

(2000) 11 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13983 of 1989 and AS No. 1149 of 1994

Mohd. Riazuddin and others

APPELLANT

Vs

Govt. of A.P. and others

RESPONDENT

Date of Decision : 02-11-2000

Acts Referred:

Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 — Section 1, 10, 2(1), 24, 3
Andhra Pradesh (Telangana Area) Abolition of Inams Rules, 1975 — Rule 5
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)
Waqf Act, 1954 — Section 3(1)

Citation : (2000) 6 ALD 756 : (2000) 6 ALT 239

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. K. Pratap Reddy, for the Appellant; Government Pleader for Revenue, Mr. A.M. Qureshi, SC for Wakf Board and Mr. G. Seetaramaiah, for the Respondent

Judgement

1. The writ petition and the regular first appeal are clubbed together as they relate to the land in Sy.No.225 admeasuring Ac.1-39 guntas (hereafter called "the inam land1) of Nizamabad. This common order shall dispose of the writ petition as well as appeal.

2. The writ petition is filed challenging the appellate order of the District Collector, Nizamabad, the second respondent herein, in proceedings No.C/36/86 dated 18-9-1989 under the A.P. (Telangana Area) Abolition of Inams Act, 1955 (hereafter called "the Inams Act"). AS No.1149 of 1994 is filed against the judgment and decree dated 28-4-1994 in OS No.145 of 1987 filed by the A.P. State Wakf Board (hereafter called "the Wakf Board" which is 4th respondent in the writ petition) on the file of the Court of the Subordinate Judge, Nizamabad. The said suit is for declaration and perpetual injunction in respect of the suit property admeasuring Ac. 1-39 guntas comprised in Sy.No.225 against three

defendants who are the petitioners in WP No.13983 of 1989. For the sake of convenience, the parties shall be referred by their status in the writ petition.

3. The litigation in respect of inam land has a long history. There are proceedings between Tanzeemi Committee (Madina Masjid), Nizamabad and the petitioners or their predecessors in title, proceedings between the Wakf Board and the petitioners or their predecessors in title and proceedings between respondents 6 to 9 and the petitioners from 1963 onwards. There were also proceedings between the predecessors in title of the petitioners and the erstwhile Government of Hyderabad. Therefore, it is necessary to notice the facts as culled out from voluminous record - pleadings, documents marked in earlier suits and proceedings, orders by various authorities including this Court.

4. The Nizam of Hyderabad granted a Muntakliab (Decree) No.223 in the name of one Jama! Shah, S/o Suleman Shah in respect of Ac.5-33 gts. of Boregaon village and Ac.2-33 gts. of Nizamabad village. This was in 1282-F corresponding to 1872-1873 A.D. After the death of Jama! Shah in 1302-F (1892-93 AD), a fresh grant by way of succession was granted to Suleman Shah S/o Jamal Shah. The land in Nizamabad originally comprised in Sy.Nos. 134 and 135, which were re-numbered later Sy.No.134 was re-numbered as 101/1 and Sy.No.135 as 101/2. Subsequently an extent of Ac.0-34 gts. was classified as graveyard leaving Ac. 1-39 gts. in re-numbered Sy.No.225. The dispute in this case as mentioned in the beginning is only with regard Sy.No.225 admeasuring Ac. 1-39 gts.

5. In 1924, the then Collector proposed to acquire the land in Sy.No.101/1 and 101/2 for the purpose of a graveyard. After conducting inspection, the Collector, Nizamabad, considering the grievance of inamdar, issued proceedings on 25-1-1924 deciding to exclude the land from acquisition proceedings. After the death of Suleman Shah, his son Nooruddin approached the Collector claiming succession to inam. After thorough enquiry under Atiyat Enquiry Act, the Collector by order dated 9-2-1930 (8th Fervardi 1339-F) granted succession in case No.18 of 1958. The Collector held that the inam is "Madad-e-Mash" (free grant). Nooruddin enjoyed the property without any objections.

6. In 1963, Nooruddin, father of the third petitioner leased out the lands to one Mumtaz AH for construction of a firewood shop. The Tanzeemi Committee of Madina Masjid questioned the permission granted by the Nizamabad Municipality for selling up firewood shop. By an order dated 25-5-1964, the Collector set aside the permission granted by the Municipality and directed the parties to approach the competent civil Court. The matter was carried to the Government by way of revision. The Government, vide G.O. Ms. No.254, dated 12-3-1965, while rejecting the revision petition of Nooruddin directed the parties to seek redressal in Civil Court or Atiyat Court. The Wakf Board also advised the Tanzeemi Committee to approach the Civil Court.

7. The brother of Nooruddin, one Raftuddin (who is the father of the second

petitioner) and others filed a suit being O.S.No.77 of 1970 on the file of the Court of the Subordinate Judge, Nizamabad for declaration of title and permanent injunction restraining the defendants who claimed to be the leaders of Muslim community from interfering with their possession. The suit was dismissed on 28-11-1974. In appeal against the judgment and decree of the trial Court, this Court, by judgment dated 20-7-1979 in A.S.No.290 of 1976 decreed the suit holding that the plaintiffs (heirs of Suleman Shah) are entitled for a declaration that they are the owners of the suit schedule land and the defendants were restrained from interfering with the possession of the plaintiffs over the land. It is pertinent to notice that this Court rejected the contention of the defendants in the suit that the land was acquired by the Government and that it was being used as a grave yard for Muslims. This Court relied on the relevant revenue records (Khasra pahanis for 1954-55) and also the report of the Court Commissioner and recorded a finding that out of the total extent only an extent of about Ac.0.34 gts. is graveyard.

8. The defendants filed LPA No.108 of 1979 against the judgment and decree of the learned single Judge. The same was dismissed on 2-6-1987. The matter was carried to the Supreme Court. The SLP being S.L.P.No.15065 of 1987 was dismissed by the Supreme Court on 15-3-1988. The Division Bench of this Court while dismissing the LPA observed that the land covered by graveyard in an extent of Ac.0-34 gts. is not the subject matter of the suit, that the proceedings under the Inams Act initiated by the plaintiffs have no relevance so far as the title to the suit land is concerned and the parties may agitate the question before the authorities under the Inams Act. While dismissing the SLP the Supreme Court also made similar observations.

9. When the dispute was pending in the civil Courts at various stages, the A.P. (Telangana Area) Abolition of Inams Act,, 1955 came into force with effect from 20-7-1955. In 1967, another Act with similar title was passed. The 1967 Act was challenged before this Court and the same was declared ultra vires the Constitution (See Raja S. V.Jagannadha Rao and others v. State of A.P. and others 1972 (1) ALT 270). The judgment of this Court declaring the 1967 Act ultra vires was confirmed by the Supreme Court (See Mohd. Shaukat Hussain Khan Vs. State of Andhra Pradesh, . This resulted in reviving 1955 Inams Act with effect from 1 -11 -1973. Be it noted that as held by a Division Bench of this Court, for the purpose of vesting the inam land, the date 20-7-1955 is relevant, whereas for the purpose of deciding the claim as to occupancy right, 1-11-193 is relevant (See B. Ramender Reddy v. District Collector 1993 (2) An.WR 84). When 1967 Act was in force, the competent Revenue Divisional Officer (RDO) granted a patta in favour of inamdars. After 1967 Act was struck down by this Court as unconstitutional, the petitioners again made application in 1975 for grant of fresh patta. By proceedings dated 22-12-1977, the RDO granted patta under 1955 Inams Act vide Certificate No.51 of 1978. Respondents 5 to 9 filed an appeal before the District Collector who by order dated 10-2-1981 set aside the patta and remanded the matter to the competent RDO for fresh enquiry. After

conducting enquiry, the RDO, Nizamabad again issued a patta on 21-8-1986 in favour of the petitioners. Against this order, respondents 5 to 9 preferred appeal before the District Collector, who by the impugned order dated 18-9-1989 allowed the appeal, and directed the third respondent to issue patta in respect of the land in Sy.No.225 to the Wakf Board.

10. The third category of cases relate to other suits. The Wakf Board filed OS No.145 of 1987 on the file of the Court of the Subordinate Judge, Nizamabad for declaration and the title and perpetual injunction. Along with the suit, the Wakf Board filed IA No.810 of 1987 against the petitioners herein for a temporary injunction. The same was dismissed by the trial Court holding that there is no document to show that the Wakf Board is the owner of the land. The matter was carried to this Court by way of Civil Miscellaneous Appeal No.50 of 1988 by the Wakf Board. This Court by an order dated 11-7-1988 dismissed the CM A. The petitioners herein filed I.A.No.1144 of 1989 seeking a temporary injunction against the Wakf Board. The same was granted by the trial Court holding that the land in Sy.No.225 is not Takiadari inam, that it is not a graveyard and that it was never acquired by the Government at any time. Subsequently, the suit was dismissed rejecting all the contentions of the Wakf Board. Against this judgment, A.S.No.I 149 of 1994 is filed. Though this Court initially granted ex parte injunction in CMP No.13318 of 1994 in A.S.No.1149 of 1994, the same was subsequently vacated by order dated 26-10-1994 in CMP No. 14009 of 1994. The Wakf Board again unsuccessfully sought for injunction in CMP No.17487 of 1994 which was dismissed.

11. The case of respondents 2, 4 as well as respondents 5 to 9 may also be summarised in brief. The District Collector, in his counter affidavit states that the land in question is Takiadari service inam and that it was acquired by the Government for the purpose of Muslim graveyard by the Local Fund Office, Indoor (Nizamabad) and the acquisition is binding on the inamdars as well as their heirs. Therefore, ryotwari patta certificate issued by the third respondent in favour of the petitioners is illegal. It is also stated in the counter affidavit that the first application of the petitioners for ryotwari patta was rejected by the third respondent on the ground that the land docs not come within the purview of the Inams Act, and therefore, the second application ought not to have been entertained. After enquiry, it was found that the lands are granted under "MashruMil-Khidmat"-"Takiadari" and therefore, the petitioners were not entitled for ryotwari patta under the Inams Act. The second respondent also denied the allegation that the petitioners are in possession of the land. It is stated that as per the pahanis there are graves in Ac.0-20 gts. of land and the remaining area is kept fallow. All other allegations made by the petitioners regarding earlier litigation the suit, appeal etc., are not specifically denied.

12. The Wakf Board in their counter affidavit have taken a stand that for the purpose of deciding the issue under the Inams Act, the judgment of this Court in AS No.290 of 1976 and other proceedings have no bearing and that having

submitted to the jurisdiction of the authorities under the inams Act the petitioners cannot rely on the proceedings in the civil Court. In spite of the civil proceedings, the authorities under the Inams Act have jurisdiction to adjudicate upon the rights of the parties under the Inams Act.

13. Respondents 5 and 7 have filed a separate counter stating that the earlier civil proceedings have no bearing insofar as the decision under the Inams Act is concerned.

14. The learned senior Counsel for the petitioners, Sri K. Pratap Reddy submits that the impugned order of the District Collector is illegal. He submits that the original Muntakhab in favour of Jamal Shah is not a service inam and it is unburdened inam. The succession certificate granted to Nooruddin, the grant son of Jama! Shah also shows that it is Madad-e-Mash. He submits that though originally the grant in favour of Jama! Shah describes him as Takiadar, that does not convey any meaning. Under the system of inam tenures, every successive grant by the sovereign is a fresh grant which requires to be considered as such ignoring the nature of earlier grant. He also submits that the appeals by respondents 5 to 9 before the District Collector itself is not maintainable as admittedly they did not claim the land under the Inams Act. The District Collector was not right in assuming that the succession granted by the then Collector, Nizamabad was without power or authority; that the land was acquired in 1924 by the Government for the purpose of a graveyard and that the earlier application of the petitioners was already rejected by the RDO. He submits that there was no material before the District Collector to record a finding on these aspects against the petitioners. He also submits that grant in favour of Jamal Shah is not a conditional grant burdened with Takiadari service. When once grant is given by the sovereign the condition with which the inam is burdened will be imposed specifically and such conditions cannot be inferred. The sovereign granted inam to Jamal Shah describing him as darwaish to be enjoyed from generation after generation till the death of the claimant. The grant does not specifically say that Jamal Shah is given the land for doing "lakaiadari" service and it only describes him as "Takiadar". Further, under the grant, Ac.8-26 gts. of land was given as inam for personal enjoyment. In respect of the land in Boregaon, the petitioners or their predecessors in title were already granted a ryotwari patta and there is no reason to deny the ryotwari patta to the petitioners. The succession certificate which is marked as Ex.A1 in OS No.77 of 1970 would show that the then Collector granted inam to Nooruddin as Madad-e-Mash with a condition of giving vested right (shikmi) to Rafmdin (father of the second petitioner) and Riyazitddin (first petitioner) subject to maintenance of minor daughter. There was a clear declaration of inam by the District Collector as Madad-e-Mash and therefore, the order of the District Collector deciding the grant as Mashurut-ul-Khidmat (service inam) is unsustainable.

15. Sri Challa Seetharamaiah, learned senior Counsel for respondents 5 to 9 submits that the original grant is for pious, religious and charitable purposes and

therefore, it is a wakf. He further submits as follows: When once a wakf is created it will never lose its character as wakf even after fresh grant. The Inam to Jama! Shah was given as a Takiadari inam, and Nooruddin also applied for succession as a Takidar. As the Division Bench as well as the Supreme Court left open the question to be decided by the authorities under the Inams Act, any finding recorded in the civil proceedings arising out of O.S.No.77 of 1970 does not operate as res judicata. Therefore, he submits that the appellate authority having considered all the documents came to a conclusion that it was a wakf grant and therefore under the Inams Act the petitioners are not entitled for ryotwari patta. Elaborating his submission, the learned senior Counsel would submit that the Munlakhab No.223 was granted to Jamal Shah in 1292-F for Takiadari Service. After the death of Jamal Shah, succession was granted to his eldest son Nooniddin in 1339-F. During the enquiry by the District Collector in 1339-F, Nooruddin, S/o. Sitleman Shah stated that he is in possession and enjoyment of Mash and that the services of Takiadar are being performed by Nooniddin and his brothers. He also stated that his great grand father was rendering service of Takiadari and, therefore, the legal representatives presumed the Mash (Inam) as service to Takia. The village Revenue officials also stated that the inam land is under the condition of service to Takia. Therefore, the grant from the time of Jamal Shah was for a wakf and Inam was burdened with service of takiadari and hence the petitioners are not entitled for ryotwari patta. He relied on the various judgments of the Courts in support of his submission that in Muslim Law a grant given to Takia should be treated as grant to wakf and takiadar cannot claim any right in the land. Even if a fresh grant is given to successors of takiadar, there is a presumption that the grant for wakf continues to be a wakf. Lastly, he submits that the "nature and history" of the lands being a relevant consideration, the order of the District Collector adverting to these aspects is legal and valid.

16. S/Sri E.Madan Mohcm Rao learned Govt. Pleader for Revenue and A.M. Qitreshi, learned Standing Counsel for Wakf Board broadly adopt the arguments of Sri Challa Seetaramaiah. They also submit that when the District Collector has adverted to all aspects of the matter in detail, this Court may not be inclined to re-appreciate the evidence on record unless grave error has crept into the impugned order. They submit that there is no error in the impugned order apparent on the face of the record.

17. In view of the rival contentions, the only point that arises for consideration in writ petition is whether the order of the District Collector impugned in the writ petition is illegal and vitiated by grave error apparent on the face of the record?

AS No. 1149 of 1994

In the suit, OS No.145 of 1987 by the A.P. Wakf Board, it pleaded that the land in question was acquired by the Government for the purpose of graveyard for the inhabitants of Phulong and Kotagalli locality, that an extent of Ac.0.34 gts. was filled with graves, that there are graves in Sy.No.225, that the property cannot

be alienated or sold, that the defendants, the petitioners herein are trying to induct third parties into the land, that the District Collector has cancelled the patta given by the RDO (which is challenged in the writ petition) and that the defendants are trying to constantly disturb the possession of the Wakf Board. Therefore, a declaration and perpetual injunction was sought. The petitioners herein filed their written statement taking the same pleas, which I have already extracted above. The trial Court framed the following issues:

1. Whether Sy.Nos.101/1 (134), 101/2 (135) present Sy.No.225 are the Wakf properties of Takiadari?
2. Whether the graves in 0-30 guntas of said Sy.Nos. are family graves of defendants or belong to other inhabitants of Phulong and Kotgalli localities"?
3. Whether the said Sy.Nos. were acquired for graveyard at any time?
4. Whether plaintiff has locus standi to file suit?
5. Whether plaintiff is entitled for declaration and perpetual injunction against the defendants?
6. To what relief the parties are entitled to?

18. The plaintiff examined PWs.1 and 2 and marked Exs.A1 to A19 and A44 to A45. The defendants examined DWs.1 to 4 and marked Exs.B1 to B25. Ex.B1 is the certified copy of the judgment of the Court in AS No.290 of 1976, dated 20-7-1979 and Exs.B2 to B12 are pahanis for the years 1970-71 to 1980-81 and the defendants also filed record of rights passbook (Ex.B14), the judgment in LPA No.108 of 1979 (Ex.B17). The Court of Subordinate Judge, Nizamabad recording the relevant findings on all the issues held that the properties are not takiadari properties, that they are not Wakf properties and that the Wakf Board is not entitled for declaration of title and as the Wakf Board was never in possession of the suit property, they are not entitled for injunction. Accordingly, the suit was dismissed without costs.

19. Sri A.M.Qureshi, learned Standing Counsel for the Wakf Board submits that the trial Court has not properly appraised the evidence on record and failed to appreciate the law of the wakfs in a proper perspective. He also submits that the order of the District Collector dated 23-9-1989 (Ex.A.3) is very relevant for the purpose of enquiry. The lower Court did not scrutinise Ex.A.3 correctly. When once the competent authority under the Inams Act decided the property as Wakf and also held that the land was acquired for a graveyard, the lower Court had no justification to again take, a different view. The learned Standing Counsel relied on Ex.A.3, order of the District Collector, dated 23-9-1989 and Ex.A18, which is the report of surveyor on wakf property in relation to the property.

20. The learned Counsel for the respondents in the appeal (writ petitioners) in addition to the submission in challenge to the impugned order also submits that the survey report on the wakf is not conclusive. He also submits that in a suit for

declaration by the Wakf Board, the plaintiff either has to prove the dedication of" the property to the takta or coming into existence of wakf by use or the existence of graveyard in the entire land admeasuring Ac.2-22gts. He pointed out that in Ex.B.I, which is the judgment of this Court in A.S.No.290 of 1976 and Ex.B.17, which is the judgment inLPA.No.108 of 1979, this Court ruled that there is no graveyard in the entire land and that the land was never used as a graveyard.

21. Having regard to the rival submissions, pleadings and evidence on record, the points that arise for consideration in AS No. 1149 of 1994 are as under:

(1) Whether by way of clear dedication of endowment or by user, the property is wakf property being takia for religious purposes?

(2) Whether the graves in an extent of Ac.0.33 gts. of land are the family graves of the inamdar or the inhabitants of Phulong and Kotagalli localities are using the graveyard?

WP No. 13983 of 1989

At the outset, it is necessary to briefly notice to the provisions of the Inams Act. Section 2(IXc) of the Inams Act which defines "Inam" as follows :

"(c) "Inam" means land held under a gift or a grant made by the Nizam or by the Jagirdar, holder of a Samsthan or other competent grantor and continued or confirmed by virtue of a muntakhab or other title deed, with or without the condition of service and coupled with the remission of the whole or part of the land revenue thereon and "entered as such in the village records and includes-

(i) arazi makhta, arazi aghar and seri inam; and

(ii) lands held as inam by virtue of long possession and entered as inam in the village records:

Provided that in respect of former Jagir areas, the expression inam shall not include such lands as have not been recognised as inatns by Government after the abolition of the jagirs".

22. As per section 2(1)(d), inamdar means a person holding an inam or a share therein either for his own benefit or in trust and includes the successor in interest of an inamdar. Section 3 abolishes all mams to which the Act is made applicable. Subsection (2) of Section 1 applies Inams Act to all inams except to inams held by or for the benefit of charitable and religious institutions and inams held for rendering village service. With effect from the date of vesting, certain consequences shall ensure as provided under sub-section (2) of Section 3. It lays down that the inamdar shall as against the Government be entitled only to such rights and privileges as provided under the Inams Act. Sections 4, 5, 6, 1 and 8 deal with registration of inamdar and others as occupants. The Collector, that is to say, a Revenue Officer not below the rank of Deputy Collector, shall examine the nature and history of all lands in respect of which inamdar claims to be

registered as an occupant and decide in whose favour the claim should be allowed. Here it is useful to extract Section 10 of the Inams Act.

"10. Enquiry by Collector in certain cases :--The Collector shall examine the nature and history of all lands in respect of which an inamdar, Kabiz-e-Kadim permanent tenant, protected tenant or non-protected tenant claims to be registered as an occupant under Sections 4, 5, 6, 7 and 8 as the case may be, and decide-

(a) in whose favour, and in respect of which inam lands, the claims should be allowed;

(b) the land revenue and the premium payable in respect of such lands".

23. Chapter III of the Inams Act provides for determination, apportionment and payment of compensation to the inamdar or any other person whose rights stand vested in the Slate. Chapter IV of the Inams Act deals with appeals, revisions and references. Section 24 provides that any person aggrieved by a decision of the Collector u/s 10 may, within 30 days from the date of decision, appeal to the prescribed authority.

24. In exercise of powers under subsection (1) of Section 35 of the Inams Act the Government promulgated the Rules known as A.P. (Telangana Area) Abolition of Inams Rules, 1975 (hereafter called "the Rules"). Rule 5 of the Rules prescribes limitation of a period of ninety days for making an application by the inamdar and others for the purpose of registration as such.

25. Though an objection was taken in the pleadings that the application made by the petitioners is barred by limitation, the same is not pressed. However, having regard to the fact that the Rules were published in the Official Gazette on 27-6-1975 and the petitioners made an application for grant of patta under the Inams Act on 18-10-1975, it should be held that the application for patta i.e., for registration of inamdar as occupant was made within time.

26. As already seen, Section 10 of the Inams Act provides that the Collector shall examine the "nature and history of the lands" while adjudicating the claims of inamdar for registration as occupant. Sections 1, 2, 2(1)(c) and (d) deal with the nature of inams. Any land held under a gift or a grant made by the Nizam or by Jagirdar or holder of Samsthan or other competent grantor and continued or confirmed by virtue of muntakhab or other title deed, with or without condition and coupled with remission shall be treated as inam. It is not denied by the learned Counsel for the respondents that indeed Jamal Shah held the land under inam granted by the competent grantor. It is, however, submitted that the inam being for the benefit of a religious institution - takia, the provisions of the Inams Act are not applicable.

27. At this juncture, it is necessary to examine the grounds on which the second respondent allowed the appeal of respondents 5 to 9 and directed the RDO to grant patta to the Wakf Board.

28. The District Collector framed the points for consideration as under:

- (1) Whether the subject matter under appeal i.e., Sy.No.101/1 measuring Ac. 1-10 guntas and Sy.No.101/2 measuring Ac. 1-22 guntas corresponding to Sy.Nos.134 and 135 further corresponding to new Sy.No.225 has been acquired for the purpose of graveyard, if so, what is its effect?
- (2) Whether the inam is service inam as alleged by the appellant - respondent No.4 or Madad-e-Mash as contended by the respondents 1 to 3 ?
- (3) Whether the Wakf Board is necessary party?
- (4) Whether the order of civil Court operates as res judicata?
- (5) Whether the order under appeal is without jurisdiction and barred by limitation?
- (6) Whether the appeal is maintainable?.

29. On point No.1, the second respondent held that the land was acquired and kept fallow for the purpose of graveyard. On point Nos.2 and 3, a finding is recorded that the lands are service inam lands and, therefore, Wakf Board is necessary party to any proceedings under the Inams Act. On the point of res judicata it was held that the earlier civil proceedings do not operate as res judicata. On point No.5, it was held that the application of the petitioners is barred by limitation as the application was not made within six months from the date of commencement of the Inams Act and on the last point it was held that the appeal of the respondents is maintainable.

30. In the writ petition S/Sri Challa Seetaramaiah, learned senior Counsel, Madan Mohan Rao and A.M. Qureshi have not seriously contested to the submissions of Sri K. Pratap Reddy, learned senior Counsel for the petitioners with regard to limitation and as to whether the land was acquired earlier or not. Similarly, Sri K Pratap Reddy did not challenge the standing of the Wakf Board and respondents 5 to 9 to maintain appeal before the District Collector. Therefore, what remains for consideration is whether the inam is takiadari service inam, as alleged by respondents 5 to 9.

31. The main contention of the teamed senior Counsel for the petitioners is that the impugned order of the Collector is illegal. In "Principles of Judicial Review" (By De Smith, Woolf and Jowell : 1999 : Sureet and Maxwell ; London;) the learned authors described the concept of illegality as under:

"An administrative decision is flawed if it is illegal. A decision illegal if:

- (1) It contravenes or exceeds the terms of the power which authorises the making of the decision; or
- (2) It pursues an objective other than that for which the power to make the decision was conferred.

The task for the Courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the power in order to determine whether the decision falls within its "four corners". In so doing the Courts enforce the rule of law, requiring administrative bodies to act within the bounds of the powers they have been given."

32. The above principle has been accepted by the Supreme Court in *Tata Cellular Vs. Union of India*, (See paragraphs 93 and 94). The doctrine of illegality in administrative law is concerned with the questions whether a decision maker exceeded his power, committed an error of law, committed breach of rules of natural justice or whether the decision maker abused his powers. The decision maker must understand correctly the law that applies for the decision-making and must give effect to it. He should consider the relevant facts and factors for arriving at a decision. He should shirk or abhor irrelevant and extraneous facts. If the decision maker arrives at a finding, which is based on irrelevant considerations as well as relevant considerations, a difficulty arises as to what factors - whether extraneous, relevant or irrelevant - weighed with the decision maker for arriving at a decision.

33. Again it may be noticed, the factors which weighed with the second respondent while allowing the appeal. First, originally the inam was granted by the then Prime Minister of HEH the Nizam Government and, therefore, if at all the inamdar was aggrieved by the nature of inam, he had to approach the Prime Minister for change of the nature of inam and the Collector is not competent to change the very nature of inam at the request of inamdar. Secondly, the third respondent could not have entertained the application of the inamdars for grant of occupancy certificate as their earlier application was rejected on 3-6-1977. Thirdly, the land in question was acquired for the purpose of graveyard long back against which Nooruddin preferred an appeal before the Government of Andhra Pradesh which was rejected giving liberty to the inamdar to approach civil Court or Atiyat Court. Instead of approaching the civil Court or Atiyat Court, the inamdar approached the ROD claiming it to be "Madad-e-Mash" and lastly the inam is takiadari service inam as the original inamdar Jamal Shah used to render service to Takia. There are the four important factors which weighed with the District Collector in allowing the appeal of respondents 5 to 9. As the cumulative result of finding on all these four points resulted in dismissal of the claim of the petitioners, it is not possible to assess which one of the factors weighed with the second respondent. In other words, if some of the factors are found to be irrelevant for the purpose of deciding the question whether the second respondent understood the law correctly or not, the difficulty arises because the Court of judicial review could not be certain which one of the findings weighed more or which one of the findings weighed less with the District Collector.

34. The learned Government pleader, Sri E. Madan Mohan Rao and the learned senior Counsel, Sri Seetaramaiah could not sustain the finding of the second respondent that the third respondent on 3-6-1977 dismissed the earlier

application of inamdar. There is no material. Indeed, in saying so, the second respondent, in my considered opinion, has relied on a non-existent document, which is grave error apparent on the face of the record.

35. Whether the question of competency of the District Collector in issuing a succession certificate to Nooruddin allegedly changing the nature of inam is "relevant". Section 10 of the Inams Act clearly shows that the Collector shall examine the "nature and history of all the lands" while granting occupancy certificate. Whether a claimant obtained inam from a competent authority or not would be relevant for the purpose of enquiry. Sri K. Pratap Reddy has relied on "Mazumoo-e-Malguzari"(Manual of Revenue Laws -Vol.11- Compiled by Moulvi Mohiuddin Ah/tied and edited by Khan Bahadar Shams-ul-Ulama Nawab Aziz .lung Bahadur). This volume contains the laws, rules and regulations of HRH the Nizam Government besides Atiyat Rules and Regulations upto 1347-F. In page 818 of the said volume, various authorities for granting inam, succession certificates by inam, sanctioning of adoption, fixation of shares etc., is given. Annexure A at page 827 deals with disposal of cases and rules of succession pertaining to Atiyat. In respect of mam land admeasuring Ac.5-00 (dry) and Ac.100 (wet) where the land revenue is Rs.100/- per year, the District Collector is the competent authority to conduct succession enquiry. The learned Counsel also placed before this Court an order of the Government of Hyderabad issued on 14-9-1949 stipulating powers of officers of Inam Department. This is almost a reiteration of the powers delegated in 1347-F. Therefore, the finding of the second respondent that only the Prime Minisler of Government of Nizam was competent to issue succession certificate allegedly changing Madad-e-Mash is not only improper but ignores the relevant law on the subject.

36. Whether the land of inamdar was acquired in 1924? On this, the second respondent proceeds as if the land was acquired for graveyard. If the land was acquired for graveyard in 1924 itself there was no necessity for the competent authority i.e., the District Collector to conduct enquiry under the Atiyat Act and grant succession certificate to Nooruddin, the grand son of Jamal Shah. This shows that the second respondent again was carried away with an irrelevant and non-existent material. To be fair to the learned senior Counsel, Sri Seetaramaih, he has not disputed this aspect insofar as the competency of the District Collector to issue succession to Nooruddin in 1930, the non-existent rejection by RDO on 3-6-1977 and the power of the District Collector to grant succession. What remains to be seen is whether the District Collector has committed illegality in recording a finding that it is a takiadari service inam having regard to the nature and history of the land in question. I will scrutinise this question after examining important aspect of administrative law.

37. Whether the order of a quasi judicial authority based both on irrelevant and relevant considerations renders itself vitiated or illegal ?

38. In Dhirajlal Girdharilal Vs. Commissioner of Income Tax, Bombay, , a Constitution Bench of the Hon"ble Supreme Court held that a clear issue of law

arises in a situation where the Court of fact arrives at the decision by considering material which is partly relevant and partly irrelevant or bases its decision partly on conjectures, surmises and suspicions and partly on evidence or considers material which is irrelevant to the enquiry. Answering the issue, the ratio was laid down as under:

"It is well established that when a Court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises".

39. In *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, , a three Judge Bench of the Apex Court again considered the question. After referring to the earlier judgments in *Dhirajlal's case* (supra) and *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, , *State of Orissa Vs. Bidyabhushan Mohapatra*, , the Court summed up the principle as under:

"The principle underlying these decisions appears to be this. An administrative or quasi-judicial order based on several grounds, all taken together, cannot be sustained if it be found that some of the grounds are non-existent or irrelevant, and there is nothing to show that the authority would have passed the order on the basis of the other relevant and existing grounds"

40. In *Zora Singh*, , the earlier view that in all situations, the orders passed on relevant and irrelevant and extraneous considerations, as a general rule would fall foul, was not accepted when the Supreme Court laid down as under:

"The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant,, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari, the superior Court does not sit in appeal, but exercises only supervisory jurisdiction, and, therefore, does not enter into the question of sufficiency of evidence."

41. In *Ram Avtar Sharma and Others Vs. State of Haryana and Another*, , dealing with an administrative determination by the Government u/s 10(1) of the Industrial Disputes Act, 1947 declining to make a reference of industrial dispute, the Supreme Court observed that if an administrative order (not being a quasi-judicial order) is found to be vitiated on the ground that irrelevant and

extraneous considerations, the Court can direct the Government to reconsider the matter. It is useful to excerpt the following:

"It is equally well settled that where the Government purports to give reasons which tantamount to adjudication and refuses to make a reference, the appropriate Government could be said to -have acted on extraneous, irrelevant grounds or grounds not germane to the determination and a writ of mandamus would lie calling upon the Government to reconsider its decision"

42. The principles that emerge from these binding precedents are :

(i) An administrative or quasi judicial order based on several grounds cannot be sustained even if it is found that some of the grounds are non-existent or irrelevant and there is nothing to show that the authority would have passed the order on the basis of other relevant and existing grounds;

(ii) Where a decision is based on "subjective satisfaction" and it is found that the reasons for the decision are invalid or irrelevant, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, brought about such satisfaction to the authority;

(iii) In a situation where the order is required to be passed based on "subjective satisfaction", the Court of judicial review cannot assume the role of administrator and proceed with the decision making. The Court shall have to issue mandamus directing the authority to consider its decision. In a case where the conclusion is based on "objective" facts and evidence and it is found that there was some legal evidence before the Tribunal even if some of the evidence is irrelevant, the superior Court would not interfere and the finding can be sustained on the rest of the evidence:

(iv) Where a decision is based on "objective satisfaction" which is supported by objective facts and some legal evidence, such a decision can be sustained even if there are non-existent or irrelevant grounds for such decision, only if the Court is satisfied that the authority would have passed the order on the basis of the other relevant and existing grounds and that exclusion of the irrelevant and/or non-existing grounds would not have affected the ultimate opinion or the decision.

43. In this case, we are dealing with a quasi-judicial order passed by the District Collector in exercise of the appellate powers u/s 24 of the Inams Act. As I have already held that the second respondent has arrived at conclusions based on irrelevant and non-existent facts, the only relevant consideration would be whether it was Madad-e-Mash or Mashrut-ul-Khidmat (service inam) and whether the second respondent addressed himself to the correct legal position. After perusing the impugned order, I am of the considered opinion that there is no warrant for determination that even shirking the irrelevant and non-existent factors, the second respondent would not have come to the same conclusion. Hence as held by the Supreme Court in Dhirajlal's case (supra), in this case a question of law arises as it is established that the second respondent decided the

matter based on partly relevant and partly irrelevant material.

44. The District Collector after referring to the case of the petitioners relied more and more on the succession proceedings before the District Collector in -1930 at the instance of Nooruddin. These succession proceedings culminated in the grant of succession by the Collector on 9-2-1930. Though a reference was made to the original grant in favour of Jamal Shah, S/o. Suleman Shah, who is grand father of Nooruddin, the basic questions for determining whether the grant was in favour of a wakf and/or whether the grant was given for service of Takiadari were not dealt in a proper perspective by the District Collector as contended by the learned senior Counsel for the petitioners. The examination of these issues require a brief resume of the law of inams/grants in erstwhile Nizam State as well as the law of wakfs in Muslim Law.

45. The specific submission of the learned Senior Counsel for the petitioners as well as the respondents may again be seen. Sri K. Pratap Reddy submits that under the law of grants, only the sovereign or such other authority designated by the sovereign can alone grant an inam to a person. After the death of the original grantee, the inam does not devolve on the heirs automatically. The same has to be re-granted by the sovereign or other competent grantor and so on. Every time the inam is granted it is by law treated as a fresh grant. Therefore, it is submitted that even if it was being assumed that Jamal Shah was given grant as Takiadar for Takiadari, there is no evidence before the authorities that the grant continued to be for Takiadari when succession was granted to Suleman Shah, son of Jamal Shah. In any event, according to the Counsel, the succession granted to Nooruddin, the grandson of Jamal Shah shows that it was certainly not burdened with any service to Takia or graveyard or for Takiadari. When I examine the basic documents on this aspect I will further advert to other submissions.

46. "Inam" means held under gift or a grant made by sovereign or other competent grantor. The property given as inam is not heritable. It reverts to the grantor on the death of the inamdār. However, a limited right of being considered for grant of succession vests in the heirs of inamdār. They, however, do not get automatic right of succession to the inam property. Their succession has to be recognised by granting a succession certificate which itself is inam or a fresh grant.

47. In Ahmad-Un-Nissa v. State AIR 1952 Hyd. 163, a Full Bench of five Judges of Hyderabad High Court postulated the following principles:

"The initial presumption therefore that jagirs are only for the lifetime of the grantee must prevail in the present case till we come to the sanad-of 1918. Therefore upto that time it must be held that the jagirs were held by various ancestors of the respondent only for their lives. In such a case where a grant is continued in a family from generation to generation and each grantee holds it for his life the limitation against any one grantee starts to run from the date his title arose. This was recognized by the Privy Council in AIR 1946 59 (Privy Council)

where it was observed that where each grantee holds an estate for his lifetime the limitation would start to run against an heir from the date when his title accrued on the death of the previous heir. From the very fact that the grant of a Jagir is only for the lifetime of the grantee and that his son when he gets the jagir gets a fresh grant, it follows that it was not open to a jagirdar to make an alienation which would ensure beyond his lifetime and thus a jagirdar could not grant a permanent lease unless he was specifically entitled to do so, under the sanad or the law of the State".

48. In *Raja Rameshwar Rao and Another Vs. Raja Govind Rao*, , the Supreme Court accepted the legal position that Nizam was absolute ruler and it was open to him to take away any land from jagirdar and to grant to any other person. It was also held that when as absolute ruler the Nizam takes away the land of jagirdar and gives it to other person, the jagir would be informed of the divesting of the property which is granted to another person. However, there should be clear indication in the sanad that the land granted earlier to one jagirdar had been taken away and was granted to other person. It was also reiterated that mere grant afresh by itself does not lead to the conclusion that the original inamdar or his heirs were divested by the Nizam unless there is a clear indication to that effect. The principle that each grant shall be treated as a fresh grant even in respect of the same property and to the members of the family of inamdar, was accepted, and the Supreme Court quoted with approval the law enunciated by the Full Bench of Hyderabad High Court in *Ahmad-Un-Nissa* case (supra).

49. In *Sikander Jehan Begum and Another Vs. Andhra Pradesh State Government*, , a Constitution Bench of the Supreme Court reiterated the legal position as under:

"It is true that on the death of a jagirdar an enquiry was held about the succession to the said jagir either by the Aliyat Courts or by a commission or Tribunal specially appointed in that behalf; and it is also true that generally the property of the deceased Jagirdar was granted to the person who was held by the Nizam to be the successor of the deceased jagirdar. But that does not affect the true legal character of the Jagir. This position is borne out by the previous finans issued by the Nizam in regard to the enquiry of the Atiyat estates. Circular No.34 of 1341-F prescribed rules for conducting enquiry and passing decision in cases of Inam,,... Therefore, even under the Circulars issued by the Nizam for holding enquiries into the questions of succession to jagirs, the position appears to be clear that jagirs were not heritable and on the death of the jagirdar, on principle and in theory. it was always a case of resumption and regrant".

A reference to the above three authorities shows that on the death of the original inamdar his property is deemed to have been resumed by the sovereign. When the successors or heirs of the inamdar are granted a fresh inau by way of a re-grant, it is always open to the sovereign or other competent grantor to change the nature of inam. Insofar as the inains/gifts by the grantor are concerned, Sri

Seetaramaiah does not dispute the position~ He, however, submits that a gift or endowment of property for a pious, religious and spiritual purpose does not become unburdened inam -- Madad-e-Mash and in law it is always deemed as a dedication to a God or for religious purpose; in other words, the wakf. When once the property is originally dedicated for a wakf, the person rendering service as a Takiadar i.e., keeper of Takia, any subsequent grant individually to the heirs of the Takiadar does not change the nature of original grant for religious and pious purposes.

50. The learned author - P.R. Ganapathi Iyer in "The Law relating to Hindu and Mahomedan Endowments" Modern Printing Works, Madras : Second Edn., 1918, points out four essentials of wakf as follows:

"The essentials of a valid wakf are the following: (1) capacity of the endower (wakf), (2) a valid dedication or mode of constitution, (3) property capable of being endowed and (4) proper objects of wakf."

51. The learned author also elaborately considers the various aspects of each of four essentials of a valid Wakf. Dealing with the "valid dedication", the learned author has this to say:

"A mere intention to set apart property followed by actual appropriation, however, will not do. On the same principle a mere mental act unaccompanied by a form of explanatory words will not do. There is a plain distinction between "giving in charity" and "declaring that one has given in charity"..... An oral declaration of dedication to God is atleast necessary. The actual setting apart of property permanently for the support of a pious object is, however, sufficient to constitute a wakf. In the absence of evidence as to an express dedication, the latter may be presumed by inference arising from acts and conduct of the parties. User is evidence of dedication but the bare fact that moneys for the expenses of a mosque have been expended from the rents of a certain property does not necessarily show that the property is endowed. By user certain lands or buildings may become wakf as cemeteries, mosques".

52. The wakf and a sadaqah occasionally overlap each other. The latter are not wakfs. Dealing with the differences between sadaqah and Wakf, Ganapathi fyer (supra) states the law as under:

"A gift in sadaqah is not sufficient to constitute wakf without accompanying circumstances..... A sadaqah operates as a transfer of property while a wakf does not so operate. A sadaqah means "an offering or gift made with the object of obtaining the approval of the Almighty, or a reward in the next world..... The difference consists in the fact that in the case of a sadaqah there is a transfer of property or ownership to the trustees on behalf of the charity but in the case of a wakf there is only an extinguishment of the proprietary interest of the wakf..... In a wakf the legal estate or "ownership" is not vested in the muttawalli or trustee but is so to speak transferred to God."

53. In *Vidya Varuthi v. Eahtswaml* AIR 1922 PC 123, the judicial committee expressed its opinion through Law Lord Ameer Ali as under:

".....When once it is declared that a particular property is wakf, or any such expression is used as implies wakf, or the tenor of the document shows, that a dedication to pious or charitable purposes is meant, the right of the wakf is extinguished and the ownership is transferred to the Almighty. The donor may name any meritorious object as the recipient of the benefit. The manager of the wakf is the Mutwali the governor, superintendent, or curator..... But neither the sajjada-nashin nor the Mutwalli has any right in the property belonging to the Wakf; the property is not vested in him and he is not a "trustee" in the technical sense".

54. Instead of multiplying the authorities, which laid down the similar principle, it is useful to refer to the following relevant passage in -the judgment of the Supreme Court in *Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others*, .

"We agree with the view that a place may be dedicated as a mosque or masjid without there being any building as held in *Akbarally A. Adamji Peerbhoy Vs. Mahomedally Adamji Peerbhoy*, . But in the instant case since the building in the nature of a mosque was built a clear case of dedication has been made out. Once the mosque was constructed it stood dedicated to God and all the right, title and interest of the owner got completely extinguished".

55. The learned Counsel for the respondents submit that the use of the words Takiadari in Muntakhab No.223 issued in 1282-F issued to Jamal Shah shows that there was a wakf. In "Islamic Law" by B.R.Verma (6th edn.) the author describes Takias as under:

"Takias:- The term "takia" has been used in different senses. A takia is a resting place or an abode for fakirs to reside in and to impart religious instructions to their disciples and others.

A burial ground is sometimes called a takia. A takia may be a place of assembly in a village and devoid of all religious significance or it may be prayed platform in a graveyard. A faqir may collect disciples at his residence and develop it into a real Khanqah. Such Khanqahs are called takias. Takias develop by importance into astanas and then into khanqahs. Khanqahs and takias and such like institutions do not come within the strict purview of Mohammedan Law and, probably, it is correct to say that they are not recognised by the Monmmedan religion and may be valid objects of wakfs".

56. In AIR 1938 202 (Privy Council) , the Privy Council described Takia as under:

"A takia is a place where a fakir or dorvish (a person who abjures the world and becomes an humble servitor of God) resides before his pious life and teachings attract public notice, and before disciples gather round him, and a place is constructed for their lodgement..... A takia is recognized by law as a religious

institution, and a grant or endowment to it is a valid wakf or public trust for a religious purpose".

57. In *Huji AH Md. v. Anjuma-I- Tslantia* AIR 1931 Lah 379, a Division Bench of Lahore High Court referring to earlier case law summarised the principles.

"There are numerous decisions which lay down that takias and Khankahs, properly so called, are religious foundations among the Mahomedans and the property attached to them is wakf and therefore lies up in the ownership of God.....

There may be cases in which a takia is merely a place where a certain class of people assemble and indulge in local gossip and enjoy smoke. Such a place would obviously be devoid of all religious character and the Mahomedan Law of wakf and its incidents would have no application to it. But, in order to determine the religious character of a takia and before applying to it the incidents of a Mussalman Wakf one MUST, in the absence of direct proof of dedication, take into consideration the early history of the institution and the existence of religious associations and a holy atmosphere about it, and for this purpose, the general setting, in which the property claimed to be wakf is placed, is of considerable importance".

58. The learned Counsel also relied on the judgments of Privy Council in *Court of Wards v. Ilahi Bakshi* ILR Cal. 297 and AIR 1931 45 (Oudh) , in support of the contention that if the land is used for burial, the presumption of wakf arises by long user and that the land in between graves is also treated as graveyard. I shall refer to these authorities later at appropriate place.

59. With this background, I may now take up the other three authorities cited by the learned senior Counsel for the respondents in support of the submission that in a case where the property is tied up in the ownership of God or property is "wakf by user, the grant of patta in favour of inamdar cannot alter the nature of the wakf. This submission is made in opposition to the contention of petitioners that every time a re-grant is given afresh, the earlier grant loses its nature and character.

60. *R. Doraswamy Reddy v. Board of Wakf* 1978(2) APLJ 399, Andhra Pradesh Wakf Board, Hyderabad Vs. S. Syed Ali Mulla and Others, and Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, , are relied on for the above purpose. The principle considered in these authorities is that when once the wakf was created it continues to be a wakf and if the inam is resumed and re-granted, the same does not take away the character of a property being service inam.

61. In *Doraswamy Reddy's* case, a learned single Judge, Hon'ble Sri Justice Gangadhara Rao considered the question whether inam is a wakf within the meaning of Wakf Act, 1954. In that case, the plaintiff purchased a part of the property out of larger extent which was notified as wakf property under the Wakf

Act. He contended that it is not a wakf property but forms part of personal inam granted to the ancestors of the Vendors. The trial Court as well as the First Appellate Court rejected the suit for declaration of title. A submission was made for the plaintiff/ appellant before this Court in the second appeal that the property does not vest in the Almighty but it vests in the person who renders service. His Lordship Justice Gangadhara Rao rejected this. The reasoning is as under:

".....It is true that the land was granted to an individual to perform service. But it does not mean that he acquires title to the property. Similarly, if the land can be resumed for non-performance of service and can be regranted to another person for rendering service, it does not mean that the original grantor continues to be the owner of the property. When once the wakf was created it continues to be a wakf. When the inam is resumed and regranted it does not mean that there is revocation of the service. It only means that the wakf property is entrusted to another individual to perform the service."

62. In Syed Ali Mullet's case (supra), the A.P. Wakf Board filed a suit being OS No.148 of 1967 on the file of the Court of Subordinate Judge, Visakhapatnam. The suit was for cancellation of registered lease deed dated 24-6-1949 executed by one Lulfa Rasool and 11 others in favour of 10th defendant for 99 years and for cancellation of subsequent leases or subleases executed in respect of the same property and for recovery of possession of land from 21 persons in an extent of Ac.2,215.85 in Sy.Nos.212 to 216 of Devada village. The plaintiff claimed that the property covered by inam title deed No.42 is a wakf property. The suit was defended taking the plea that the property is not wakf property but it is personal property of the lessors. The trial Court dismissed the suit. In appeal before this Court, the question that arose was whether the property is a wakf within the meaning of Section 3(1) of the Wakf Act, 1954 and what was the nature and character of the original grant. The original grant was not available in the enquiry held by the Inam Commissioner in 1863. But, inam enquiry had revealed that the original grant was made to support Dargah of Visakhapatnam. It was in evidence that the legal representatives of Ansar Saheb, Madina Saheb and Mohammed Saheb, the ancestors of the lessor were performing service and their names were mentioned under the word "Dargah". Therefore, the inam title deed No.42 was issued to the legal representatives of the above three named persons. This Court observed that the extract of Inam Fair Register (Ex.B3 in the suit) gives indication that the grant to support Dargah was made of lands in Devada Mokhasa village. Later, in 1902, inam title deed was cancelled and the Mokhasa village was resumed, presumably for the reason that the services which the grantees had to render at the Dargah were not being performed at that time.

63. The earliest documents in Syed AH Mulla's case (supra) revealed that (a) the original grant was for the support of Dargah of Visakhapatnam; (b) the inam was classified as Devadayam; (c) the three original grantees Ansar Saheb, Madina Saheb and Mohammed Saheb were rendering service to Dargah at the time of

Muharrum festival; (d) the inam title deed No.42 was issued in 1863" showing it as Dargah as grantee and mentioning the three names who initially rendered service; (e) in 1902, as the legal representatives were not performing service to Dargah, the Mokhasa village was resumed and the title deed issued by Inam Commissioner was cancelled.

64. The mokhasadars questioned the validity of resumption in O.S.No.16 of 1902 on the file of the Court of the District Judge, Visakhapatnam. They succeeded in the suit. The Government carried the matter in appeal being A.S.No.55 of 1904 before the Madras High Court. The matter ended in a compromise. The compromise inter alia provided that the Government do restore the laid to mokhasadars to enjoy the properties for performing the duties connected with the Dargah subject to certain conditions like giving charity to fakirs, spending amounts for Muhurum and monthly festivals etc. and the balance-amount only to be enjoyed by mokhasadars. Having regard to the compromise and the entries in Inam Fair Register this Court held that the entries in Inam Fair Register would establish the ingredients of wakf as defend u/s 3(1) of the Wakf Act. It was also observed that for the purpose of constituting a wakf, the dedication need not be in favour of the Dargah and it is enough if the dedication is made for a purpose recognised by Muslim Law as pious, religious or charitable. Further it was held that the grant by way of service inam made for pious, religious and charitable purposes would also constitute wakf. In the context, the Division Bench relied on Doraswamy Reddy's case (supra) and observed as under:

"Wakf in its nature is a permanent dedication of property for a purpose recognised by the Muslim law as pious, religious or charitable. When once Ilia property is held to be wakf, it always retains Us character as a wakf and the grant of a patta in favour of the Mokhasadars in possession of the property does not in any manner detract from the earlier dedication made of the property constituting the same as wakf".

65. The unsuccessful lessees carried the matter to the Supreme Court against the judgment of the Division Bench in Syed All Mulla's case (supra). The Supreme Court dismissed the appeal. The Supreme Court relied on Inam Fair Register (Ex.B3) and mam title deed, and held that there are entries to establish the ingredients of wakf under the Wakf Act and that it is sufficient if the dedication is made for the purpose recognised by the Muslim law as pious, religious and charitable. On this, while agreeing with the view taken by this Court that the disputed property is a wakf, the Hon"ble Supreme Court laid down the test for deciding whether initial grant is a wakf or not as under:

"It is true that the grant or sanad dedicating the property is not on record. Further there is no evidence on record to show as to who granted the inam, in whose favour and in what year. In the absence of such documents what is to be considered is, whether taking an overall view of the evidence on record, the Wakf Board has succeeded in establishing that there is a permanent dedication of the property as wakf.

66. Applying the above principle and relying on Ex.B.3 (Inam Fair Register) and Ex.A.20 (compromise decree passed by Madras High Court), the Supreme Court held that there is "sufficient light on the character of the disputed properly to say that it is a wakf.

67. The analysis of various decided cases shows that the following principles are well settled:

(1) Mohammedan Law of wakf owes its origin to a rule laid down by the Prophet and means "tying up of property in the ownership of God and Almighty and the devotion of the profits for the benefit of human beings"; (See : Vidya Varuthi v. Baluswami AIR 1922 PC 123).

(2) When a founder dedicates the property for a wakf, the ownership of the founder is completely extinguished; (See Vidya Varuthi v. Baluswami AIR 1922 PC 123 and Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others, .

(3) When once it is declared that a particular property is wakf or any such expression is used implying wakf or the document shows that there is dedication for a pious or charitable or religious purpose, the right of the person is extinguished and the ownership is transferred to the Almighty. The manager of wakf is Mutawalli. Though Mutawalli is the administrator, governor, superintendent or curator of the wakf property, he has no right in the property belonging to the wakf. The property is not vested in Mutawalli and he is not a trustee in the technical term; (See Vidya Varuthi v. Balu Swami AIR 1922 PC 123 and Nawab Zain Yar Jung and Others Vs. The Director of Endowments and Another, .

(4) The dedication need not specifically be in favour of a place of worship, kankah, Dargah, cemetery etc. It is enough if the dedication is made for the purpose recognised by Muslim law as pious, charitable or religious; (See Andhra Pradesh Wakf Board, Hyderabad Vs. S. Syed Ali Mulla and Others, and Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, .

(5) Service inam granted to individuals burdened with service for the purposes which are pious, religious or charitable, answers description of all the ingredients of wakf; (See Andhra Pradesh Wakf Board, Hyderabad Vs. S. Syed Ali Mulla and Others, and Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, .

(6) A takia properly so called is itself an institution recognised by law and a grant or endowment to the same is valid as wakf as to a khankah, dargah or mosque (See Mahommed Ilamid v. Mian Mahomed AIR 1922 PC 384 ; Kabir-ud-Din Mondol and Another Vs. Entaj Mondol and Others, and Haji All Md v. Atijuma-I-Islatnia AIR 1931 Lah 379).

(7) There may be cases where religious takia is merely a place where certain class of people assemble for different purposes other than religious purposes. If

the purpose for which people assemble at a takia is devoid of all religious character, Mahommeden law of wakf and its incidents would have no application. In order to determine the religious character of a takia, in the absence of direct proof of dedication, one must take into consideration the history of the institution, the existence of religious association, holy atmosphere about it and the general setting in which the property claimed to be wakf is placed; (See Haji Ali Md. v. Anjumma-I-Islamia AIR 1931 Lah 379).

(8) When once the property is held to be wakf, it always retains its character as a wakf and the grant of patta to service inamdars and persons in possession, does not in any manner change the character of wakf; (See R. Doraswamy Reddy v. Board of Wakf 1978 (2) APLJ 399; Andhra Pradesh Wakf Board, Hyderabad Vs. S. Syed Ali Mulla and Others, and Sayyed AH v. A.P. Wakf Board, Hyderabad (1988) 2 SCC 642).

(9) In a case where the inam is service inam for rendering service in connection with a pious, religious and charitable purpose, it does not mean that the holder of the inam burdened with service acquires title to that property. Hence, if the land is resumed from such inamdar for non-performance of service and re-granted to another person it only means that the wakf is entrusted to another individual to perform service; (See R. Doraswamy Reddy v. Board of Wakf 1978 (2) APLJ 399; Andhra Pradesh Wakf Board, Hyderabad Vs. S. Syed Ali Mulla and Others, and Sayyed AH v. A.P. Wakf Board, Hyderabad (1988) 2 SCC 642).

(10) The dedication of property to the wakf should be specifically provided by clinching evidence. In the absence of any documentary evidence, an overall view of the evidence on record is to be taken to establish that there is a permanent dedication of the property as a wakf; (See Sayyed AH v. A.P. Wakf Board, Hyderabad (1988) 2 SCC 642).

68. The case law analysed above also deals with other principles, but I have extracted the legal principles insofar as they are relevant for the purpose of this case. Now keeping the above principles in mind I will examine the rival contentions of the learned Counsel for the parties which may again be noticed.

69. The case of the petitioners is that Muntakhab No.223 was issued to Jamal Shah S/o. Suleman Shah granting inam of the land unto his death. After his death, his son, Suleman Shah was granted succession. In 1924 there was a proposal by the Collector to acquire the land for the graveyard. After taking into consideration the grievance of the inamdar that he has no other source of livelihood except inam land, the Collector excluded the inam land from acquisition. After the death of Suleman Shah, his son, Nooruddin was granted succession in Case No. 18/38 in 1930 clearly stating that the inam is Madad-e-Mash. Therefore, they submit that there are no ingredients of a wakf. They also rely on the judgment of this Court in the earlier civil proceedings in AS No.290 of 1976 and LPA No.108 of 1979 to disprove the case of the respondents that the land is graveyard giving the character of wakf to the property.

70. The case of the respondents-District Collector and other respondents is that the inam is takiadari service inam, that the land was acquired for the purpose of graveyard, that the land is being used as graveyard, that the acquisition being conclusive and binding on the inamdar and the legal heirs, the claim of Nooruddin was rejected by the Government in G.O. Ms. No.254, dated 12-3-1965 and therefore, the inamdar is not entitled for patta under the Inams Act. It is also stated before me that Jama! Shah was darwaish i.e., pious man who used to preach at the place. After his death he was buried at the place (takia) and the inam, which was initially given for a pious and religious purpose to Jamal Shah, continued to be takiadari service inam. Noontddin while applying for succession in 1930, as well as in his statement before the Collector clearly stated that the inam land is in the shape of "Shrat-e-Khidmat" - takiadari and the same is permanently continued and, therefore, the inam is Mashrut-ul-Khidmat or takiadari service inam and it is not inam land in respect of which patla can be granted to the inamdars.

71. The important documents relied on by both the learned senior Counsel are the Muntakhab No.223 issued in 1379-F or 1382-F and the succession granted to Nnoruddin in 1930. The learned senior Counsel for the respondents also relied on the application of Noontddin and the statements of Nooruddin as well as the statements of Gumasta Pahvari recorded by the Collector of Nizamabad in connection with succession enquiry. These documents and other related events are to be considered keeping in view the principles enunciated by various authorities noticed hereinabove.

72. Muntakhab No.223 is statement of enquiry. It reveals that it was subjected to an administrative consultative process from Taluqdar to Awal Taluqdar (District Collector) and Sadar-ul-Mohami (Minister) and ultimately to Madar-ul-Mohami (Prime Minister). All the important officials dealing with the Revenue administration have enquired into while issuing Muntakhab No.223. Columns 6 and 7 of the Muntakhab show that the claim for inam land as well as Yoomia cash was approved as per the remarks of Taluqdar and Sadar Taluqdar. In Column 8, Awal Taluqdar (Collector) endorsed as under:

"The Inam land is proved to be the Royal Grant; and that the grant of Yoomia is from the late Maharaja. This is the contention of the claimant. The sanad of Grant has been filed, but the same could not be verified. From the old documents the same document is proved. Hence it is felt just and proper that the sum of Rs.20-11-6 (Rupees twenty eleven annas and six pies) be released permanently generation after generation or till the lifetime of the claimant; and the Inam land measuring 8 Biglias 10 Baams which is now released one, be released after deducting four anna share thereof i.e., Rs.25/-," and be released permanently generation after generation.

Dated 5th Moliarram, 1289 Hijri."

73. Relying on the statement that 8 Bighas 10 Baams of land is released after

deducting four annas share i.e., Rs.25/- as well as the words "Darwaish and Takiadari": "Circle North" appearing in the heading of the Muntakhab, Sri Challa Seetaramaiah, learned senior Counsel submits that the inam was given by the North Circle of the Department of Darvvaish and Takiadar, which leads to the inference that the inam is for takiadari service. It is contended that the sanction order deducting "four annas share" in respect of the Inam land shows that the takiadar was given a service inam to enjoy only 75 annas share in the land or out of the income of the land and he was not given absolute right and hence it is proper to assume that Muntakhab No.223 is a takiadari service inam. Sri K.Pratap Reddy, learned Senior Counsel submits that when inam is burdened with service or some condition, the same should be specific and conditions of inam cannot be presumed or inferred. Referring to column 8 of the Muntakhab, he submits that grant is not conditional for rendering service. Conditions must be specifically imposed. In the absence of such specification of conditions, they are not surmisable. "the grant to Jama! Shah was given describing him as Darwaish and Takiadar and not by the North Circle of Department of Darwaish and Takiadar. The inam, is to Darwaish and Takiadar to be enjoyed from generation after generation or till the death of the claimant and not to graveyard or for takia. He also submits that as per the grant, two pieces of land were given as inam; one at Nizamabad and another at Boregaon. The inamdar already got "occupancy certificate" in respect Boregaon land. If the Muntakhab is in respect of two lands, it cannot be assumed that one piece of land is given as im-burdened and another piece of land is given as takiadari service inam. Therefore, he would submit that Muntakhab No.223 cannot be interpreted as granting service inam or endowing the property to the takia.

74. Jamal Shah is described as Darvvaish and Takiadar. The Muntakbab is given by North Circle of the Administration. It is not possible to agree with the learned Counsel for the respondents that it is given by the Department of Darwaish and Takiadar, North Circle. Indeed, simply because the calling of Jamal Shah is shown as Darwaish, it is also not possible to infer that the inam is granted to Jamal Shah for takiadari service. Columns 8 and 9 of the Muntakhab would show that it is Madad-c-Mash to the extent of 75 annas share and that the entire revenue on the land is not inam. It is well to remember that the concept of "inam" means that the person who is given the land is exempted from paying revenue to the sovereign completely or to the extent of inam. In this case, Jamal Shah was given, it is reasonable to infer, Madad-e-Mash, in respect of 8 Bighas 10 Baams to the extent of 75 annas share. The Muntakhab does not speak of any condition or any service to be rendered by Jamal Shah. The inam cannot be considered for a pious, religious or charitable purposes. I am also of the considered opinion that Jamal Shah was admittedly a pious man - Darwaish and, therefore, it is possible that the authorities acting for the sovereign gave the inam "with a religious feeling" and the same cannot be taken as "endowment" for pious, religious or charitable purposes. I am also of the considered opinion that Jamal Shah was admitted by a pious man-darwaish and therefore, it is possible that the

authorities acting for the sovereign gave the inam "with a religious feeling" and the same cannot be taken as "endowment" for pious, religious or charitable purposes. There is obvious difference when a person acts "with pious and religious purposes and when a person endows property "for" a pious and religious purpose. Hence, Muntakhab No.223 does not in any manner help the respondents.

75. Muntakhab No.223 (in Column 8) describes the land as inam land to be the Royal Grant. Even during the time of enquiry leading to the issue of that Muntakhab and even prior to the death of Jainal Shah it was inam land. It is further supported by the statement that late Maharaja (presumably the Prime Minister of HEH the Nizam) granted the inam. The sanad was also filed. The same was also verified by comparing with old documents. Muntakhab No.223 is not the original sanad granting inam. It is only, in all probability, a succession granted to Jamal Shah after the death of his father Suleman Shah or it is possible that in place of inam land covered by a Royal Grant a fresh Muntakhab as evidenced by Muntakhab No.223 was issued. Further, intrinsic evidence shows that the inam is not service inam and that it is not for any pious, religious or charitable purposes. It was given permanently to be enjoyed from generation after generation till the lifetime of the claimant. Really if it is a wakf, in my considered opinion, particular statement that the inam is permanently given from "generation after generation" would not have been there as rightly contended by the learned senior Counsel for the petitioners.

76. After the death of Jamal Shah, succession was granted to Suleman Shah S/o. Jamal Shah in 1302-F. The respondents do not deny this. It is a fact that there were land acquisition proposals to acquire the land in question. If the land was service inam or endowed for a wakf i.e., for graveyard there was no necessity for acquiring the land again for graveyard. I will consider this aspect a little while later.

77. The next important document is succession statement given to Nooruddin by the District Collector, Nizamabad dated 8-11-1929 (8th Ferverdi 1339F) after conducting enquiry. It may be mentioned here that the succession statement/certificate was marked as Ex.A.1 in O.S.No.77 of 1970. This statement shows that in 1292-F, Madad-e-Mash was granted to Jamal Shah. After his death, succession was granted to Suleman Shah in 1302-F. The extent of the land was Ac.2-33 gts. The inam was decided as Madad-e-Mash and succession was sanctioned to Nooruddin. If the land was really acquired as contended by the District Collector it is not explained as to how Nooruddin was granted succession again? Sri Seetaramaiah relied on the letter addressed by Nooruddin to Awal Taluqdar (Collector), Nizamabad and the statement given by him in connection with succession enquiry on 21st Isfandar 1333-F.

78. In the letter dated 3rd Dai, 1339-F addressed to Awal Taluqdar, Nizamabad, Nooruddin only gives explanation to the effect that in the case filed by the petitioners the land is being called conditional inam instead of Madad-e-Mash. It

was thought that great grandfather of Nooruddin was rendering service of takiadari and hence the legal heirs presumed the Mash as takiadari service inam and were performing takiadari service. The Mash is Madad-e-Mash and, therefore, he requested to grant succession under the head of Madad-e-Mash. The statement given by him in the enquiry is also to the same effect Nooruddin explained why the misunderstanding has crept into the whole affair. The sum and substance of the letter and statement is that it was thought of that Jamal Shah was rendering service as Takiadar. It is not clear where and when he was rendering takiadari service, either in the same land or elsewhere. The family presumed that it was a service inam and hence he made a categorical statement that it is a Madad-e-Mash.

79. The District Collector while issuing succession order to Nooniddm adverted to this. After considering the statements of Noontddm, Gumasiha Mokhadam Mali and Gitmastha Patwari, the District Collector referred to the proceedings of succession issued to Suleman Shah, S/o. Jamal Shah and observed as under:

"in this proceeding a copy of enquiry statement has been filed by the applicant. In col.No.14 of this at first the words "Madad-Mash" was written in it, but later on it was corrected and written as "Mashroot-ut-Khidmat" and in the succession proceedings held later and in the recent proceedings it is shown as "Mashroot Takiadari". To settle this dispute, the case was pending since a long time. As per the application of Nooruddin dated 1339 Fasfi and after the perusal of enquiry statement, this Mash is decided as "Madad-Mash".

The reasoning of the District Collector, Nizamabad that it is a Madad-e-Mash, but while granting succession to Suleman Shah, a mistake crept in and, therefore, the Collector decided as Madad-e-Mash cannot be faulted. This clears the clouds to a great extent. As observed by all the Courts which decided the issue, in the absence of any document, an overall view of evidence on record is to be taken to decide whether there was a permanent dedication of property to the wakf or whether there was a service inam in respect of the property dedicated to the wakf. In my considered opinion, the Muntakhab No.223 and succession granted to Nooruddin clearly show that it is a Madad-e-Mash and not Mashrut-ul-Khidmat.

79. The view taken above is also supported by decided cases. In *Ali Muhasmmad Khan v. Ali Akbar Khan* AIR 1924 Lah 58, a Pir/saint died. The plaintiff who was installed as sajjadanashin in his place claimed the same lands as wakf alleging that they were dedicated to the saints. He also alleged that three or four times on the death anniversary of the saint, Urs has been celebrated. The Court relied on these instances and held that an implied dedication could be presumed on these facts. Therefore, if after the death of Jamal Shah it is proved that religious functions like Urs were held either during the time of Jamal Shah or Nooruddin it could be presumed that there was a takia.

80. I have already referred to Haji Ali Md's case (supra). It was held that so as to determine the religious character of a takia, in the absence of direct proof of

dedication, the early history of the institution and the existence of religious associations, holy atmosphere and the general setting in which the property claimed as wakf is placed are relevant considerations. In this case, there is no material to hold that the takia where allegedly Jamal Shah used to meet people had any religious character. Though there could be a valid wakf to a takia, as held by Lahore High Court, every place (takia) where people meet and discuss cannot be associated with a religious character. There is no such evidence in this case to arrive at a conclusion that takia was of religious character where people used to gather around Jamal Shah. There is also no evidence that at any time after the death of Jamal Shah there were any religious ceremonies or there were any religious associations or holy atmosphere or general selling to characterise the place as a religious takia. On mere surmises it cannot be held against the petitioners. As held by the Supreme Court in Syed Ali Mulla's case (supra), an "overall view of evidence on record" is to be taken.

81. The other point is the presence of graveyard. It is not denied that when the petitioners and others filed a suit in OS No.77 of 1970 claiming declaration of title and for injunction, the defendants in the suit, who were claiming to be the leaders of Muslim community, opposed the suit claim stating that originally the land was mam land sanctioned in the name of the ancestors of the petitioners as takiadar of graveyard. They also stated that the land was acquired by the Government and it was being used as graveyard by the Muslim community. This Court, considering the evidence on record, held that the entire land is not a graveyard and that only an extent of Ac.0-22 gts. in Sy.No.134 (corresponding to Sy.No.101/1) and Ac.0.08 gts. in Sy.No.135 (corresponding to Sy.No.101/2) is graveyard. It is now on record that an extent of Ac.0.34 gts. is classified as graveyard whereas Sy.No.225 admeasuring Ac. 1.39 gts. is classified in the pahanis and other revenue records as belonging to Nooruddin and others. Thus, consistently it has been held that only an extent of Ac.0.34 gts. which earlier formed part of Sy.Nos.134 and 135 before consolidation, is shown as graveyard. This Court, both the learned single Judge as well as the Division Bench, in appeal and LPA, categorically held that an extent of Ac.1-39 gts. in Sy.No. 225 is not graveyard. These findings have not been disputed. Indeed, I have already noticed that the contention of the District Collector in these proceedings that the land was acquired by the Collector for the purpose of graveyard in 1924 is based on no evidence. When the land was not acquired for graveyard, from where these graves have come into existence?

82. In the letter in File No.6/86/33 (earlier land acquisition proceedings) dated 28-1-1924, the Collector, while addressing the Tahsildar of Nizamabad Taluka, recorded that dead bodies of those respected persons were only buried and that dead bodies of new persons cannot be allowed to be buried there. Therefore, at least from 1924 onwards, even the land admeasuring Ac.0-34 gts. in which graves were found, is not being used as graveyard. This only gives indication that in all probability, dead bodies of holy persons were buried in the private graveyard of inaindar. It is not a case where there were such maqbaras or

dargahs and later inam was granted in favour of any person. Even the original Munttakhab No.223 does not show that there were any graves or takias at that point of time. In the light of this, the explanation given by Nooruddin before the Collector in the succession enquiry that the inam was a Madad-e-Mash was rightly accepted by the District Collector who granted succession in 1929. Sri Seetaramaiah, to get over the unimpeachable Court finding that there are no graves in Sy.No.225 except in Ac.0-34 gts., would like this Court to apply the principle that if there is a land in between the graves the entire land is presumed as graveyard and that when once the land is used for burial ground, the question of private graveyard or public graveyard does not arise. He has relied on the judgment of the Privy Council in *Ilahi Bakshi's case* (supra) and *Chhutkao's case* (supra).

83. In *Ilahi Bakshi's case*, a suit was filed for declaration that certain land in Multan was in possession of the Mahomedan community as wakf and was in fact a graveyard which had been used from time immemorial for the burial of dead, and for an injunction restraining the Court of Wards from transferring any part in that land. The District Judge dismissed the suit. On appeal, the Chief Court of Punjab allowed the appeal of the defendants. Before the Privy Council, it was contended that even there was no express dedication of the whole land as wakf, the presence of graves together with the entries in the settlement record showed that the land has become wakf by user. Lord Macnaghten delivered the judgment of the judicial committee. Section 44 of the Punjab Revenue Act, 1897 laid down that an entry in a record of right in accordance with law shall be presumed to be true until the contrary is proved. The judicial committee therefore relied on the entry in the record of rights i.e., settlement record which showed that the land forms part of a graveyard set apart for Muslim community and held that it is a wakf. "Therefore, *Ilahi Bakshi's case* cannot be considered as authority for the proposition that the land situated in between graves or graveyards should also be treated as graveyard. In the absence of any revenue record it is not possible to draw an inference as suggested by the learned senior Counsel, in this case, as held by this Court, an extent of Ac.0.34 gts. only is shown in the Revenue records as grave yard.

84. In *Chhutkao's case* (supra), though there was no evidence of dedication, a plot of land described as takia was used as a place of burial by Mahomedans. Based on this, a question arose whether a plot mortgaged by one Maula Shah to Pannalal is inalienable under Mahomedan Law. Relying on the statement of law by Mr. Ameer Ali in his book on "*Mahometan Law*", it was held that when a plot of land is used for burial only the land by user can be considered as a wakf. , It was further held as under:

"it is only where there are one or two bodies buried but the whole plot is not considered to be maqbara or burial ground that the actual places where the dead are buried are considered to be consecrated and the rest of the land may be alienated."

85. Therefore, the presence of graves scattered over a piece of land admeasuring Ac.0-34 gts. cannot be the basis to presume that the entire extent of Ac.1.39 gts. in Sy.No.225 is a wakf by user. It is, however, to be noticed that under Muslim Law, even a wakf can come into existence by user, but there should be sufficient evidence to show that the entire land is graveyard by user. As already noticed, the letter of the Collector while dropping the land acquisition proceedings shows that there were few graves of holy men and it was agreed by all that no further burial shall be allowed by the inamdar on the plot. Therefore, the principle of wakf by user coming into existence does not apply to this case especially when the inam is governed by valid muntakhab and subsequent succession certificate given to the heirs of inamdar.

86. There is yet another submission made by the learned senior Counsel, Sri Seetarainaiah that the appellate authority taking into consideration the entire evidence including the documents placed before him has taken a view and that being a Court of judicial review the finding cannot be disturbed. No doubt, on principle of law, Sri Seetarainaiah is correct. But, as pointed out by me, the doctrine of illegality presupposes whether the decision maker has correctly understood the law and applied the same to the facts of the case. The discussion shows that the District Collector misdirected himself in assuming that the land was acquired for graveyard and that the earlier application of the petitioners for occupancy certificate was rejected. As observed by the Supreme Court in Dhirajlal's case (supra), an "issue of law arises" when a decision maker decides partly relevant and partly irrelevant factors.

87. In Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and Others, , the Supreme Court held that construction of entries in Inam Fair Register and Revenue record, which have great evidentiary value, is a "question of law". Therefore, the construction of original Muntakhab, the succession given to Nooruddin and other Revenue records is a question of law and it is permissible for this Court to examine the case with reference to legislative prescription in Section 10 of the Inams Act.

88. For all the above reasons, it should be held that the impugned order of the District Collector suffers from illegality and gave error apparent on the face of the record. Accordingly, the impugned order is quashed and the third respondent. Revenue Divisional Officer, Nizamabad shall take necessary steps for registering (he pelitioners as occupants of the inam land.

AS No. 1149 of 1994

While summarising the pleadings and contentions, I have framed two points for consideration in the first appeal before me. On these two points I have already recorded findings that as per the judgment in A.S.No.1290 of 1976 and other evidence before the trial Court or before the District Collector, it is reasonable to infer that the land was not acquired for a graveyard and that except in an extent of Ac.0.33 gts. there were no graves of the general public. Even as per Exs.B2 to

B12 which are pahanis for the years 1970-71 to 1980-81, Nooruddin was shown as inamdar in respect of Ac. 1-39 gts. in Sy.No. 225 out of which Ac.0-04 gts. is shown as waste land. I have seen the photographs marked by the plaintiff/appellant, which do not support its case. There is abundant evidence-Ex.B1 (judgment of this Court in AS No.290 of 1976), Ex.B17 (judgment of this Court in LPA No.108 of 1979), Exs.B2 to B12 (pahanis), Ex.B14 (Record of Rights Passbook) to show that it is inam land covered by the Inams Act and the Wakf Board has no title to it.

89. Sri Qureshi has invited the attention of this Court to Ex.A18, which, as noticed is a report of survey of wakf property. In column 5 of the said report, it is mentioned as graveyard Phulong takia (dilapidated) and in column 6 it is shown that the land in survey No.134 admeasuring 6-1/2 acres is also covered by the survey. Immediately below that it is mentioned that the land in Sy.No.135 is Madad-e-Mash in favour of Nooruddin excluding the graveyard. Again in column 8, it is clearly shown that an extent of Ac.0-17 gts. is graveyard and there is a timber shop in Ac.0-17 gts. allegedly belonging to one Mr Miuniaz Ali. Column No. 19 refers to the proceedings of Assistant Commissioner (Law), dated 24-2-1968 in File No.462/CWIII/67, which allegedly declares an extent of Ac.7-36 gts. in Sy.Nos.134 to 137 as wakf. However, Sri Qureshi is not able to invite the Court's attention to any evidence to show that the wakf was notified in accordance with the provisions of Wakf Act, 1954. Further, nobody on behalf of the Wakf Board spoke about the proceedings allegedly issued by the Assistant Commissioner (Law). The Inspector who conducted the survey has noted in his remarks in column No.20 of Ex.A18 that there is a graveyard in Sy.Nos. 134, 136 and 137. The remarks are vague and do not support the case of the plaintiff/appellant in the face of the judgment of this Court in A.S.No.290 of 1976 and LPA No.108 of 1979. In the suit, the plaintiff also prayed for a perpetual injunction, but no evidence was placed before the trial Court to show that they were in possession of the property and the defendants are in any way interfering with the alleged graveyard. There is no iota of evidence placed before the trial Court to show that there was a graveyard except the photographs - Exs.A19 to A30, which show scattered, graves here and there. In view of this, I must hold that the plaintiff has failed to prove the case as pleaded and the lower Court has considered the pleadings, relevant evidence in a proper perspective and recorded findings on all the issues, which do not warrant any interference in appeal. Therefore, I dismiss the appeal with costs throughout.

90. In the result, the writ petition is allowed without costs and the impugned order of the second respondent in Proceedings No.C/36/86, dated 18-9-1989 is quashed and a writ of certiorari shall issue as indicated above. AS No.1149 of 1994 is dismissed with costs throughout.