

(1978) 03 MAD CK 0053
In the Madras High Court
Case No : O.S.A. No. 20 of 1975

Tamil Nadu Wakf Board

APPELLANT

Vs

M. Ebrahim, Musuee Muthavalli and Others

RESPONDENT

Date of Decision : 27-03-1978

Acts Referred:

Waqf Act, 1954 — Section 1(3), 3, 3(1), 36A, 57

Citation : AIR 1979 Mad 231 : (1979) 92 LW 355 : (1979) 1 MLJ 189(1)

Hon'ble Judges : Nainar Sundaram, J;Ismail, J

Bench : Division Bench

Judgement

1. One Halima Bai executed a deed of Wakf-alal-aulad and the same was registered on 24-1-1935. Under the document, several properties belonging to her were endowed as wakf-alal-aulad. Clause (12) of that deed expressly provides that after deducting the disbursements referred to in the earlier clauses from the income of the endowed properties, the surplus should be divided every month by the muthavalli for the time being among the members of her family from children born to her by Mohamed Musa Sait, her husband, including herself and her husband the said Mohamed Musa Sait in the following manner, namely, two shares for a male and one share for a female for ever so long as there are any and until her property lasts, and should it become extinct, then the income shall be expended for the benefit of the poor Mohammed's, preference being given to the bringing up and the maintenance of Muslim orphans and widows. Cl. (14) provides that in the event of any of the endowed immovable property described in the schedule thereunder written being dilapidated and being found necessary by the muthavalli to dispose of such property, he shall upon the resolution in writing of the then existing members of family, dispose of the said property and purchase as soon as possible and without any delay another immovable property capable of yielding rent that was derived from the property disposed of when the same was in good and sound condition. Under clause (16), the muthavalli shall not lease the said property or any portion thereof to any one for a longer period than three years nor shall the muthavalli receive advance

from any lessee more than three month's rents of the property so leased. The provisions of the deed make it absolutely clear that the usufructs from the endowed properties should be utilised for the benefit of the person who created the wakf and the members of her family, and so long as any member of the family continues to survive, no part of the income should be spent for any other purpose, and it is only when the entire lineal descendants become extinct, there is provision for spending the money for the benefit of poor Muslims, preference being given for Muslim orphans and widows. In other words, the nature of the endowment in question was that is generally under the Mohammedan Law known as wakf-alal-aulad or a private wakf. The wakif is alive.

2. The Wakf Act, 1954 (Central Act 29 of 1954 hereinafter referred to as the Act) was enacted by the Parliament and under that enactment a survey of wakfs in each State was conducted and Wakf Boards in States were constituted. It is not in dispute that the properties belonging to the endowment in question were held as wakf properties, and the wakf itself was registered as a wakf with the State Wakf Board. Not only that, the first respondent herein, namely, the muthavalli, applied to the Wakf Board to grant him permission to sell 17 1/2 grounds of land belonging to the wakf situated in Naval Hospital Road, Periamet, Madras for the purpose of construction of a building for the wakf at No. 9, Greames Road, Madras-6 and accordingly such permission was granted by the Board for sale of the lands by a resolution dated 13-8-1971 but the Board had not given permission to utilise the sale proceeds for the construction of the building as proposed by the muthavalli and the matter is said to be still pending.

3. The Wakf Board claimed contribution from several wakfs including the wakf in question. Venkatadri, J. after elaborately referring to the legal position in this behalf, in his judgment in G.M.A. Bhaimia, Muthavalli "Wakf Estate A.M. Bhaimia" and Others Vs. The Madras State Wakf Board and Another, held that the Wakf Board will be entitled to claim contribution from a wakf-alal-aulad only to the extent to which the property has been dedicated for pious, religious and charitable purposes as recognised by Mohammedan Law. After this judgment, the muthavalli, the first respondent herein took out C. S. No. 175 of 1973, namely, the original Side Rules. The purpose of this originating summons was to obtain the sanction of this court for the purpose of selling the property, house in door No. 40/1 Malaya Perumal Street, G. T. Madras for Rs. 1,28,000 in favour of the second respondent herein and for the purpose of utilising the sale proceeds for putting up construction at No. 8-A Greames Road, Madras 6 which is also a property belonging to the Wakf. When this court, the muthavalli stated that the nineteen beneficiaries who were in existence were all agreed to the disposal of the property because the said disposal would be for the benefit of the wakf. After hearing the muthavalli, this court on 22-8-1973 permitted the muthavalli to sell the property in question in favour of the second respondent herein for a sum of Rs. 1,28,000 and from and out of the sale proceeds of the said property, to put up a second floor to the building at No. 8-A Greames Road, Madras-6. After this sanction was granted by the High Court, the present application, namely

Application No. 2831 of 1973 was filed by the State Wakf Board for the purpose of revoking or canceling the order which this court passed on 22-8-1973. The contention of the Wakf Board was that the property is a wakf property and therefore under S. 36A of the Wakf Act, the muthavalli has no right to sell, gift, mortgage, or exchange any wakf property or lease the same for a period exceeding three years in the case of agricultural land, or for a period exceeding one year in the case of non-agricultural land or building, without the previous sanction of the Board, and in this particular case, the muthavalli has played a fraud in not obtaining the sanction of the Wakf Board and in not disclosing to this court the fact that the wakf in question had submitted itself to the jurisdiction of the Wakf Board, and therefore the permission granted by the High court will have to be cancelled. The Wakf Board purported to file the application under S. 57 of the Act. Sub-sec. (1) thereof provides that "in every suit or proceeding relating to a title to wakf property or the right of a muthavalli, the court shall issue notice to the Board at the cost of the party instituting such suit or proceeding", and in the absence of a notice under sub-section (2), sub-section (4), provides that the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

4. This application filed under S. 57 of the Act was resisted by the muthavalli who figured as the first respondent and the purchaser who figured as the second respondent, and our learned brother Sethuraman, J. by his order dated 9-7-1974 held that the property in question is not subject to the jurisdiction of the Wakf Board and therefore the Wakf Board was not entitled to maintain the application which it filed. Therefore, the learned Judge dismissed the said application. It is against this order of Sethuraman, J., the present appeal has been filed by the Tamil Nadu State Wakf Board.

5. Before we proceed to deal with the matter, it is necessary to refer to certain provisions contained in the Wakf Act referred to already. The Act was enacted by Parliament to provide for a better administration and supervision of wakfs. Section 3 defines certain expressions and the most important of which is the expression "Wakf" itself. Clause (1) of S. 3 defines that expression as follows:--

"Wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes--

(i) a wakf by user;

(ii) grants (including mashrut-ul-khidmat) for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable;

and "wakif" means any person making such dedication".

6. We have incidentally referred to the substance of the provisions contained in Ss. 36A and 57 of the Act. The sole question having regard to the decision of Sethuraman, J. is whether the endowment created by the lady in the present case on 24-1-1935 would constitute a wakf as defined under S. 3(1) of the Act or not. The whole thing depends upon the meaning of the expressions occurring in S. 3(1)(iii) because that alone deals with the case of wakf-alal-aulad. From the use of the expression "to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable" the Legislature contemplates that for a wakf-alal-aulad to be a dedication for any purpose recognised by Muslim law as pious, religious or charitable. That assumes that the purpose of a wakf-alal-aulad simpliciter will not be considered to be a purpose recognised by the Muslim law as pious, religious or charitable and we shall have occasion to say a little more on this aspect towards the end of this judgment. Therefore, while examining the present wakf, we have to consider whether there is any property which had been dedicated for any purpose recognised by Muslim law as pious, religious or charitable. We have already referred to the fact that this is purely a wakf-alal-aulad in the sense that in praesenti there is no dedication whatever of any part of the property or income for any purpose other than to support the wakif, the members of her family and the descendants. In fact, so long as some descendants of the wakif are alive, the property will be for the benefit of such descendants only and only when the entire line becomes extinct, the income from the property will be utilised for the benefit of the poor Muslims, preference being given to Muslim orphans and widows. Whoever may be the ultimate beneficiary, in praesenti as far as the present wakf is concerned, nothing is present wakf is concerned, nothing is dedicated for any purpose recognised by Muslim law as pious, religious or charitable. In view of this position, it will follow that the Central Act 29 of 1954 has no application whatever to the present wakf. That is the view that has been taken by this court as well as by the other courts.

7. The earlier pronouncement of this court on this point is that of Venkataraman, J. in V. Mohamed Mohin Vs. Madras State Wakf Board, . The matter was elaborately considered by the learned Judge and as a result of such consideration, the learned Judge came to the conclusion that a wakf-alal-aulad will be a wakf for the purpose of this Act only to the extent to which the properties have been dedicated for the religious and charitable purposes recognised by Muslim law. Once it is held that there is some property which has been dedicated for a pious, religious or charitable purpose as recognised by Muslim law, it will be necessary for the court to determine that extent in appropriate proceedings. According to the learned Judge a wakf-alal-aulad as such without there being some property in praesenti dedicated for any purpose such as pious, religious or charitable, will not come within the scope of the term "Wakf" as contained in Section 3(1) of the Act. This view of Venkataraman, J. was approved by a Bench of this court in Madras State Wakf Board v. Mohamed Mahim, (1971) 84 MLW 261. The next decision which dealt with the present wakf

itself is that of Venkatadri, J. in G.M.A. Bhaimia, Muthavalli "Wakf Estate A.M. Bhaimia" and Others Vs. The Madras State Wakf Board and Another, . The question came before this court in the context of the controversy raised by the muthavallis of several wakfs when the Wakf Board demanded contributions from them. The learned Judge against the background of the earlier Mohammedan Law authorities as well as the decisions of courts came to the conclusion that a pure wakf-alal-aulad will not come within the scope of the Central Act, and only a wakf-alal-aulad in which some property has been dedicated in praesenti for the purpose recognised by Muslim law as pious, religious or charitable, will come within the scope of the Act. The learnt provisions of the statute and the earlier history of the legal position observed as follows:--

"The State Wakf Board may, with the best of intentions, resort to enhance the wakf funds, in order to devote and utilise the funds for welfare objects. But the Board cannot on that account, under the guise of the historical theory of wakfs under the Mohammedan Law demand or claim or collect contribution from the muthavallis of private wakfs simpliciter, i.e. where properties are solely dedicated for the benefit of the settlor and his descendants. Even in the case of composite wakfs created for the benefits of the family and descendants and for pious, charitable and religious purposes, the Board can claim contribution only in respect of the income from properties set apart for pious, religious and charitable purposes in the wakf deed."

This decision is really in favour of the first respondent herein. The decision of Venkatadri J. referred by a above was followed and approved by a Bench of the Patna High court in Begum Asma Jafar Imam and Another Vs. The State of Bihar and Others, . That was also the case of a private wakf. The question came to be considered whether the Central Act had any application to such a wakf or not. The learned Judges elaborately considered the legal position in this behalf and observed as follows:--

"From a bare reference to the definition of "wakf" in the 1954 Act, it is obvious that a wakf-alal-aulad has been specifically included; but by using the words to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable" after the words "wakf-alal-aulad" in S. 3(1)(iii) of the Act, it appears that the provisions of the Act have been made applicable only to the properties which have been dedicated for any of the purposes mentioned above. If the intention of the legislature was that the provisions should be applicable to all wakfs-alal-aulad and to all the properties covered by such deeds, it would have simply said, after defining "wakf, and includes wakf-alal-aulad". If it is held that all wakfs-alal-aulad and every part of them are included in the definition of "wakf", then the words "to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable", will become surplus age and redundant. It is a settled cannon of interpretation that a statute is not supposed to use words without a meaning and it is better to adopt the construction which would give

some effect to the words, rather than that which will give none. Thus. having regard to the definition of the term "wakf" contained in S. 3(1)(iii) of the Act, it is clear that the Wakf Boards will have jurisdiction only to the extent to which property has been dedicated for any purpose recognised by Muslim law as pious, religious or charitable and this must be in addition to the provision for the members of the family and descendants."

8. In this particular case, we have shown and there is no dispute that under the terms of the wakf deed, there is no provision for distributing any part of the income in praesenti to any person other than the members of the family, and the poor Muslims come in only in the event of the entire line in the family becoming extinct and so long as a single member of the family is alive, there is no chance of any poor person coming and taking the benefit under the wakf deed, and therefore the present wakf is a wakf-alal-aulad simpliciter and consequently it is outside the scope of the Act and therefore S. 36A of the Act has no application. Consequently, the Wakf Board cannot come and complain under S. 57 and seek to revoke the sanction already granted by this Court. This is sufficient for the disposal of the appeal, and the result is that the order passed by this court already granting permission to sell the property on 22-8-1973 cannot be cancelled, with the consequence that the dismissal of Application No.2831 of 1973 filed by the appellant herein by our learned brother Sethuraman, J. is correct and does not call for any interference. The appeal therefore fails and the same is dismissed. There will be no order as to costs.

9. However, in view of certain submission made before us, we would like to make a few observations before parting with the case. It is not necessary to elaborately go into what constitutes a pious, charitable or religious purpose. Under the Muslim law so that a Wakf can be created for the said purpose. Under the Muslim law as explained and practised by the prophet and his followers, a wakf may be created for the benefit of an person or class of person. or for any object of piety or charity and it may even be for children that are unborn, and if the person or object in whose favour it is created is not in existence at the time of the creation of the trust, it will be applied for the poor who are the ultimate recipients of all wakfs, unless there are other objects named in the wakf itself. The ultimate provision for "poor" is for the purpose of importing an element of permanency to the wakf so that it will not fail under any circumstance as there will always be poor people so it was thought and the provision for the poor is not the only basis for sustaining the validity of a wakf as having been created for a pious, religious or charitable purpose. The concept of piety and charity according to the Mussulman Law is very wide in its amplitude, connotation and sweep and it is this connotation that had been the basis of the creation of wakfs in the early Islamic history. According to Islamic Tradition.

"The Prophet of God declared that a pious offering to one's family (to provide against their falling into want) is more pious than giving alms to beggars. The most excellent of sadakah is that which a man bestows upon his family."

Therefore, the provision in the wakf for the maintenance of the family and relations of the wakf was itself considered to be a pious and charitable object under the Muslim Law, and only under the Hanafi School of Law, the wakif, the settlor himself, can participate in the benefit accruing from the wakf. Therefore as far as the Muslim Law is concerned, there was absolutely nothing against a wakf being created exclusively for the benefit of the wakif, the members of his family and descendants because that itself was considered to be a pious and charitable act under the Muslim Law. But, unfortunately, the English notions of what constitutes charity had considerably influenced the decision of the Judicial committee of the Privy council in dealing with wakfs created by Muslims. The Judicial committee of the Privy Council in its decision in *Abdul Fata Mahomed Ishak v. Russonoy Rasamaya Dhur Chowdhri*, (1895) 22 Ind App 76 held that such a wakf cannot be valid. For coming to this conclusion, the Judicial Committee pointed out--

"As regards precedents, their Lordships ought to know a great deal more in detail about them before judging whether they would be applicable at all. They hear of the bare gift and its maintenance, but nothing about the circumstances of the property--except that in the case cited the house seems to have been regarded with special reverence--or of the family, or of the donor.

As regards precepts which are held up as the fundamental principles of Mohammedan Law, their Lordships are not are mixed up together in the Mohammedan communities; but they asked during the argument how it comes about that by the general law of Islam, at least as known in India, simple gifts by a private person to remote unborn generations of descendants, successions that is of inalienable life-interests, are forbidden and whether it is to be taken that the very same dispositions which are illegal when made by ordinary words of gift, become legal if only the settlor says that they are made as a wakf, in the name of God, or for the sake of the poor. To those questions, no answer was given or attempted nor can their Lordships see any. It is true that the donor's absolute interest in the property is curtailed and becomes a life interest, that is to say, the wakfnama makes him take as mutawali or manager. But he is in that position for life; he may spend the income at his will, and no one is to call him to account. That amount of change in the position of the ownership is exactly in accordance with a design to create a perpetuity in the family, and indeed is necessary for the immediate accomplishment of such a design.....Their Lordships have endeavoured to the best of their ability to ascertain and apply the Mohammedan Law, as known and administered in India, but they cannot find that it is in accordance with the absolute, and as it seems to them extravagant, application of abstract precepts taken from the mouth of the Prophet. Those precepts may be excellent in their proper application. They may, for aught their Lordships know, have had their effect in moulding the law and practice of wakf, as the learned Judge says they have. But it would be doing wrong to the great law-giver to suppose that he is thereby commending gifts for which the donor exercises no self-denial, in which he takes back with one hand what he appears to put away

with the other; which are to form the centre of attraction for accumulations of income and further accessions of family property; which carefully protect so called managers from being called to account; which seek to give to the donors and their family the enjoyment of property free from all liability to creditors; and which do not seek the benefit of others beyond the use of empty words".

10. This decision of the Privy Council gave rise to considerable concern and apprehension among the Muslims of this country which led to the enactment of the Mussalman Wakf Validating Act, 1913 (Central Act 6 of 1913). It is not necessary at this distance of time after what has happened subsequently to say anything about the judgment of the Judicial Committee referred to above except to point out that the decision of the Judicial Committee was considerably influenced by the doctrine of the English law against perpetuities and the concept of "charity" as known to that law.

11. When the Mussalman Wakf Validating Act, 1913 was passed, its object was stated to be to remove doubts regarding the validity of wakfs created by persons professing Islam in favour of themselves, their families, children and descendants and ultimately for the benefit of the poor or for other religious, pious or charitable purposes, and it made lawful for a Muslim to create a wakf, which in all other respects is in accordance with the Muslim Law. S. 3 of the Act provided as follows:--

S. 3 "It shall be lawful for any person professing the Mussalman faith to create a wakf which in all other respects is in accordance with the provisions of Mussalman Law, for the following among other purposes:--

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

(b) where the person creating a wakf is a Hanafi Mussalman, also for his own maintenance and support during his lifetime or for the payment of his debts out of the rents and profits of the property dedicated: Provided that the ultimate benefit is in such cases expressly or impliedly reserved for the poor, or for any other purpose recognised by the Mussalman law as a religious, pious or charitable purpose of a permanent character."

Thus, this remedial enactment came to the help of the Muslim community of this country who were alarmed by the judgment of the Judicial Committee of the Privy council referred to above. In the proviso to S. 3 which we have extracted already, the expression "Musalman law" meant the Mussalman law as interpreted by the Judicial Committee because under the original Mussalman law, even the provision for the members of one's own family would constitute a pious and charitable act. It is this definition contained in the Mussalman Wakf Validating Act, 1913 that would appear to have been adopted by the Central Act 29 of 1954.

12. It was contended before us that even in the case of a wakf-alal-aulad, pure and simple, there is an ultimate dedication for the poor or for a charitable, pious

or religious purpose, however remote may be the point of time when such ultimate dedication really takes effect and the ultimate beneficiary becomes entitled to enjoy the usufruct and therefore some machinery or method must be found to see that the wakf properties even in such cases are not dissipated and totally lost. It was brought to our notice that even in the present case, the property would have fetched much more, but still that muthavalli and others joined together and got only a sum of Rs. 1,28,000. It was also pointed out that the second respondent is a tenant and while the law prevents the granting of a lease for a period more than three or five years as the case may be, in this case, the lease has been granted for decades. Thirdly, it was pointed out that all the beneficiaries of the wakf in this particular case have joined together for obtaining the permission of this court to sell the property for Rs. 1,28,00 and the court had no means to find out whether the property could fetch more and in a case where all the present beneficiaries join together and sell away the property even without the permission of the court, there would be nobody to challenge such an alienation because in praesenti there is no dedication in favour of any other person and therefore some salutary provision is necessary in the form of control being exercised by the Wakf Board or court even in such matters. There is considerable substance in these submissions.

13. It may be stated that the wakfs created by Muslims generally fall into two categories. One is public wakfs in the sense that the beneficiaries are members of the public and the other is private wakfs in the sense that public as such are not the beneficiaries and certain specified individuals happen to be the beneficiaries. Even with regard to a private wakf there may be two kinds.

One is a wakf-alal-aulad simpliciter as we have in the present case where the public in the form of the poor will come into the picture only when the line of the wakif becomes completely extinct at some future uncertain point of time. The second is a wakf in which there is a dedication or gift in praesenti in the sense that a portion of the income from the wakf property is reserved for being spent on strangers and other objects of piety or charity and the other portion being spent for the benefit of the wakif's relations and members of the family. The latter category alone is called generally a composite wakf in the sense that even in praesenti it takes the character of a private wakf as well as a public wakf simultaneously. In other words, it is partly private and partly public. From what we have stated already, Section 3(1)(iii) takes in only such a composite wakf. It does not take in a wakf-alal-aulad simpliciter. Therefore, the question for consideration is whether there is any need to make any provision by way of some check or control against dissipation or deliberate or negligent dealing with the property even in cases of wakf-alal-aulad simpliciter so that the ultimate benefit, even though it may be in a very remote future, may still be available.

14. While considering the above question, it is relevant to point out certain enactments that were actually in force when the Central Act 29 of 1954 came into force. Section 1(3) of the Act states that it shall come into force in a State to

which this Act extends on such date as the Central Government may, by notification in the official Gazette appoint in this behalf for that State. But there is a proviso to this section which states that in respect of any of the States of Bihar, Uttar Pradesh and West Bengal, no such notification shall be issued except on the recommendation of the State Government concerned. The reason for this proviso was obvious. On the date when the Central Act was enacted, in those three States, there were separate and independent Wakf Acts containing elaborate provisions for supervising and controlling the management of wakfs. As far as Bihar was concerned, there was the Bihar Wakf Act, 1947, as far as West Bengal was concerned, there was the West Bengal Wakf Act, 1934 and as far as Uttar Pradesh was concerned, there was the Uttar Pradesh Muslim Wakfs Act, 1936 subsequently replaced by the Uttar Pradesh Muslim Wakfs Act, 1960. The relevancy of the reference to these Acts is that these Acts contained provisions for the Wakf Board exercising control over purely private wakfs, namely, wakf-alal-aulad simpliciter also though to a lesser extent than in the case of other wakfs. It is worthwhile referring to some of the provisions contained in these Acts for the purpose of appreciating the point that is now being made.

15. We may take the case of the West Bengal Wakf Act, 1934 which is the earliest in point of time as between the three Wakf Acts in question. Section 6(1) of that Act states that "beneficiary" used with reference to a wakf-alal-aulad means a wakif, any member of his family or descendants entitled to receive any pecuniary or other material benefits from such wakf. Section 6(10) states that "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Islamic Law as pious, religious or charitable and includes a wakf by user Section 6(11) defines "wakf-alal-aulad" as meaning a wakf under which not less than seventy-five per cent of the net available income is for the time being payable income is for the time being payable to the Wakif for himself or any member of his family or descendants. While dealing with the general powers and duties of the Commissioner of Wakfs, Section 27(1)(d) provides that the Commissioner shall keep in his custody the particular and all other information relating to wakfs-alal-aulad. According Section 32, in the case of a wakf-alal-aulad, a beneficiary or any person entitled under the wakf deed to receive pecuniary or other material benefits either on his own account or on behalf of a religious or charitable institution, and in the case of any other wakf, any person interested may make an application to the Commissioner supported by an affidavit to institute an enquiry relating to the administration of a wakf or for the examination and audit of the accounts of a wakf, and the Commissioner, on receipt of such application and the prescribed fee, and on being satisfied from facts set forth in the affidavit that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, shall take such action thereon as he thinks fit, sub-section (1) of Section 34 is as follows:--

34(10): "If after an inquiry u/s 32 the Commissioner is of opinion that the affairs of any wakf-alal-aulad have been mismanaged to such an extent as to make it

desirable for the protection of the wakf property or in the interest of the beneficiaries that the wakf should be subjected to greater control and supervision, he may recommend to the State Government that such wakf shall for a specified period be subject to the provisions of this Act which are applicable to wakfs other than wakfs-alal-aulad."

Sub-section (2) of this section states--

(2) After considering any recommendation of the Commissioner under sub-section (1), the State Government may, if it thinks fit, by notification in the Official Gazette, direct that for such period as may be specified therein the provisions of this Act which are applicable to wakfs other than wakfs-alal-aulad shall so far as possible apply to the wakf to which the recommendation relates and thereupon, notwithstanding anything contained in this Act, these provisions shall apply accordingly."

Section 35 provides that the Commissioner shall be bound to comply with any request made by the Board for the supply of any information or the production of any document relating to a wakf or for the summoning of any witness whose attendance may be required. With regard to the case of a wakf-alal-aulad, such information will be furnished only for the due performance of any duty of the Board under the Act in relation to such wakf-alal-aulad. Even with regard to the inspection of records and grant of copies, wakf-alal-aulad. Even with regard to the inspection of records and grant of copies, wakf-alal-aulad, is not outside the pale of the relevant provisions of the Act. The enrolment of wakfs contemplates the enrolment of wakfs contemplates the enrolment of wakf-alal-aulad also. Section 46-A provides that any question whether a particular property is wakf property or not or whether a wakf is wakf-alal-aulad or not shall be decided by the Commissioner whose decision, unless revoked or modified by a competent court, shall be final. Section 48 contemplates wakfs including wakf-alal-aulad submitting accounts and Section 52 of the Act makes express provision for statements to be submitted by the wakfs-alal-aulad. Section 53 dealing with the bar to transfer of immovable property of a wakf is a general provision. With regard to annual contributions recoverable from wakfs, wakf-alal-aulad simpliciter is not excluded and the Act provides that in the case of a wakf-alal-aulad the contribution shall be at such rate not exceeding one half of the rate payable by other wakfs. We are merely referring to these statutory provisions for the purposes of pointing out that a wakf-alal-aulad simpliciter has not been kept outside the pale of the Bengal Wakf Act, 1934. Similar provisions were contained in the other two Acts also. Needless to point out that even in respect of wakf-alal-aulad, some safeguard is necessary against the property being dissipated because in case of every wakf, whether it is a public wakf or a private wakf, the property is vested in the Almighty, it is inalienable and non-heritable, and therefore steps, for the purpose of preserving this character of the property, will be absolutely necessary so that in the vent of the immediate object having been fulfilled, the ultimate object may not fail. It is for the Parliament or the State

Legislature to consider the desirability or otherwise of undertaking legislation to bring the wakf-alal-aulad simpliciter also within the scope of the law relating to administration of wakfs now in force, and at the same time to make suitable and appropriate provisions therein relating to it bearing in mind the features that distinguish such a wakf from other wakfs.

16. Appeal dismissed.