
(1977) 03 DEL CK 0009
In the Delhi High Court
Case No : Suit No. 451 of 1971

Ramjas Foundation

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-03-1977

Acts Referred:

Citation : AIR 1977 Delhi 261 : (1978) 14 DLT 45 : (1977) 2 ILR Delhi 372 : (1977) ILR Delhi 371

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : R.M. Lal, R.C. and K.S. Bindra, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) There are a good number of schools and colleges in Delhi. Some of these are managed and run by the Ramjas Foundation. The Foundation has brought this suit for a declaratory decree against the Union of India, the Principal defendant to the suit.

(2) Ramjas Foundation is an educational charitable institution. At present it runs 15 schools and one post-graduate college in Delhi. Thousands of students are studying in these institutions. They all bear the name of Ramjas. The founder of these institution was one Rai Sahib Kedar Nath.

(3) Rai Kedar Nath retired as a District Judge in 1911 from the Punjab Judicial Service. He was childless. To perpetuate the memory of his father Lala Ramjas Mal, he thought of starting educational institutions. He made a modest beginning. He started a school in Kucha Ghasi Ram, Chandni Chowk, Delhi in 1912. Thereafter he acquired large tracts of land by purchase. By three sale deeds dated August 25, 1915, December 21, 1915 and December 22, 1915 Rai Kedar Nath purchased nearly 1800 bighas of land in villages Chowkri Mubarkabad and Sadhora Khurd. He also collected money by way of donation from other philanthropists.

(4) On December 21, 1916, Rai Kedar Nath arranged a meeting in the school at Kucha Ghasi Ram. He invited respectable persons of the city. Teachers and students of the school were also present. At this solemn function Rai Kedar Nath declared that he was giving everything he had to the Ramjas Institution, viz. lands, his own cash of Rs. 30,000.00 or so, his wife's jewellery, clothes and household goods. He did not keep anything for himself. Like St. Francis of Assisi he took a vow of poverty, self-abnegation and denial. At that meeting in severe winter he dressed himself sparsely. All that he had was a lion cloth and a blanket on his body. His wife was wrapped in a saree worth two rupees given to her by Seth Laxmi Narain Gadodia, a benefactor, who was also present at the meeting. A Hawan ceremony was performed by a Pandit and a Shastri both belonging to the school where they taught. Rai Kedar Nath's head was shaved.

(5) In 1917 Ramjas College Society was formed. A Board of Trustees was appointed. Rai Kedar Nath himself was the founder president of the Society. To the Society he transferred among other things the lands which he had purchased in his own name as the manager of the Ramjas High School. On June 25, 1936, Rai Kedar Nath executed a release deed (Ex. Public Witness 5/4) in respect of the lands covered by the three sale deeds. He renounced all interest in them.

(6) During his life time the schools under his wise management flourished and increased. They were all well attended. They served the needs of the people and the locality in different parts of Delhi. Many more schools had to be started. Rai Kedar Nath worked in a spirit of dedication. His mission in later life was to spread education. To this noble cause he gave his heart and soul. A number of the judicial fraternity, he crusaded against illiteracy and ignorance. That was his life's work. And today the schools that he founded are a fitting memorial to his name as much to his father's whose memory he wished to preserve and enshrine. He lived an austere life as long as he was alive. On June 12, 1942, he died.

(7) During the second world war the lands of the Ramjas College Society were requisitioned by the British Government. The lands were used for prosecution of the war effort. Buildings and barracks were erected by the Government. At the end of the war the lands were derequisitioned. The Society got them back with buildings and structures. On November 26, 1946, a settlement was arrived at between the Government and the Society. The terms of settlement were reduced to writing (Ex. P. W. 6/1). It was settled that the Government will not claim any compensation for the buildings and structures. The Society in its turn agreed not to claim any compensation for the use of the land by the Government. Both were quits. This was the settlement.

(8) The Society has been in possession of the lands since then. Now buildings and barracks have been given on rent. The rental income is utilised for educational institutions.

(9) On January 27, 1967, the name of Ramjas College Society was B changed to

Ramjas Foundation.

(10) On November 13, 1959, the Chief Commissioner Delhi issued a notification under s. 4 of the Land Acquisition Act (Public Witness -8/1). Land measuring 34070 acres was notified as land likely to be acquired by the Government at public expense for a public purpose, namely, the planned development of Delhi. The following land was excluded from the scope of the notification :-

"(A)Government land and evacuee land; (b) the land already notified, either under Sec. 4 or u/s 6 of the Land .Acquisition Act, for any Government scheme; (c) the land already notified either u/s 4 or u/s 6 of the Land Acquisition Act for House Building Co-operative Societies; (d) the land under graveyards, tombs, shrines and the land attached to religious institutions and Wakf property;"

(11) On December 11, 1959, Ramjas Society filed objections under 5A of the Land Acquisition Act.

(12) Nearly nine years later the Chief Commissioner on February 28, 1968, issued a notification under s. 6 of the Land Acquisition Act (PW-8/2). In this notification, the land of the Foundation measuring 872 bigha 19 biswa situated in Chowkri Mubarkabad was declared to be required by the Government for the planned development of Delhi.. The Collector was directed to take orders for the acquisition of the said land under s. 7 of the Land Acquisition Act.

(13) The Ramjas Foundation, that being the Society's new name, filed a writ petition in May, 1968 challenging the action of the Government in acquiring their lands on the ground that the said lands were "wakf property" within the meaning of that expression as used in the notification of November 13, 1959. It was prayed that the notifications dated November 13, 1959 and May 23, 1968 be quashed by a writ of certiorari. The petition was opposed by the Union of India. The grounds of attack as well as defense in that petition were substantially the same as in the present suit.

(14) Sachar, J. who heard the petition was of the view that the matter ought to be tried in a suit instead of writ proceedings. He, Therefore, by his order dated August 10, 1971 permitted the Foundation to withdraw the petition within liberty to agitate the matter in a suit. Finally, the writ" petition was dismissed as withdrawn. The Foundation on November 8, 1971 brought the present suit for declaration.

(15) The Union of India deny the claim. Their pleas-in-law are reflected in the following issues :-

(1)Whether the plaintiff has cause of action to file the present suit ? OPP.

(2)Whether the suit is not maintainable in the present form ? OPD.

(3)Whether the suit is within time ? OPP.

(4)Whether the plaint is properly signed and verified by a duly authorised

person ? OPP.

(5)Whether the declaration as prayed for cannot be given u/s 34 of the Specific Relief Act ? OPD.

(6)Whether the decision in civil writ No. 408/68 operates as res judicata ? OPD.

(7)Whether the suit is barred by Section 92 of the CPC ? OPD.

(8)Whether the suit is not maintainable for the reasons mentioned in para 11 of the preliminary objection ? OPD.

(9)Whether the land in dispute is Wakf property or in the nature of Wakf property as alleged in the plaint ? If so its effect ? OPP.

(10)Whether proper court fee has not been affixed to the plaint ?

(11)Relief.

(16) An additional issue was framed on November 17, 1975 which reads:

(9A)Whether the impugned notifications and the acquisition proceedings are null and void on the grounds mentioned in clauses (J) to (Q) of para 21 of the amended plaint ? OPP.

(17) In their plaint the Foundation has taken two principal grounds of attack. One is that the purpose of acquisition, namely, the Planned Development of Delhi, is not a public purpose. So far as this ground is concerned, the Supreme Court has settled that Planned Development of Delhi is a public purpose within section 4 of the Land Acquisition Act. This was decided in *Munshi Singh and Others Vs. Union of India (UOI)*, *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, and *Pt. Lila Ram Vs. The Union of India and Others*, . Counsel for the Foundation has not, Therefore, pressed this ground before me.

(18) The only other ground urged by the counsel is the ground based on the words of notification dated November 13, 1959. Basing himself on clause (d) of the excepted lands, counsel submitted that the land of 872 bigha 19 biswa of Chowkri Mubarikabad of the Foundation sought to be acquired by the Government was "Wakf Property" and, Therefore, it was excluded from the ambit of the notification of November 13, 1959. The Foundation seeks a declaration that the said land is exempted from the purview of Notifications under ss. 4 and 6 of the Land Acquisition Act by virtue of clause (d) set out above, and the acquisition proceedings consequently are liable to be set aside and cancelled.

(19) The principal question to be decided in this suit is this Can the land comprising 872 bigha 19 biswa in Chowkri Mubarikabad be said to be "Wakf property" ? If it is so then the land is exempt from acquisition.

(20) Counsel for the Foundation contends that the term "wakf has been used in the Notification dated November 13, 1959 in a general secular sense irrespective of the fact whether the property belongs to a Hindu or a Muslim. He has argued

that on the principles of statutory interpretation, the word "Wakf" should be read in its more popular and primary sense so as to comprise properties which have been set apart for religious or charitable purposes by a person whatever be his religious persuasion. In this connection, first of all, he referred me to the dictionary meaning of the term "Wakf". The term "Wakf" is defined as "bequeathing for pious purposes, a bequest or legacy for pious purposes.. a religious or charitable endowment (as habitations for the poor, books for the use of learned men etc.)" "Wakf karna" means "to dedicate to pious uses, to consecrate; to I make a grant for charitable or religious purposes". (Platts-Dictionary of Urdu Classical Hindi and English published in 1960 by Oxford University).

(21) Another dictionary to which a reference was made is A Dictionary of Hindustani & English by Duncan Forbes published in 1866 where the word "Wakf" is defined as "a legacy for pious uses; lands etc. belonging to mosques, colleges and charitable institutions for their support and maintenance".

(22) Read in this sense, counsel contended, the word "wakf property" would include the lands of the present public charitable institution notwithstanding the fact that Rai Kedar Nath, a Hindu, founded it in early 20th century.

(23) I was referred by counsel to Jai Deval v. Dewan Ram Air 1938 Lah 686 Anur Singh v. Badar Din Air 1940 Lah 119 , Mirza Hidayat Beg Vs. Seth Behari Lal, , Motishah v. Abdul Gaffar Air 1956 Nag 38 and Ram Charan Das Vs. Mst. Girjanandani Devi and Others, in support of his submission that even a Hindu can make a wakf and that there ought not to be any distinction in interpreting the notification whether the founder was a Hindu or Muslim if the object of the wakif (the founder of the wakf) is to dedicate the property for religious or charitable purposes.

(24) What is the origin of the word "wakF and whether the lands of the Foundation can be said to be wakf within the meaning of the Notification ? This is the question to be decided in the suit.

(25) In Mohammadan law, the institution of wakf owes its origin to a rule laid down by the Prophet of Islam, It means "the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings". 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, if there is a wakf-name (that is a deed writing) that a dedication to pious or charitable purposes is meant the right of the wakif 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.

(26) The Privy Council in Vidya Viruthi v. Baluswami Air 1922 Pc 123 observed that the Muhammadan law differs fundamentally from the English law of trusts. It was in view of this fundamental difference between the juridical conceptions

on which English law relating to trusts is based, and those which form the foundations of the Hindu and the Muhammadan systems that the Indian Legislature in enacting the Indian Trusts Act (II of 1882) deliberately exempted from its scope the rules of law applicable to wakf, and Hindu religious endowments. S. 1 of that Act lays down :- "but nothing herein contained affects the rules of Muhammadan law as to wakf, or the mutual relations of the members of an undivided family as determined by any customary or personal, law, or applies to public or private religious or charitable endowments"

(27) Delivering the opinion of the Board Mr. Ameer Ali said :

"THE conception of a trust apart from a gift was introduced in India with the establishment of Moslem rule. And it is for this reason that in many documents of later times in parts of the Country where Mahomedan influence has been predominant, such as Upper India and the Carnatic, the expression wakf is used to express dedication."

(28) The law of wakf is, according to Ameer Ali, the most important branch of Muhammadan law for it is interwoven with the entire religious life and social economy of Muslims. Wakf is perhaps the most important form that charity takes amongst Muslims. The word "wakf literally means "detention" but in Islamic law it means (i) State lands which are inalienable, used for charitable purposes; and (ii) pious endowments. In India generally we are concerned with the second meaning. Wakf is, thus, a pious endowment which is inalienable and, Therefore, supposed to be perpetual although, in actual practice, this quality of perpetuity is cut down by several limitations. (A. A. A. Fyzee-Outlines of Muhammadan Law Ch. IX p. 274-275.)

(29) The institution of wakf is historically traceable to certain sayings of the Prophet. It is said that Omar had acquired a piece of land in the Canton of Khayber and on his enquiring from the Prophet as to how he can make a pious use of it, the Prophet is said to have declared "tie up the property (asl or corpus) and devote the usufruct to human beings and it is not to be sold or made the subject of gift or inheritance; devote its produce to your children, your kindred and the poor in the way of God". It is in accordance with this direction that Omar made the dedication of the property. This appears to be 1st reported instance in Muslim Law.

(30) A later development in Muslim law is the Wakf Act of 1913 generally known as Mussalman Wakf Validating Act of 1913. This Act permitted Muhammadans to create family settlements known as Wakf-ul-Aulad. These were wakfs for the family of the wakif. In these private wakfs, as distinguished from public wakfs, the benefit is for the time being claimable for himself by the person by whom the wakf was created or by any member of his family or descendants.

(31) The Privy Council had refused to recognise Wakf-ul-Aulad on the ground that such a wakf was for the "aggrandizement of family" and the gift to charity was illusory [See Abdul Fata Mahomed Ishak v. Bussomoy Dhiri Chowdhary

(1894) 22 is 76. This case created a storm in the country; it was deemed to go against the fundamental notions of Islamic law. It was refuted with a wealth of learning by Ameer Ali in his well-known work on Mohammadan Law.

(32) Finally the legislature passed the Mussalman Wakf Validating Act of 1913 overruling the view of the Privy Council. In 1930 another Act was passed to give a retrospective effect to the Act of 1913. This in brief is the history of the wakf legislation in India. Wakf is a part of the personal law of the Mohammadans. It is unknown to Hindu law. A religious or charitable trust can be created by a Hindu by all means.

(33) Religious and charitable trusts are found to exist, in some shape or other, in almost all the civilized countries and their origin can be traced primarily to the instincts of piety and benevolence which are implanted in human nature. The form and nature of these trusts undoubtedly differ according to the spiritual and moral ideas of different nations. As Mr. Justice B. K. Mukherjea says :

"EACH system of law has its peculiarities depending upon its particular social conventions, its political necessities and religious usages, and Hindu Law has its own characteristics."

(Hindu Law of Religious and Charitable Trusts 3rd edition page 3).

(34) The popular Hindu religion of modern times is not the same as the religion of the Vedas though the latter are still held to be the ultimate source and authority of all that is held sacred by the Hindus. But it cannot be disputed that the fundamental moral and religious ideas of the Hindu lie at the root of their religious and charitable institutions.

(35) A trust would be denominated a religious or charitable trust, if it is created for the purpose of religion or charity. In the Hindu system there is no line of demarcation between religion and charity. Charitable trusts are as old as religion.

(36) The social, economic and cultural life of people in Muslim countries was entirely different. In all Muslim countries vast funds, properties and agricultural lands are dedicated as wakfs. The real purpose of making a wakf is to acquire merit in the eyes of the Lord: all other purposes are subsidiary. Therefore, every purpose considered by the Muhammadan law as, religious, pious or charitable would be considered valid.

(37) In terms of the Wakf Validating Act, 1913 wakf means : The permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman Law as religious, pious or charitable." [S. 2(1)].

(38) The incidents mentioned are (1) permanency of the endowment, (II) its creation by a Muslim, (III) of "any property" and (IV) for "any purpose recognised by the Mussalman Law as religious, pious or charitable".

(39) It is true that this definition is not exhaustive as the Privy Council has said

in *Ma Mi v. Kallander Ammal*. 54 I.A. 23 but it sets out the essentials of a wakf accurately.

(40) But then who can make a Wakf ? This is the decisive point in this case. In order to create a wakf Muhammadan Law requires dedication by a person of Muslim faith. The Wakif must be a Muslim. Ameer Ali points out that according to the classical jurists of Islam, even non-Muslims could make wakfs; and his view has prevailed in Nagpur and Patna, where it has been held that non Muslims can validly make public wakfs, "but the law requires that the objects for which the dedication is made should be lawful according to the creed of the dedicator as well as the Islamic doctrines". In, *Motishah v. Abdul Gaffar*, Air 1956 Nag. 38 (supra) the question was of a graveyard. It was said that Islam is not a necessary condition for the constitution of a wakf and any person of whatever creed may create a wakf. But the object for which the dedication is made should be lawful according to the creed of the dedicator as well as Islamic doctrines. In *Mst. Mundaria and Others Vs. Rai Shyam Sundar Prasad and Others*, it was held that a Hindu cannot dedicate an Imambara which was a private as distinguished from a public wakf.

(41) In *Arur Singh v. Badar Din*, Air 1940 Lahore 119 the dedication of land as a grave-yard by a Hindu was held to be valid.

(42) But in *Fuzhir Rahman v. Anath Bandhu Pal*, 16 C W.N. 114 the dedication for the maintenance of a mosque by a Hindu was held to be invalid. The Division bench of the Calcutta High Court quoted Mr. Baillie's Digest of Mahomedan law where he says:

"If a zimi (non-believer) should appropriate his mansion for a temple, a church or a house of fire it would be void."

(43) The Bench also quoted Mr. Ameer Ali who in his *Tagore Law Lectures* for 1884 at page 160 said :

"Any person of whatever creed may create a wakf, but the law requires that the object for which the dedication is made must be lawful according to the creed of the dictator as well as the Islamic doctrines. Divine approbation being the essential element in the constitution of a wakf if the object for which a dedication is made is sinful either according to the laws of Islam or to the creed of the dedicator it would not be valid. Consequently a Moslem cannot make a dedication in favor of an idol, a non-moslem place of worship, or any other object which is recognised as unlawful or sinful in his law nor can a Non Moslem validly make a dedication for a Moslem place of worship."

(44) And again at page 424 he says :

"A Non-Moslem who fulfills the conditions above-mentioned can make wakf of the whole or part of his property, it is unlawful for an unbeliever to make a wakf in favor of a mosque."

(45) From these passage's it appears that a wakf must pass two tests. The dedication must be valid according to the creed of the dedicator. Secondly, it must not be opposed to Islamic law.

(46) In *Mirza Hidayat Beg Vs. Seth Behari Lal*, a Hindu executed a deed of wakf. The wakf was created for national education.

(47) Sometime the term "wakf" has also been used in the broad general sense of a religious or charitable trust as was done by Din Mohammad, J. in *Jai Dayal v. Dewan Ram Saran Das*, Air 1938 Lah 686. In that case, a resting place was set apart by a Hindu for marriage processions. The judge called it a "wakf in the course of his judgment but what he meant was a charitable trust created by a Hindu, and not a wakf as known to Mohammadan Law.

(48) The object of discussion of Hindu and Mohammadan Law on the subject is to demonstrate that wakf is quite distinct from a charitable trust as understood in Hindu Law. Wakf can be created by a person of Islamic faith. Suppose a non-Muslim can also create it. It must in that case be in accord with the Islamic doctrines. It is impossible to think of wakf in a World apart from Islam. It has been held that a non-Muslim may not make a wakf for endowing a mosque, though he may make a wakf for other purposes, it being assumed that Muslim law must govern the question (*Fazlur Rahman v. Ananth Bandhe* 16 C. W.N. 114 and Tyabji--- Muslim Law 4th ed. p. 507).

(49) A Hindu who wishes to establish a religious or charitable institution may according to his law, express his purpose and endow it. All that is necessary is that the religious or charitable purposes should be clearly specified, and that the property intended for the endowment should be set apart for or dedicated to those purposes. Having regard to modern conditions and views, the usual religious ceremonies of *sankalp* (the formula of resolve) and *samarpan* (delivery) cannot be regarded as absolutely essential requirements. It is the intention that is material and the dedication may be expressed or inferred otherwise than from formal or religious ceremonies (*Mayne-Hindu Law & Usage* 11th ed. p. 921).

(50) This distinction was dear to the mind of the statutory authority under s. 4 of the Land Acquisition Act. The Indian Trusts Act makes this distinction. So the statutory authority will be presumed to be aware of it.

(51) I cannot read the term "wakf property as embracing property impressed with the character of a charitable trust amongst the Hindus. A property burdened with the obligation of a charitable trust as understood in Hindu Law cannot be called a wakf property in a legal sense. In a non-legal popular sense it may be possible to use the expression wakf indiscriminately for and in relation to any property set apart for charity. But in legal technology the word "wakf has a definite and accepted connotation. It is in, that sense that the word has to be understood. For the true interpretation of the word one must turn to Mohammadan Law and see what it means.

(52) Now the question is : Was Rai Kedar Nath making a wakf of his properties when in the meeting of 1916 he made a declaration in favor of charity ? The answer to this question is in a resounding negative. This is on the assumption that a Hindu can create a wakf though such cases are rare.

(53) The function held at that meeting shows that Rai Kedar Nath did two things. He renounced his interest in his private property. He dedicated everything to the institution he founded. These are known as Samarpan and Sankalp in Hindu Law. There was a clear and unequivocal declaration of intention to create a trust and vesting of the same in the donor as a trustee. There was clear proof of dedication in the ceremony he performed. He divested himself of the property dedicated.

(54) There was a hawan ceremony. This shows that Rai Kedar Nath was an orthodox Hindu. He was a believer in religious ceremonies. What he wanted to do was to found a charitable trust of which he himself was the founder trustee, apart from being the Manager of the School and the President of the society. He created a Foundation as the name of the plaintiff now shows. He established an institution together with provision for its perpetual maintenance.

(55) In evidence this trust has been called by the Secretary as "Educational Charitable Institution". In the deed of settlement dated November 26, 1946, it was described by the British Government as "a public educational charity". All in all it comes to a charitable endowment. It can be properly called a charitable trust. The Indian Trust Act will not govern it, as Section I of that Act lays down. What Rai Kedar Nath created was a charitable trust as known to Hindu law. Reading the notification as a whole, it appears to me that the wakf property as known to Muslim Law has been excepted from the acquisition proceedings. This has been done by the Government in exercise of its powers of eminent domain. I do not think that it will be proper to call the lands in question as wakf property. This is not the sense which that word bears in the notification. In my opinion, the Chief Commissioner's notification uses the expression "wakf property" in the sense in which wakf is understood in Mohammadan Law.

(56) The Chief Commissioner's notification under s. 4, Land Acquisition Act is in the nature of a statutory instrument. It uses the expression "wakf property". How do we interpret these words ? I think these words must be construed according to the legal and technical meaning given to them by Muslim. Law. They are not to be given the more popular, non-legal or ordinary dictionary meaning of the word. These words must be taken in their legal sense. As Lord Macneughten said in Commissioner of Income Tax v. Pemsel (1891) A.C. 531:

"IN construing Acts of Parliament it is a general rule-that words must be taken in their legal sense unless a contrary intention appears."

(57) I now take up the issue. Issue No. 1 Since the Foundation claims that their lands are exempted under the notification dated November 13, 1959 that is their cause of action for bringing the suit. Issues 2 and 5

(58) Under s. 34, Specific Relief Act any person entitled to "any right as to any property" may institute a suit against any person denying, or interested to deny, his title to such right. The court can make a declaration in its discretion if it finds that he is so entitled. The suit Therefore is maintainable. Issue No. 3

(59) "THE other question argued before me is about limitation. I think the suit is within time, if the period spent in the writ proceedings is excluded. The notification under s. 6 is dated February 28, 1968. The present suit was brought beyond three years of that date. It was filed on November 8, 1971. If the period spent in the writ proceedings is excluded, under s. 14, Limitation Act, the suit is well within time. The High Court of Andhra Pradesh has held that under s. 14 time taken in writ proceedings is deductible. (See : Adari China Narayana v. The Commissioner for Hindu Religious and Charitable Endowments, Andhra Pradesh and others. 2nd 1962 Andhra Pradesh 865) (15). Issue No. 4

(60) It is in evidence of Ram Kanwar Gupta, secretary of the Managing Committee (P.W. 10) that on October 27, 1969 a resolution was passed by the Foundation authorising him to file the suit. The minutes were signed by the Honorary Secretary. He has proved his signatures on the plaint as well as on the power of attorney. Issue No. 6

(61) The Civil Writ No. 409 of 1968 was allowed to be withdrawn by Sachar J. The Foundation was allowed to agitate the question in a suit. Since there was no decision in the civil writ on merits of the claim, the decision in the civil writ does not operate as a bar. Issue No. 7

(62) Section 92 of the CPC does not bar the present suit. The present suit is not for one of the reliefs mentioned in that section. The Foundation claims a declaration against the action of the Union of India. I, Therefore, decide this issue against the defendants. Issue No. 8

(63) In paragraph I of the Preliminary Objections the points covered by other issues already discussed by me have been raised. Therefore, this issue is superfluous. Issue No. 9

(64) I have already discussed it. The main issue of substance is this.

(65) The land in dispute is not wakf property. The Foundation is a charitable trust for the promotion of education. The lands of the Foundation are impressed with the character of a charitable trust. Issue No. 10

(66) It has not been shown to me how proper court-fee has not been fixed on the plaint. The suit is for declaration pure and simple. Correct court-fee thereon has been paid. Issue No. 11

(67) Because of my finding on issue No. 9 I would dismiss the suit of the plaintiff but make no order as to costs.