
(1933) 08 CAL CK 0025
In the Calcutta High Court

(Prince) Gholam Hossain Shah and Others	APPELLANT
Vs	
Altaf Hossain and Others	RESPONDENT

Date of Decision : 18-08-1933

Acts Referred:

Religious Endowments Act, 1863 — Section 7
Specific Relief Act, 1877 — Section 40

Citation : AIR 1934 Cal 328

Judgement

1. This appael has arisen out of a suit instituted by the plaintiffs appellants, as the members of the committee for the management of the Hooghly Imambarah, appointed under Act 20 of 1863 (I. C.) for a declaration that defendant 1, respondent has been validly removed from his office as manager or muttawali of the Hooghly Imambarah, and that defendant 2 has been validly appointed in his place. In addition to the declaration mentioned, the plaintiffs in the suit prayed for a perpetual injunction restraining defendant 1 from asserting his alleged right to the office, and interfering with defendant 2 in the execution of his duties. The suit was dismissed by the Subordinate Judge, in whose Court it was instituted, on 21st May 1929; and this appeal was preferred by three out of the five original plaintiffs in the suit. One of the plaintiffs, plaintiff 2, died before this appeal was filed; plaintiff 3 died alter the filing of the appeal to this Court.

2. The history of the litigation has to be stated in some detail, in view of the nature of the controversy between the parties. Hajee Mohamed Moshin, a name writ large in the annals of Bengal, executed a deed of appropriation or endowment on 20th April 1806 conveying certain properties, yielding a very large income, to two Muttawalis named Rajab All Khan and Shakur Ali Khan in trust for certain, purposes. For the purpose of the present case, we are concerned with the income out of properties devoted to what is described as religious or pious purposes. The different purposes of the trust were mentioned by the founder of the endowment under three heads: (1) three-ninths on religious ceremonies and the upkeep of the Imambarah at Hooghly; (2) two-ninths on emolument of the muttawalis, (3) four-ninths in maintaining

establishment, and paying certain pensions. The muttawalis appointed by the founder of the endowment were given the power to appoint their successors. The trust so created was carried into effect, and Haji Mohamed Moshin died in the year 1813, when the two muttawalis appointed by him were in possession of the endowed properties. In the same year Shakur Ali Khan, one of the muttawalis was seriously ill, appointed his son Baker Ali Khan muttawali in his place, and died in the next year. Rajab Ali Khan and Baker Ali Khan who acted as joint muttawalis, were dismissed by the Board of Revenue by virtue of powers conferred upon the Board by Regn. 19 of 1810, and one Syed Ali Akbar Khan was appointed sole muttawali, in the year 1818, of the Imambarah and the religious ceremonies connected therewith. The Government thereupon substituted one trustee for two muttawalis appointed by the original deed of endowment, thereby substantially altering the original idea of having two muttawalis.

3. In the year 1825, Wasiq Ali Khan, claiming muttawaliship under a nomination by his father, Rajab Ali Khan, brought a suit impugning the right of the Board of Revenue to dismiss muttawalis, and claiming the right of his father to nominate him as the successor muttawali. The case of the Government as stated before the Court in Wasik Ali Khan's suit, was that the case was of a public trust of a religious endowment, which properly came within the intent and scope of Regn. 19 of 1810, u/s 13 of which the revenue authorities and local agents had full power, on proof of corruption on the part of the incumbent trustees, to appoint others in their stead. In the case the Board of Revenue with the sanction of the Governor-General in Council, on full proof of corruption, incapacity, and dishonesty, appointed Ali Akbar Khan to the office of muttawali. The Government's case further was that Rajab Ali Khan had no power to appoint a successor. The case came up to the Sadar Dewany Adalat (6 S. D A. 130). The plaintiffs' suit was dismissed. The final decision was passed by the Sadar Dewany Adalat in September 1836. The learned Judges held that the trust created by Haji Mohamed Moshin was of the nature of a towleeut mi-ul-waseeut or testamentary trust (per Mr. Barwell and per Mr. Smith); that the Board of Revenue under the authority vested in the Government and delegated to the Board by Regn. 19 of 1810, had the power to remove a muttawali on sufficient grounds, and that power was rightly exercised. On such dismissal, the office of Muttawali became vacant (per Mr. Smith). It was further held that under the terms of the original trust deed, the endowment could not have been excluded from the control and superintendence of the Board of Revenue, who possessed the right of control over such establish, ment.

4. Under the provisions of Sections 8, 11, 12 and 13 Regn. 19 of 1810, Rajab Ali Khan had no power to appoint a successor in his stead without the knowledge and consent of the revenue authorities (per Mr. Money). In the year 1836, the Board of Revenue dismissed Syed Ali Akbar Khan, whom they had appointed in 1818; and one Syed Keramat Ali was appointed to the muttawaliship of the Hooghly Imambarah in January 1837. Keramat Ali held the office until the year 1875. Before the appointment of Keramat Ali to the office of muttawali, one

Moulvi Zynuddin was placed in charge of the office after the dismissal of Syed Ali Akbar Khan in 1836. The history of the office shows that after the dismissal of the mutta-walis holding office under the deed of endowment; one-ninth of the income of the endowed properties was assigned to "the agent or muttawali appointed by the Government," to administer the affairs of the endowment, the Government in official correspondence of the years 1836 and 1863 using the words muttawali, agent and superintendent in the same sense with reference to the person placed in charge of the Imam--barah. The Religious Endowment Act, Act 20 of 1863, was passed; and it received the assent of the Governor-General on 10th March 1863. The enactment required, by Sections 3 and 7, the Local Government to appoint a committee to exercise the powers conferred on the Board of Revenue by Regn. 19 of 1810, in the matter of the power of appointment to a vacancy in the office of a trustee, manager or superintendent, conferred upon the Board by Section 14 of the Regulation.

5. In 1875, Moulvi Ashrafuddin Ahmed was appointed by the Government in the place of Keramat Ali, as the committee under the new enactment of 1863 had not been appointed till the time of appointment of Keramat Ali's successor came. Keramat Ali wanted to nominate his successor, but his claim was rejected by the Government; and it was pointed out to Keramat Ali that he had no right to appoint his successor. The committee appointed by the Government under Act 20 of 1863 began to function from July 1875; and Ashrafuddin Ahmed was recognized as mutta wali by the committee. Ashrafuddin Ahmed claimed the right to nominate his successor and the claim appears to have been accepted by the Government. The Government's action in this behalf was challenged by the committee, and ultimately Ashrafuddin Ahmed continued to be the muttawali till 1916, when he retired. In view of the right claimed by Ashrafuddin Ahmed in the matter of nominating a successor, the committee had for the purpose of settling a dispute, to grant a pension as also a bonus to the retiring muttawali. The committee after this, decided, in 1916, to appoint muttawalis for a term; and in consonance with that decision appointed Syed Mabammad Raziuddin as muttawali in 1916 for the period of three years, with the stipulation contained in a registered agreement, that it would be competent for the committee to dismiss the muttawali, on giving him three months' notice, without assigning any reason for dismissal. On the expiry of the period for which Raziuddin was appointed, he was granted an extension of service for one year. In 1920, Syed Ali Kazimaini was appointed on the same terms and conditions as those under which Raziuddin was appointed in the year 1916. Raziuddin thereupon instituted a suit against the members of the committee for a declaration that he was a muttawali under the Mahomedan law, and as such could not be removed by the committee, that the agreement executed by him was illegal. Raziuddin also prayed for a permanent injunction restraining the members of the committee and their nominee Syed Ali Kazimaini from interfering with him in the discharge of his duties as muttawali.

6. The trial Court, as also the Court of appeal in its judgment passed ,on 25th March 1920, refused the prayer for injunction; and it was held by the Court of

appeal that the restriction clauses in the agreement under which Raziuddin was appointed muttawali, could not be held to be illegal and void, as contended by the plaintiff Raziuddin. After the expiry of the term of three years for which Syed Ali Kazimaini was appointed muttawali by the committee, defendant 1 Syed Altaf Hossein was selected, and appointed as muttawali, with effect from 1st March 1923. There was an advertisement for the post of muttawali of the Hooghly Imambarah, on 10th December 1922, inviting applications for the post; term of appointment was mentioned as three years, with option to the members of the committee for a further period of three years; the emolument of the post was mentioned as Rs. 300 per mensem, the minimum, under certain terms and conditions. Defendant 1 entered office after having executed an agreement dated 1st March 1923, as between himself and the committee, which agreement was duly registered. Five conditions were specifically and de-finitely mentioned in the agreement. The salary agreed upon was stated, and it was mentioned that

the appointment of muttawali (or manager) will stand good for three years from the date of appointment, "during which time the committee will be at liberty to dispense with the services of Moulvi Syed Altaf Hossein without assigning any reason, by simply giving him three months" legal notice to terminate his appointment as muttawali (or manager)." The said Moulvi Syed Altaf Hossein will be at liberty to resign his appointment without assigning any reason whatsoever, or by simply giving three months" legal notice to vacate his appointment as muttawali (or manager) of the said Imambarah.

7. Before the expiry of the three years" term, there was another agreement drafted, and it was approved by Syed Altaf Hossein, on 17th January 1926; the agreement contained the terms of appointment ; and the terms were the same as those contained in the registered agreement of 1st March 1923. It appears from a letter addressed to the committee by Syed Altaf Hossein on 2nd February 1926, that he (Syed Altaf Hossein) thanked heartily the members of the committee for appreciation of his services by re-appointing him of their free will for a second period of three years. He was willing to enter into a fresh agreement embodying the terms and conditions, the draft of which had been signed by the members of the committee and himself. It was pointed out to the committee that the provision relating to the three months" notice for dispensing with service, without assignment of reason, was to say the least of it, erroneous; it was said however that if the committee did not fall in with that view of the matter, he (Syed Altaf Hossein) did not wish to go against the wishes of the committee for the sake of doing some more service to the cause of the holy shrine and sacred trust. Eventually Syed Altaf Hossein complied with the wishes of the committee that he should make over charge of his office in the evening of 28th February 1925, the day on which the first term of his appointment came to an end, and take charge again early next morning, entering upon this office for a second time.

8. Soon after, on 16th March 1926, the committee appears to have exercised their power to dismiss the muttawali, by asking him to vacate office with effect

from 1st July 1926; and that was followed by the appointment of defendant 2, Syed Ajar Hossein Jufri as muttawali for the period of five years. Defendant 1 refused to vacate his office and the position taken up by him gave rise to the suit for declaration and injunction by committee out of which this appeal has arisen. The case of defendant 1 on the merits was, that he was a muttawali under the Mahomedan law, and could not be removed by the committee. The agreement under which he entered office in the year 1923, was characterised as fraudulent, which was not binding on the defendant; and that the defendant pleaded that there was no ground for his dismissal. There was also the plea raised by defendant 1 that the suit was not maintainable in the form in which it was instituted. The appeal to this Court against the decision of the trial Court, dismissing the suit on the merits, has also been characterised as an appeal infructuous and incompetent, as the members of the committee of management are not represented in the same, and for the further reason that one of the plaintiffs died during the pendency of the suit, and another plaintiff died during the pendency of the appeal to this Court.

9. It is necessary that the plea in bar,, raising the question that the suit was not maintainable, has to be taken into consideration first. As has been observed by the trial Court, the plaintiffs' suit was not barred by any of the provisions contained in Section 42, Specific Relief Act, and regard being had to the nature and scope of the suit, we are clearly of opinion that the primary relief claimed in the suit was for a permanent injunction against defendant 1, in the matter of his continuing in office as the muttawali of the Hooghly Imambarah. The relief claimed by the plaintiffs in the suit were such, as made the defendants' plea that the suit was not maintainable in the present form, is in our judgment wholly untenable, and the decision of this Court in the case of Deo Kali Keor v. Kedar Nath (1912) 39 Cal 704, on which very great reliance was placed on behalf of defendant 1-respondent, has no application to the case before us. That effect of the death of one of the plaintiffs in the suit during the pendency of the suit in the trial Court, and of the death of another, when the appeal to this Court was pending did not make the suit and appeal infructuous, arises for consideration next. In view of the provisions contained in the Religious Endowments Act (20 of 1863) which govern the rights of the parties in the case, a suit by the surviving members of a committee appointed by the Government u/s 7 of the Act is maintainable, and we are in agreement with the view taken by the learned Judges in the decision of this Court in the case of Raghu Nandan v. Bibhuti Bhusan (1912) 39 Cal 304. That a committee is not ipso facto dissolved when one of its members dies. In the above view of the case, there is no such defect in the appeal as preferred to this Court, which could sustain the plea raised by the defendant-respondent that it had become infructuous on the death of two of the members of the committee.

10. The substantial question in controversy in the case related to the position of the defendant 1-respondent, under the law; whether the defendant was a muttawali under the Mahomedan law. Subsidiary to this general question were

the questions whether the appointment of a muttawali for a limited period was legal and valid; whether the agreement under which defendant 1 came into office was a valid and binding agreement between the parties; could the committee appointed u/s 7, Religious Endowments Act (20 of 1863), legally dismiss a muttawali without assigning any reason as provided by the agreement. The determination of the main question in the case depends on the scope and operation of the two enactments relating to public religious endowments: (Regn. 19 of 1810 and Act 20 of 1863, by which the aforesaid Regulation was in course of time, superseded). The superintending authority over religious endowments exercised by the old rulers of the country passed to the British Government; and the Bengal Regn. 19 of 1810, defined the manner in which the power of the Government was to be exercised. The preamble to the Regulation declared the duty of the Government to provide that all such endowments be applied according to "the real intent and will of the grantor. The Government by promulgating the Regulation of 1810 framed a general scheme for the better management of the institution. The general superintendence of the endowments was vested in the Board of Revenue, and the Regulation authorised the Board of Revenue to appoint local agents (Sections 7 and 8 of Regn. 19 of 1810).

11. The authority to remove for just cause was recognised and the authority to remove was considered to be impliedly given as a proper incident to the principal duties and responsibilities of the Board of Revenue: see *Chinna Rangaiya angar v. Subbraya Mudali* (1866) 3 Mad 334. The powers of the Board of Revenue were, in fact, the sovereign powers of the Government, in regard to the management and superintendence of endow-, ments taken charge of by the Government. The Government, after assuming control of the endowment created by Haji Mahomed Moshin, dismissed the muttawalis in possession, owing to misappropriation of funds; Akbar Ali was appointed an agent of the Government, thus substituting one agent for two muttawalis, to administer the affairs of the endowment; a litigation ensued which was concluded by the decision of the Sadar Dewani Adalat, Bengal, the position taken by the Government in regard to the endowment having been accepted by the final Court of appeal in the year 1836. The plea advanced by the plaintiff in the suit, claiming to have derived title through one of the original muttawalis mentioned in the deed of endowment, having been negatived. The decision of the question of the right to appoint a successor muttawali was against the plaintiff in the suit, and in favour of the Government, The powers vested in the Government were being exercised by the Board of Revenue under Ss. 13 and 14, Regn. 19 of 1810 in the matter of appointment of mutawallis described in various correspondence as agent or mutawalli; the appointment of a second mutawalli as provided by the deed of endowment was effectively done away with. In the year 1863, the regulation was replaced by Act 20 of 1863. The property in the possession of the Board of Revenue was transferred to a committee. Under the enactment, the committee appointed u/s 4 was to have the same powers that the Board of Revenue had under Regn. 19 of 1810, the powers being of supervision and control. The object

of Act 20 of 1863 was, as clearly indicated in the preamble, to relieve the Board of Revenue and the local agents from all duties imposed by Regn. 19 of 1810, in respect of superintendence of religious establishments, the appropriation of their endowments, the preservation of buildings connected therewith, and the appointment of trustees and managers or connected in any way with the management of such establishments; and by the provisions contained in Sections 7 and 12, all those duties in the case of religious endowments to which Section 3 applied, were fully transferred to the committee appointed by the Local Government, to take the place and to exercise the powers of the Board of Revenue and the Local agents " The effect of the enactment was to confide to the committee the same duties and responsibilities; and enable them to exercise the same powers of the Board of Revenue, and under Act 20 of 1863, the power to suspend or remove a mutawalli for just cause, which was properly incident to the principal duties and responsibilities of the Board of Revenue under Regn. 19 of 1810, was impliedly given. It is to be noticed that by the provisions of the Act, as contained in Section 12 applicable to cases coming within Section 3 of the Act, the committee was to be appointed for the superintendence of the religious establishment and for the management of its affairs; the powers of the committee were not merely powers of supervision and control.

12. It is further to be noticed in this connection that the trustee, manager or (Superintendent of the religious establishment appointed by the committee could have no possession strictly so called. The property was vested in the committee ; the trustee, manager or superintendent could have no legal property vested in him, he being only an agent or servant of the committee. His was only the custody or management of the property acting under the supervision and control of the committee. The committee could always under the law take over such custody or management from the trustee, manager or superintendent appointed by it, provided they act in the interest of the institution ; in the exercise of the powers vested in them by law, as contained in the Religious Endowments Act (20 of 1863). As provided by Section 12 of the Act, the property is transferred to the committee, and all powers previously exercised by the Board of Revenue or local agent for the recovery of land or other property transferred, were exercisable by the committee from the date of transfer. The position thus indicated was considered by this Court in the case of Bhima Rout v. Dasarathi Das (1913) 40 Cal 323, and we are in agreement with the observation made in the judgment to the following effect:

13. Section 3 deals with cases in which at the time of the commencement of the Act the religious establishment was an institution in which the nomination of the trustee, manager or superintendent thereof was vested in or might be exercised by the Government, and the nomination of such trustee, manager or superintendent was subject to the confirmation of the Government. In cases covered by Section 3 of the course to be followed is outlined in Sections 7, 8, 9, 10, 11 and 12. The trustee, manager or superintendent was put under the control of the Board of Revenue, and subsequently under the control of the

committee under the statute. Reference may usefully be made in this connection to the observations of their Lordships of the Judicial Committee-of the Privy Council in *Vidya Varuthi Thirtha v. Balaswami Ayyer* AIR 1922 PC 123:

In 1810 the British Government had assumed control of all public endowments, Hindu and Mahomedan, and placed them under the charge of the Board of Revenue. In 1863 the Government considered it expedient to divest itself of the charge and control of these institutions, and to place them under the management of their own respective creeds. With this object Act 20 of 1863 was enacted, system of committees was devised to which were transferred the powers vested in Government for the appointment of managers, trustees and superintendents; rules were enacted to ensure proper management. The Act contains no definition of the word "trustee;" it uses indifferently and indiscriminately the terms, "manager, trustee or superintendent," clearly, showing that the expressions were used to connote one and the same idea of management. After the enactment of 1863, the committee to whom the endowments were transferred, were vested, generally speaking, with the same powers as the Government had possessed before in respect of the appointment of "managers, trustees and superintendents".

14. To the above observation may be added the opinion expressed by Sir John Wallis, C. J., in the decision of the Madras High Court in the case of *Govindaraja Mudaliar and Swaminatha Mudaliar and Others Vs. Sabapathi Mudaliar and Others*, , that

the powers which had been given to the Board of Revenue by the regulation and which were conferred upon the committee by Act 20 of 1863 were exceedingly wide, and enabled them to appoint or to make such other provision of the trust, management and superintendence, as might to them seem fit, with reference to the nature and condition of the endowments.

15. In the present case, as it would appear from the narration of the history of appointment of muttawalis, the committee, in view of the past history, and regard being had to the fact that the muttawallis, successively appointed to the office, never ceased to assert their right to continue in their office, and the right to nominate their successor, considered it necessary to fix a definite period for which the muttawali of the Hooghly Imambarah was to hold office. It is difficult to hold that regard being had to the past history, the decision of the committee was one which was not to the interest of the endowment concerned. Successive holders of the office, in assertion of their rights, forced the committee to face litigation, or settle the matters in controversy on terms which meant expenditure of funds of the endowment; and in the case of *Ashraf-uddin Ahmed*, the settlement of dispute entailed a recurring charge on the endowment in the shape of a monthly pension for a number of years. On the materials before us, we have come to the conclusion that the decision arrived at by the committee that the office of the muttawali of the Hooghly Imambarah could be held only for a fixed period of time was a proper decision on the facts and in the circumstances of the

case. The committee had the power in them, vested under the law, to decide that the tenure of office of a muttawali, was to continue so long as its continuance was not inconsistent with the in-terest of the endowment.

16. The question was whether the committee had acted on a bona fide belief that the appointment of a muttawali for a term, and not for a life, was necessary in the interest of the endowment confided to their care, or had it been actuated by some improper motive. The onus was on defendant 1 in the suit to show that the committee had not acted on a bona fide belief ; and there is noth-ing before us with reference to which it could be held that the action of the committee in this behalf, decided upon in the year 1916, was not bona fide, and in the interest of the endowment. Appointment was to be made subject to good behaviour, and to competence to carry out the duties of the office. This has been the policy of the committee from 1916 ; some of the muttawalis had to be dismissed and others had to be pensioned. It requires to be mentioned in this connexion, that the powers of the committee appointed under Act 20 of 1863 are not the powers exercisable under the general Mahomedan law in the matter of appointment of muttawalis, and not the powers exercised by the creator of the endowment himself, but by the power vested in the Ruling Power, the power exercised by the Board of Revenue under Regn. 19 of 1810, and the power conferred upon the committee under the Religious Endowments Act (Act 20 of 1863). The muttawalis appointed under the Regulation have no power to appoint their sucees-sors.

17. This was the scheme followed by the Board of Revenue, in supersession of the general rule of Mahomedan law, and of the scheme outlined in the deed of endowment executed by Haji Mahomed-Moshin in 1806. After the endowment vested in the committee, under Act 20 of 1863, the scheme of appointing muttawalis without terms and conditions attached to the appointment, proved to be detrimental to the interest of the endowment, and it was therefore decided in the year 1916 that the tenure of office of the person entrusted with the internal management of the Hooghly Imam barab, was to be for a fixed period. In our judgment, it appears to be clear that the position is that the mutawali in the case before us did not hold office as a muttawali under the general Mahomedan law, or in accordance with the terms of the original endowment. As a (person placed in charge of the internal administration of the Imambarah, he wag an officer of committee appointed by the Government, in the case of an endowment to which Section 3, Religious Endowments Act (20 of 1863) was applicable; and could not under the law exer-cise any right, or have any power under the law, excepting those delegated to him by the committee, as a trustee or manager or superintendent, as mentioned in the Act.

18. The position of a mutawali appointed by the committee is that of a servant of the committee and he cannot have what is called a freehold in his office. In the lease before us, as in all cases falling (Under Section 3, Religious Endowments Act, the mutawali cannot claim the same position of a trustee u/s 4 of the Act; and it could not be claimed by the mutawali that the committee could have no

power in them to dismiss him, but would have to seek the intervention of the Courts in that behalf. In our judgment, the correct position was indicated by Davies, J., in *Seshadri Ayyan gar v. Nataraja Ayyar* (1898) 21 Mad 202 that the control of the committee was the control over a subordinate, the case being parallel to the case of a master and servant. The powers of the committee are derived from the supreme or sovereign power of Government, and they were free to deal with a servant appointed by them, according to the terms of employment, and were also free to remove the recalcitrant trustees appointed for a fixed period, without assigning reasons for such removal, in consonance with the terms of service. It would not, in our judgment, be right to hold that the committee must go to the Government, or come to the Judge with their case for orders, as has been held by the trial Court in this case. The mutawali in the present case was not a mutawali holding office under the terms of the original deed of endowment, executed by Haji Mahomed Moshin, and was not a mutawali under the general Mahomedan law, with the power to nominate or appoint his successor. The question for consideration next, is whether the agreement executed by defendant 1 in favour of the members of the committee of management was valid and binding. Was the defendant estopped from raising the question?

19. The question of estoppel, as a question of law, as raised in the case on behalf of the plaintiffs-appellants in this Court, does not, in our judgment, require any elaborate discussion. If defendant 1 in the suit was a person who could claim to be in possession of the Hooghly Imambarah as a mutawali in accordance with the terms of the original endowment, and if his position under the law was that of a mutawali under the Mahomedan law, he was not, and could not be held to be estopped from asserting his position as such. If on the other hand the defendant was merely in the position of a servant entrusted by the committee appointed u/s 7, Religious Endowments Act, 1863, with the management and administration of the Imambarah, and obtained possession of the same as such, his position was that of a licensee, a person in possession as a servant, and could not as such be permitted to deny the title of the plaintiffs in the suit at the time when he was appointed and placed in possession of the Imambarah. As we have indicated above, defendant 1 could not under the law claim the position of a mutawali under the terms of the original endowment, and he could not further claim to be mutawali under the Mahomedan law. The question then arises is defendant 1 in the suit was a mere servant or licensee of the committee. Although indication has already been given of our view of the matter, it is necessary to deal with the agreement and the terms of the employment under which the defendant came to be in the possession of the Hooghly Imambarah.

20. The facts bearing upon this part of the case, have been referred to already. The defendant answered to an advertisement for the post of a mutawali under certain terms and conditions, by an application to the committee for his employment. The committee appointed the defendant, regard being had to his qualifications for holding the office. The defendant assumed charge of the office,

after having executed a document called an agreement which was duly registered ; in this document, the office to which the defendant was appointed was specifically mentioned as " muttawali (or manager), " and there were the five terms and conditions contained in the document to which reference has already been made. The agreement has been characterised by the trial Court as "a fraudulent thing." It was according to that Court, a fraud upon the gentleman appointed, and it was not therefore valid and binding. The reason assigned for such a conclusion appears to be that the committee had no power to appoint and to dismiss a muttawali ; that "the tenure of a muttawali is a life tenure;" that it was a fraud upon the holy institution, if not on the founder. The position of a muttawali whom the committee had the power to appoint has been dealt with above, and we are unable to see how the appointment of muttawali for a term, and with conditions of service, was a fraud upon the endowment of which the muttawali was appointed manager, subordinate to the committee ; the position of the muttawali so appointed by the committee could not be held to be that of a muttawali under the terms of the original endowment, and he was not a muttawali in the ordinary sense of the word under the Mahomedan law.

21. A muttawali could under the Mahomedan law be appointed by the creator of an endowment ; a muttawali could be appointed or nominated by an outgoing muttawali, under the Mahomedan law, as his successor-in-office ; but appointment of a muttawali by a committee, brought into existence by the statutory provisions contained in the Religious Endowments Act, 1863, was unknown to the Mahomedan law, and the line of reasoning adopted by the trial Court, for holding that defendant 1 was muttawali under the terms of the original endowment, and further that he was a muttawali under the general Mahomedan law, does not commend itself to us. On the question of fraud said to have been practised on the defendant, reference may usefully be made to certain facts deposed to by the defendant himself: he joined the post of the muttawali of the Hooghly Imambarah in 1923; there was an advertisement for the vacancy and he got it; the last post he held was that of first Talukdar under the Nizam of Hyderabad, popularly called District Magistrate there; he retired on pension from that service. Reference may also be made in this connection to a letter already noticed, written by the defendant dated 2nd February 1925, to the members of the Committee of Management of the Hooghly Imambara, in which he heartily thanked the members of the committee for appreciation of his services by re-appointing him for a second period, of three years; he was willing to enter into a fresh agreement with the members of the committee embodying the terms and conditions, the draft of which had been signed by himself.

22. In the letter which is Ex. K (5) in the case mention was made of the ceremony to be performed on the eve of the 28th February, and again on the next morning, and to the provision contained in the draft agreement, relating to three months' notice to dispense with the muttawali's service, without any reason for doing so; and it was stated that the writer of the letter did not want to go against the wishes of the committee if they did not agree with his view that

such provision was, " to say the least, erroneous." On the above materials, apart from anything else, it was not, in our judgment, open to plead fraud on the part of the members of the committee in regard to the matter of the defendant's entering into the duties of his office as the muttawali of the Hooghly Imambarah, under terms and conditions which were not challenged by the defendant at any time whatsoever, before the committee considered it necessary, in the interest of the endowment, to remove the defendant from the office, A person in the position of defendant 1 who had held a responsible office in the Nizam's State, did not at any time before filing his written statement in this case, take up the definite position that he executed an agreement under a misapprehension, in the bona fide belief that the committee had the authority to appoint a muttawali for a term, and that he was in complete ignorance of the term of the wakfnama of Haji Mahomed Moshin; that the agreement was absolutely illegal and void; it was not at all binding upon him. The position so taken up by the defendant is not maintainable under the law, regard being had to the provisions of Reg. 19 of 1810 and Act 20 of 1863; and the position is wholly unsustainable upon the facts and circumstances of the case. A person who has held office under a registered agreement, for a period of three years, on certain terms and conditions, and who had unreservedly accepted a fresh tenure of office on the same terms and conditions, could not be heard to say that he was not bound by the terms of his service; that the terms were not binding on him, at a time when his employers had acted strictly under the terms of service in discharging him from service. The reason for the action taken by the Committee was specifically mentioned by the plaintiffs in the suit in the following manner:

Thereafter it having come to the notice of the committee that defendant 1 was trying to assume powers which did not fully belong to him and to act to the detriment of the Imam-bara, and in disregard of the control of the Committee, in such a way as to impair the ultimate responsibility of the committee for the welfare of the institution, gave him notice on 16th March 1926, asking him to vacate the office, with effect from the first of July 1926. That the committee came to know also of many acts of misfeasance, malfeasance of duty on the part of defendant 1, and of misappropriation and malversation of the funds and moneys of the Imambara.

23. It is apparent that the appointment of defendant 1 for a term was, as has been pointed out already, in the interest of the endowment, whereof the committee were the trustees. The dismissal was also, on the face of it, necessary in the interest of the endowment. It was for the committee to exercise their own judgment as to whether these interests were impaired by the defendant's continuance in office. The onus was on the defendant to show that the committee had not, in dismissing him, acted in the bona fide belief that the dismissal was necessary in the interest of the endowment but had been actuated by some other and improper motive: see in this connexion the judgment of Sir Lawrence Jenkins, C. J., in *Bhavani Shankar v. Timmanna* (1906) 30 Bom 508.

24. The onus was not discharged by the defendant in any way; and the inspection report, Ex. M in the case, dated 3rd May 1925, signed by two members of the Committee, contains nothing which goes against the action taken by the Committee, the following year, for the discharge of defendant 1 from the office held by him. The dismissal of defendant 1 was followed by the appointment of defendant 2 by the Committee to succeed him. Defendant 1 however would not vacate possession of the Imambarah, and would not on any account make over charge to the person appointed to be his successor; although in the judgment of this Court, passed on 18th June 1928, in a case in which the question of appointment of defendant 2 as the Mutwalli, was directly in controversy, as between defendant 2 and defendant 1, in this suit, the opinion was definitely expressed that it could not be understood why the gentleman (defendant 1)

who obtained office according to his own agreement for a limited period, in answer to an advertisement in the newspapers, should so desire to retain his office when his employers have discharged him in terms of his agreement.

25. In the judgment which was passed on an application for substitution of the name of defendant 2 in the place of defendant 1 as the Mutwalli of the Hooghly Imambarah, it was held by this Court that

the Mutwalli, or by whatever name this Manager may be called, is not a Mutwalli appointed under the Mahomedan law. Under the Mahomedan law, the appointment of a Mutwalli can be made by the donor and the succession to the appointment must be in accordance with the provisions of the deed of endowment, if: there is any.

26. The succession to the office of Mutwalli may be in accordance with the desire of the donor, if he is alive; or if the intention of the founder cannot be ascertained from any established usage, then the appointment may be made by the executor of the founder; and failing all these, the power of appointment is in the Court which represents the power of the Kazi. In no circumstances can the Mutwalli, properly so called under the Mahomedan law, be appointed in the manner in which Altaf Hossain was appointed Mutwalli. It can hardly be consistent with the Mahomedan law that the office of Mutwalli should be advertised and a gentleman who may be qualified in every respect should be appointed for a period of three years, or for a further period at the option of the members of the Committee. A person appointed in such a way cannot invoke under the provisions of the Mahomedan law the powers of a Mutwalli.

27. The respondent Altaf Hossain entered into an agreement dated 1st March 1923, which embodied the terms by which he was to hold office. It is unnecessary to recite all these terms, but under them he was liable to be dismissed by the members of the Committee. As the learned Judge has himself said that ordinarily the authority which has the power to appoint an officer, has also the power of dismissal, I do not see why the ordinary power should be held

in the present case as not capable of being exercised. In support of the proposition of the learned Judge that the authority which appoints has the power to dismiss, the case of *Ram Charan v. Rakhal Das Mukerji* AIR 1914 Cal 325 may be cited. That was case of appointment in a Hindu trust, but the principle is the same. I do not therefore agree with the observation of the learned District Judge that the general principles of the Mahomedan law apply to the office of the respondent Altaf Hossain, and I am of opinion that he is liable to be dismissed under the terms of the agreement he entered into with the members of the Committee: see Ex. 1, judgment of Bepin Behari, Ghose, J., in Appeal from Original Order No. 32 of 1927. As already indicated, we are in entire agreement with the view expressed in the judgment of this Court, quoted above; and in our judgment defendant 1 was validly removed from his office as mutwalli (or Manager) of the Hooghly Imam-barah and he ceased to be so with effect from 1st July 1926, and that the appointment of defendant 2 in the place of defendant 1 was valid. Defendant 1 could not, from 1st July 1926, under the law, assert the right to hold the office and interfere in the matter of execution of the duties of Mutwalli (or Manager) by defendant 2, appointed by the Committee.

28. In view of the arguments advanced on behalf of defendant 1. respondent some points which in our opinion do not, and cannot, arise for consideration, regard being had to the above conclu-

sion, arrived at by us, may be briefly noticed. It was argued that the agreement dated 1st March 1923, on which the Committee relied, was against public policy ; that it was ultra vires of the powers of the Committee to impose limitations in the matter of appointment of a Mutwalli. The decision on these points must depend upon the powers of the Committee under the law, and the status of the Mutwalli (or Manager) appointed by the Committee. If the members of the Committee had, as they undoubtedly had under the law, the power to appoint their officer for the manage-ment and administration of the endow ment committed to its control, it is difficult to appreciate how the appointment of an officer, Mutwalli or Manager, who could not be . called a Mutwalli under the general Mahomedan law, for a term, or an agreement with conditions for his discharge from the office, could be held to be against public policy. As it has been said, the doctrine of public policy will not be extended beyond the class of cases already covered by it, and by no means could it be said that the case of appointment of a servant for a term, or laying down the term of service and conditions under which he could be discharged, fell within the cases to which the doctrine of public policy was applicable.

29. The Courts cannot invent new heads of public policy, as we have been invited to do in the case before us, seeing that no such terms and conditions of service were imposed by the Committee by the agreement, which wore not in consonance with the powers off the Committee under the law. The terms and conditions contained in the agreement in the present case were not in violation of the statutory rights of the Committee to appoint an officer, mentioned in the

Religious Endowments Act, as a Trustee, Manager or Superintendent, and who was not a Mutwalli under the Mabomedan law. The application of the doctrine of public policy-must be within its recognized bounds, and, in our judgment, the doctrine could not in any way be applied to the case of the contract as between the members of the Committee and defendant 1. On the point that the action of the Conamittee in the matter of the contract implied by the agreement referred to above, was ultra vires, and beyond their powers, consideration similar to that already mentioned arises in regard to the statutory powers and duties of the Committee.

30. The Committee appointed u/s 7, Religious Endowments Act, 1863, exercise control over the endowment, to which Regn. 19 of 1810 applied before the Act of 1863 came into operation. The Committees are statutory bodies, and though they are not strictly corporations, their procedure in matters relating to management and administration should be governed by the rules applicable to regular corporations. The difference however between a statutory corporation and a corporation which is not statutory exists and must be recognized. The former has such rights and can do such acts only as are authorized directly or indirectly by the statute creating it; the latter, speaking generally, can do everything that an ordinary individual can do, unless restricted directly or indirectly by statute. It may be noticed in this connexion, that acts directly authorized are such things as may fairly be regarded as incidental to or consequential upon those things which are expressly authorized; and contracts entered into by a corporation created for a specific purpose are intra vires of the corporation, although not expressly mentioned in the statute under which it takes powers. In determining therefore whether an act of a corporation is ultra vires or illegal, illegality approaches very near to, and in many cases is the same as ultra vires; and the question is whether a particular act of a corporation is within the competency and power of the corporation. Keeping the above proposition in view, could it be said that the contract entered into by the Committee with defendant 1 was outside the limits of the corporate constitution, that it was ultra vires, illegal and wholly void. The Committee appointed tinder the Religious Endowments Act, 1863, were vested with the control of the endowment, and had the power to appoint a Trustee, Manager or Superintendent for the administration of the same. The power to appoint was expressly conferred by the statute; the power to determine the terms of appointment must, in our judgment, be held to be within the competency of the committee as a statutory corporation, inasmuch as acts beneficial for the purpose of the control of the endowment?the specific purpose for which the corporation was created?are intra vires of the corporation. Regard being had to the scope of the statute under which the Committee was appointed, and regard being also had to the facts referred to above, that the fixing of a period, so far as the appointment of Mutwalli of the Hooghly Imambarah was concerned, it could not be held that the contract evidenced by the agreement between the members of the Committee and defendant 1, was in any way ultra vires, illegal or void. The appointment of

defendant 1 for a term, and under certain conditions specified in the agreement, was within the power of the Committee vested in them under the law as a Committee entrusted with the control of the endowment, the properties belonging to which had vested in the Committee, and for the administration of which they were to appoint a Trustee, Manager or a Superintendent; and no part of the contract which consisted of inseparable stipulations by way of one and the same agreement was in excess of the powers of the Committee under the law.

31. The result of our conclusions mentioned above is that the plaintiffs appellants in this Court are entitled to the declaration prayed for by them in the suit. Defendant 1 was validly removed from the office of Mutwalli or Manager of the Hooghly Imambarah, and ceased to be the Mutwali or Manager with effect from 1st July 1926. Defendant 2 was validly appointed in the place of defendant 1 on and from 1st July 1926. In view of the above decision, a perpetual injunction is issued restraining defendant 1 from asserting any right as Mutwalli or Manager of the Hooghly Imambarah. The appeal to this Court by the plaintiffs is accordingly allowed, the decree of the trial Court is set aside and the plaintiffs' suit is decreed in the manner indicated above with costs. The costs of this Court, as also the costs in the trial Court, will be recovered from defendant 1-respondent, Syed Altaf Hossain, personally.