, is Section 55, which is as follows:

"55 (1) A suit to obtain any of the reliefs mentioned in Section 14 of the Religious Endowments Act, 1863 and in Section 92 of the Code of Civil Procedure, 1908, relating to any wakf may, notwithstanding anything to the contrary contained in those Acts, be instituted by the Board without obtaining the leave or consent referred to in those Acts.

(2) No suit to obtain any of the reliefs referred to in Sub-section (1) relating to wakf shall be instituted by any person or authority other than the Board without the consent in writing of the Board.

"Provided that no such consent shall be required for the institution of a suit against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules or orders made thereunder".

31. Section 57 provides for notice of suits being given by the parties, when they propose to institute suits as against the Board, and there are several other matters referred to in the other sections, which may not really be necessary to be considered, chapter VIII deals with miscellaneous matters. Section 69, occurring in that chapter, states that the enactments mentioned therein shall not apply to any wakf to which the Act applies. In particular, it will be noted that Section 5 of the Religious Endowments Act, 1863, is not made applicable by virtue of Section 69 (1) (2) of the Act.

32. The main contention of the learned counsel for the appellant Mr. V. K. K. Menon, is that "judicial proceedings" are dealt with in Chapter VII. In particular, reliefs that could be asked for in a suit u/s 14 of the Religious Endowments Act, 1863, and Section 92 of the Code of Civil Procedure, are dealt with u/s 55(1) and (2) of the Act. The learned counsel urged that Section 55(1) specifically provides that notwithstanding, anything to the contrary contained in the Religious Endowments Act or the Code of Civil Procedure, the Board is, entitled to file a suit, without obtaining the leave or consent referred to in those Acts, to obtain any of the reliefs, mentioned in Section 14 of the Religious Endowments Act, 1863 and Section 92 of the CPC Having abrogated by Section 55(1) the necessity for obtaining the leave or consent when the Board institutes a suit, the learned counsel urged, that under Sub-section (2), the legislature has categorically stated that no suit to obtain any of the reliefs referred to in Sub-section (1) shall be instituted by any person or authority, without the consent in writing of the

Board. According to Mr. V. K. K. Menon, both the sub-sections in Section 55, completely exhaust the nature of persons who can file suits, namely, the Board on the one hand and any person or authority on the other. Inasmuch as Sub-section 2 of Section 55 clearly relates to the reliefs mentioned in Sub-section (1) which in turn again refers to reliefs u/s 14 of the Religious Endowments Act and Section 92 of the Code of Civil Procedure, it follows that the legislature has made an identical provision regarding the institution of suits in respect of these reliefs by the person or authority other than the Board. The prohibition is that such a suit cannot be tiled without the consent in writing of the Boards. This amounts, according to the learned counsel, to an implied repeal of the necessity of obtaining a leave u/s 18 of the Religious Endowments Act or the consent u/s 92 of the Code of Civil Procedure. The learned counsel also urged that the provisions of the Wakf Act are special provisions relating exclusively to wakfs and the Act having clothed the Wakf Board with very large jurisdiction and authority the legislature has abrogated impfiedly the necessity of the person or authority to get either the leave of the court under the Religious Endowments Act or of the Advocate General, u/s 92 of the Code of Civil Procedure.

33. No doubt there was a contention raised on the basis of Section 4 of the Code of Civil Procedure. That is, according to the learned counsel the Wakf Act is to be considered to be a special Act dealing with a special matter and prescribing a different procedure and, therefore, the procedure indicated in the Wakf Act which is a later Act will be saved by Section 4(1) of the Code of Civil Procedure. The learned counsel also has cited certain decisions on this aspect. In my view, it is not really necessary for us to go into that aspect, because the essential point that has to be considered is whether the legislature, by incorporating Section 55(2) In the Wakf Act, has impliedly repealed the relevant provisions of the Religious Endowments Act regarding the obtaining of leave, and the Coda of Civil Procedure, regarding the obtaining of consent. If this contention is accepted, the question regarding the applicability or otherwise of Section 4(1) of the CPC does not arise at all.

34. Mr. V. K. K. Menon, learned counsel for the appellant, has also drawn our attention to certain passages in Maxwell's Interpretation of Statutes and also Statute Law by Crales, as to the circumstances under which, a court can infer implied repeal of a former enactment. Mr. V. K. K. Menon, learned counsel, also urged that if the intention of the legislature was that leave under the Religious Endowments Act, 1863, and consent u/s 92 of the CPC should also be obtained in addition to the consent in writing of the Board required u/s 55(2) the legislature would certainly have provided to that effect in the statute, and there being no such indication, the learned counsel urged that the only inference possible is of an implied repeal of the necessity of obtaining either the leave or consent under the relevant statutes. Learned counsel also urged that there is nothing in the Wakf Act 1954 to Indicate that the intention of the legislature was that suits in respect of wakfs instituted by any person or authority should also be subject to the other conditions mentioned in the Religious Endowments Act or the Code of

Civil Procedure. The learned counsel wound up his discussion on this aspect by urging that there is a clear inconsistency regarding the authority who is to grant the leave or to give the sanction under the Religious Endowments Act and the CPC on the one hand, and the provisions contained in Section 55(2) of the Wakf Act about the obtaining of consent of the Board.

35. On the other hand, Mr. K. J. Malavia, learned counsel for the contesting respondents 2 and 3, urged that the requirements of the Board's consent, in writing u/s 55(2) of the Wakf Act, is really in addition to the leave or consent as provided in the Religious Endowments Act, 1863, Section 92 of the Code of Civil Procedure. The provision regarding leave and consent in the other statutes is quite irreconcilable with the requirement u/s 55(2). There is no intention on the part of the legislature that the provision contained in Section 55(2) is to be a complete substitute for the requirements under either the Religious Endowments Act, 1863, or Section 92 of the Code of Civil Procedure. It cannot certainly be stated that the provision u/s 55(2) is inconsistent with the provisions regarding leave and consent under the other appropriate enactments.

36. Mr. Malavia further urged that the legislature was fully conscious of the requirement regarding obtaining of leave in respect of the reliefs provided in Section 14 of the Religious Endowments Act, 1863, and about the requirement of obtaining consent u/s 92 of the Code of Civil Procedure. That the legislature was conscious of this fact is clear when it specifically referred in Section 55(1) to these facts and also categorically stated that so far as the Board is concerned, there is no necessity for the Board to obtain either the leave or consent referred to in those two Acts, and there is also the further provision in Section 55(1) of the Act that the powers of the Board to institute a suit u/s 55(1) are not in any way restricted by anything that is said to the contrary in the Religious Endowments Act or Section 92 of the Code of Civil Procedure.

37. It was perfectly competent to Parliament when dealing with suits to be instituted also by any person or authority, other than the Board u/s 55(2) of the Wakf Act, to have provided that it is necessary to obtain the consent in writing of the Board only. The legislature has not chosen to say so. Therefore, reading Section 55(1) and Section 55(2), the learned counsel urged that the intention of Parliament is clear that it wanted to remove the prohibition regarding consent or leave only when the Board figures as a plaintiff and not when any person or authority figures as a plaintiff. There is absolutely no ambiguity in the intention of the legislature. Mr. Malavia also urged that there is absolutely no inconvenience or hardship flowing from holding that a person or authority, instituting a suit claiming the reliefs referred to in Section 14 of the Religious Endowments Act and Section 92 of the CPC relating to a wakf, can so institute a suit only after obtaining the consent or leave under the relevant statutes and also the consent of the Board as required u/s 55(2) of the Wakf Act.

38. Learned counsel urged that unless this court holds that the provisions of Section 55(2) of the wakf Act are so inconsistent or irreconcilable with the other

relevant provisions in the Religious Endowments Act or the Code of Civil Procedure, this Court should not infer an implied repeal of the requirement of either leave or consent. Mr. Malavia also referred to certain passages in Statutory Construction by Crawford to the effect that merely because a later enactment may relate to the same subject-matter as that of an earlier statute is not by itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative and that an implied repeal will not take place unless the two statutes are inconsistent and irreconcilable or unless the new statute is clearly Intended as a complete substitute for the old one.

39. Mr. Malavia quite naturally referred us to the provisions made in the Madras Hindu Religious and Charitable Endowments Act, Madras Act 19 of 1951. He particularly referred us to Section 5 of the said Act, where certain statutes either in whole or in part have been either repealed or not made applicable to, Hindu Religious institutions and endowments. In particular Section 5(3) (b) and (e) are to the effect that the Religious Endowments Act, 1863, and Sections 92 and 93 of the Code of Civil Procedure, 1908, shall cease to apply to Hindu Religious institutions and endowments. That is, relying upon such a provision, the learned counsel urged that it would have been perfectly competent to Parliament, when enacting the wakf Act, to make similar provisions regarding the non-application of the Religious Endowments Act, 1863, or Sections 92 and 93 of the Code of Civil Procedure. The learned counsel also urged that in the Wakf Act itself there is a special provision made by Section 69(1) to the effect that the enactments mentioned therein shall not apply to any Wakf, to which the Act applies, and in particular, the learned counsel placed considerable reliance upon Section 69 (1), (2) of the Act wherein Section 5 of the Religious Endowments Act, 1863, is one of the enactments which has been stated not to apply.

Mr. Malavia urged that when the legislature has categorically dealt with a part of the Religious Endowments ACT, 1863, which Act is again referred to in Section 55(1) as not being applicable to Wakfs, there is no further indication in Section 69, that the other parts of the Religious Endowments Act are not applicable and there is absolutely no provision made in Section 69 regarding the non-applicability of Sections 92 and 93 of the Code of Civil Procedure. Therefore, the learned counsel urged that the requirement u/s 55(2) of the Wakf Act is only in addition to the requirements which have already been laid down under the Religious Endowments Act and Section 92 of the coda of Civil Procedure.

40. After considering the various aspects that have been presented before us by Mr. V. K. K. Menon, learned counsel for the appellant, and Mr. K. J. Malavia, learned counsel for the contesting respondents, in my view, the contentions of Mr. V. K. K. Menon for the appellant will have to be accepted.

41. At this stage, it may be mentioned, that no controversy has been raised before us by any of the parties that the suit, to institute which, the consent has been asked for by respondents 2 and 3 Section 92 read with Section 93 of the Code of Civil Procedure, comprises reliefs not contemplated by Section 92 of the

Code of Civil Procedure. There is also no controversy that the suit relates to a wakf as that expression is defined in Section 3(1) of the Wakf Act 1954. If such a suit is instituted to obtain all or any of the reliefs mentioned in Section 92 by the Board constituted under the Wakfs Act, 1954, there is no controversy, that the Board need not get the consent provided u/s 92 of the Code of Civil Procedure. But the question is whether such consent referred to in Section 92 of the Code of Civil Procedure, is necessary when respondents 2 and 3 propose to institute a suit, and the further question arises as to whether the first respondent, namely, the District Collector, has got jurisdiction to entertain an application for grant of consent, u/s 92 read with Section 93 of the Code of Civil procedure, and whether he has got jurisdiction to enquire into that matter and adjudicate upon the same.

42. The rule of construction regarding the circumstances when a court can infer an implied repeal of a former enactment appears to be more or less fairly clear from the various passages that have been cited before us. In Craies Statute Law, 5th Edition, at page 338, it is stated that where two Acts are inconsistent or repugnant the later will be read as having impliedly repealed the earlier. The learned author also states at page 338, that the latest expression of the will of Parliament must always prevail. At page 338 the learned author further states that before coming to the conclusion that there is repeal by implication, the court must be satisfied that the two enactments are so inconsistent or repugnant that they cannot stand together. That is, a repeal must, if not express, flow from necessary implication. The learned author also states at page 339, that where the terms of a later enactment, taken in their primary meaning, are wide enough to abrogate the prior enactment, they will be read as repealing it, and to determine whether a later statute repeals by implication an earlier one, it is necessary to scrutinise the terms and consider the true meaning and effect of the earlier Act. Crawford in his book on Statutory Construction at page 634, after stating that an implied repeal will not take place unless the two statutes are inconsistent or irreconcilable, is of the view that if there is some expression of the legislative intent to be gathered from the statute, to repeal the existing statute then the repeal of the other statute can be inferred. No doubt, the learned author also states that merely because a later enactment may relate to the same subject-matter as that of an earlier statute, is not by itself sufficient to cause an implied repeal of the latter, since the new law may be cumulative.

43. In Halsbury's Laws of England, 3rd Edition, Vol. 36, at p. 465, the learned author states that repeal by implication is not favoured by the courts for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a law without expressing its intention to do so. But the learned author also states that if however provisions are enacted which cannot be reconciled with those of existing statute, the only inference possible is that Parliament intended that the provisions of the existing statute should cease to have effect and an intention so evinced is effective as one expressed in terms. The learned author also states that the rule is that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to the other or

if the two are incapable of standing together.

44. Maxwell on Interpretation of Statutes, 10th Edition, page 161, states that the principle is "*Leges postiores priores contraries abrogant*", i.e., later laws repeal earlier laws inconsistent therewith. Again at page 170, the learned author states that it is a reasonable presumption, that the legislature did not intend to keep really contradictory enactments on the statute book or on the other hand to effect so important a measure as the repeal of a law without expressing an intention to do so. The principle is also stated to be that if on the same subject, there are two competing Acts, and if the provisions of the later Act are so inconsistent with or repugnant to those of the earlier Act, then the two cannot stand together and the earlier Act stands impliedly repealed by the later. The principle is also stated to be that where the same power is given to two different bodies, the exercise of those powers concurrently by both bodies would be entirely destructive of the object for which they are conferred and therefore they cannot exist together. Under these circumstances, in accordance with the general principles the power more recently conferred overrides that which was conferred by the prior Act. A decision on the question that arises for consideration before us will have to be given having due regard to the various principles referred to above. That is, ultimately the question will be whether the provisions of Section 55(2) of the Wakf Act are so inconsistent with or repugnant to those regarding obtaining of leave contained in the Religious Endowments Act, 1863, or the obtaining of consent u/s 92 of the Code of Civil Procedure.

45. At this stage I may mention that the decisions of the Supreme Court reported in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, and *Deep Chand Vs. The State of Uttar Pradesh and Others*, have also been referred to by the learned counsel for the contesting respondents. In my view, it is not really necessary to advert to these decisions, because admittedly the Supreme Court was dealing with the question of repugnancy and occupied field arising under Article 254 of the Constitution. In this case there is no question of any such conflict between the powers exercised by the Parliament and the State legislature. On the other hand, the Central Legislature which enacted the Religious Endowments Act, 1863, and the CPC has also enacted the Wakf Act of 1954. Therefore, the doctrine of repugnancy or occupied field has no application whatsoever.

46. The Religious Endowments Act dealt with various matters including Wakfs. Section 92 of the CPC deals with ail trusts created for public purposes of a charitable or religious nature, whereas the Wakf Act 1954 is a special enactment dealing only with Wakfs, as that expression is defined u/s 3(m) of the Act it is admittedly an enactment, which provides for the better administration and supervision of Wakfs. The scheme of the Act clearly shows that the intention of the legislature was to confer wide and large powers on the Wakf Board and the Act itself deals with the various matters relating to Wakfs. Section 2 of the Act, I have already indicated, is very clear to the effect that the Act shall apply to all

Wakfs except as otherwise expressly provided under the Act. Section 55(1) of the Wakf Act clearly deals with a suit to obtain reliefs mentioned in Section 14 of the Religious Endowments Act 1863 and Section 92 of the Code of Civil Procedure, 1908. But for the provisions contained in Section 55(1). It would be difficult to urge that the Wakf Board can institute an action to obtain those reliefs without obtaining the leave under the Religious Endowments Act or the consent u/s 92 of the Code of Civil Procedure. That is why the Statute has made clearly a provision in Section 55(1), enabling the Board to institute such a suit claiming the reliefs referred to in Section 14 of the Religious Endowments Act or Section 92 of the CPC without leave or consent. Section 55(1) Is clearly an enabling provision in that it enables the Board to institute a suit without obtaining either the leave or consent-referred to in the relevant statutes.

47. Having provided in that manner in Section 55(1) the legislature, there cannot be any controversy, deals again u/s 55(2) with a suit claiming the same reliefs but no doubt instituted by any person or authority other than the Board. But the reliefs that are contemplated in such a suit are certainly the reliefs referred to in Sub-section (1) of Section 55. That again in turn must be related to the reliefs mentioned in Section 14 of the Religious Endowments Act, 1863, and Section 92 of the Code of Civil Procedure. Sub-section (2) of Section 55 is quite clear in that it totally prohibits the institution of suit by any person or authority to obtain the reliefs referred to in Sub-section (1) without the consent in writing of the Board. If Parliament intended that the consent of the Board is to be in addition to the leave or consent referred to in the Religious Endowments Act or the Code of Civil Procedure, in my view, such an intention would have been clearly expressed by the Legislature in Section 55(2) by adding the word "also" after the expression "in writing of the Board". Admittedly no such expression occurs in Section 55(2).

48. Section 55(1) and (2) comprises all the suits that may be instituted for obtaining the reliefs referred to in Section 14 of the Religious Endowments Act or Section 92 of the CPC relating to a wakf by (1) the Board, (2) any person and (3) any authority. While in Section 55(1) the legislature enables such a suit being filed by the Board without the consent or leave, in Section 55(2) regarding the same reliefs that are dealt with in Section 55(1), the legislature totally prohibits the institution of such a suit by any person or authority without the consent in writing of the Board.

49. No doubt, according to Mr. Malavia, there is absolutely no inconsistency between what is stated in Section 55(2) and the relevant provisions in the Religious Endowments Act and in the Code of Civil Procedure. I will presently show that this reasoning cannot certainly be accepted. I will also indicate that there is inconsistency and the two requirements as urged by Mr. Malavia cannot stand scrutiny because an acceptance of the contentions of Mr. Malavia will lead to very incongruous results, not contemplated by the legislature.

50. Section 14 of the Religious Endowments Act is only an enabling provision permitting the institution of a suit by any person or persons interested in any

mosque etc. claiming the reliefs referred to therein. The making of an application to the court and the grant of leave by the court to institute such a suit is to be found in Section 18 of the said Act. I have extracted Section 18 in the earlier part of my judgment. That section again prohibits the institution of a suit under the Act, which will also take in a suit u/s 14, without an application being first made to the court for leave to institute such suit and Section 18 also provides for the grant of leave by the court.

51. Again, Section 92(1) of the Code of Civil Procedure is really an enabling section, which permits the institution of a suit in respect of matters mentioned therein claiming reliefs under the circumstances stated in that section. Section 92(2) of the CPC again prohibits the Institution of a suit claiming reliefs referred to in Sub-section (1) except in conformity with that sub-section.

52. Similarly, Section 55(1) of the Wakf Act is an enabling section giving power to the Board to institute a suit claiming the reliefs referred to in Section 14 of the Religious Endowments Act and Section 92 of the Code of Civil Procedure, without the leave or consent referred to in those statutes. Section 55(2) is a section prohibiting the institution of a suit for those reliefs by a person or authority without obtaining the consent in writing of the Board.

53. Now take for instance a suit that has to be instituted relating to a wakf claiming reliefs referred to in Section 14 of the Religious Endowments Act. Section 18 of that Act prohibits the institution of such a suit without obtaining the leave of the court; Whereas Section 55(2) of the Wakf Act prohibits the institution of such a suit without the consent in writing of the Board. Is there not a real Inconsistency with the prohibition contained in Section 18 of the Religious Endowments Act and Section 55(2) of the Wakf Act. Again, take for instance a suit has to be instituted against a wakf claiming the reliefs referred to in Section 92(1) of the Code of Civil Procedure. u/s 92(2) of the Code there is a prohibition from instituting a suit except in accordance with Sub-section (1), that is without obtaining the consent in writing of the Advocate General; whereas Section 55(2) prohibits the institution of such a suit without the consent in writing of the Board. Can this provision stand along with the prohibition contained in Section 92(2). In my view, it cannot. That is, to the extent to which the Parliament provided in Sub-section (2) of Section 55 regarding consent in writing of the Board being obtained, that prohibition alone will have to stand and the prohibition contained in Section 18 of the Religious Endowments Act in-so far as it relates to reliefs referred to in Section 14 of that Act and the prohibition contained in Section 92(2) of the CPC in so far as it relates to the reliefs mentioned in Section 92(1) should be considered to have been abrogated in respect of suits relating to wakfs, the prohibitions contained in the Religious Endowments Act or the prohibition in the CPC referred to above, in my view, cannot certainly stand along with the prohibition contained in Section 55(2) of the Wakf Act.

54. No doubt, Mr. Malavia urged that the provisions in Section 55(2) should be considered to be cumulative or- in addition to what is required under the other

two statutes. If the intention of the legislature is made so clear in Section 55(2), this contention can certainly be accepted. If such an intention is clear, the circumstance that a party will have to go round half a dozen persons, for getting their leave or consent and the hardship that may be caused thereby are not certainly relevant. But the question is is it the intention of Parliament that the provisions of Section 55(2) are in addition to the requirements already laid down in the Religious Endowments Act and the Code of Civil Procedure. In my view, the provisions of Section 55 (2) cannot be considered to be cumulative or in addition to the requirements in the other statutes. Accepting this contention will again read to very incongruous and inconvenient results. That is, so far as a suit relating to a wakf claiming relief u/s 14 of the Religious Endowments Act and Section 92 of the CPC any person or authority will have to get not only the necessary leave or consent in writing of the Board. The Board may consider an application made to it and taking into account all circumstances may decline to give its consent to the institution of the proposed suit u/s 55(2). Similarly, an application could have also been filed before either the Advocate General or the Collector in cases coming u/s 92 of the CPC or before a court in matters coming u/s 14 of the Religious Endowments Act. The Advocate General or the Collector or the Court may have simultaneously considered that application and decided to grant the consent or leave asked for. Similarly, there may be cases where the Advocate General or the Collector or the Court declines to grant the consent or leave and at about the same time or even on the same day the Board may very well grant the consent asked for u/s 55(2). Did Parliament intend that in respect of suits relating to a wakf this situation or contingency should arise. Because if the consent of the Board also is to be obtained and if the requirement as regards consent u/s 92 of the CPC or leave under the Religious Endowments Act is to be insisted upon, such a situation and contingency may very often arise and in effect no suit can be filed in respect of a wakf. If the statute is very clear that such a contingency may arise is no decisive factor. But when Parliament has enacted a statute exclusively in order to provide for the better administration and supervision of wakfs as it has done by enacting the Wakf Act, 1954, in my view the legislature certainly did not intend any such awkward situation arising in such matters. I have referred to an these matters only to emphasise that the leave required under the Religious Endowments Act and the consent u/s 92 of the CPC cannot certainly stand side by side with the requirement regarding consent of the Board u/s 55(2) of the Wakf Act.

55. No doubt, Mr. Malavia placed some reliance upon the provisions of Section 69 of the Wakf Act. He is certainly justified in his contention that the legislature has specifically stated in that section that the enactments referred to therein shall not apply to any wakf to which the Act applies. As I mentioned earlier, he has also placed reliance upon Section 69(1) (2) wherein it is specifically stated that Section 5 of the Religious Endowments Act, 1863 will not apply to any wakf to which the Act applies. That is, according to the learned counsel when such provisions have been made in Section 69 of the Act the legislature would have

certainly referred to the provisions of Sections 92 and 93 of the CPC and also Section 18 of the Religious Endowments Act in respect of suits that are to be instituted by any person or authority.

56. Though it may prima facie appear that there is some force in this contention, in my view, it is not possible to accept this line of reasoning. When once the legislature has dealt with the entire matter regarding suits to obtain reliefs mentioned in Section 14 of the Religious Endowments Act and Section 92 of the CPC in Section 55(1) and (2) of the Act in two parts, it was absolutely unnecessary further to refer to that aspect in Section 69 on which the learned counsel for the contesting respondents has placed some reliance.

57. To conclude, in my view, the requirement regarding leave under the Religious Endowments Act, 1863, or the requirement regarding consent u/s 92 of the CPC are really inconsistent and irreconcilable with the provisions of Section 55 (2) of the Wakf Act wherein the legislature has categorically placed a prohibition regarding the institution of suits without the consent in writing of the Board. Therefore after the enactment of Section 55(2) of the Wakf Act, it must be held that the provisions regarding leave or consent as the case may stand abrogated to the extent that the suit relates to wakfs and claims reliefs u/s 14 of the Religious Endowments Act or Section 92 of the Code of Civil Procedure. In consequence it further follows that respondents 2 and 3 have no right to invoke the jurisdiction of the Collector u/s 92 read with Section 93 of the CPC and it must also be held that inasmuch as the said application is not maintainable the first respondent has absolutely no jurisdiction to entertain the application filed by respondents 2 and 3 nor has he any jurisdiction to proceed further to adjudicate upon that application.

58. In my view, the order of the learned Judge will have to be set aside, the appeal allowed and the writ petition, O. P. No. 257 of 1957 ordered by issuing a writ of prohibition restraining the first respondent from proceeding further with the application filed before him by respondents 2 and 3. The parties will bear their own costs in this appeal.

Appeal Suit No. 328 of 1957

BY THE COURT

59. In accordance with the majority opinion the appeal is dismissed with costs.