CHAPTER IV
STATUTORY AND OTHER PROVISIONS
IN REGARD OF RELIGION

There is no provision in the Constitution directing the State to remain neutral in respect of religious issues nor does it specifically ask the State to cooperate with the religious communities in respect to their faith affairs. There should be no discrimination between people on religious grounds. The silence of the Constitution on this issue is taken as tacit approval for State intervention in religious affairs of all communities, and all organs of the State like as legislature, executive and judiciary. The legislative and administrative nature are financed by the State exchequer, and their validity is well-established despite the Constitutional ban on collection of taxes meant for promoting particular religions.¹

Neither the Constitution says or even remotely suggests that religion is to be the foundation or source of state law. Nor there is such provision for religion in any legislative enactment. Parliament and state legislatures are empowered to make laws in the areas of personal status, family relations and religious endowments, shrine management and organization of inland and overseas pilgrimages, without saying that these are to be drawn on religious sources. But in practice, religious tenets are usually kept in mind while enacting such laws. Legislative

¹. Id., art. 27.
enactments and administrative regulations provisions are based on religious.

4.1 Interpretation of Constitutional Provision to Religious Freedom:

There are certain constitutional provisions relating to freedom of religion. The judiciary has in several cases interpreted Constitutional provisions relating to religious freedom to lay down its parameters and boundaries. A distinction has been made between “essential” and “non-essential” practices of religion, holding that the Constitution necessarily protects the former and not always the latter. There are so many cases in which the judiciary has dwelt on religious beliefs to determine an allegedly religious practice is “essential” or not. Sometimes the criterion has been adopted for this purpose how a community as a whole generally looks at it.

A critical observation of the Supreme Court of India in this regard is quoted here:

The rights to religion guaranteed under Article 25 or 26 is not an absolute or unfettered right, they are subject to reform on the basis of social welfare by appropriate legislation by the State. The court therefore, while interpreting Articles 25 and 26 strike a careful balance between matters which are essential and integral part of religion and those which are not, and the need for the
State to regulate or control them in the interest of the community.²

In a case relating to a prominent Muslim shrine, the Supreme Court cautioned people against treating “superstition” as religion.³ The concern of the court was well in accord with a provision of the Constitution which declares it to be a Fundamental Duty of the citizens “to develop scientific temper, humanism and spirit of inquiry and reform.”⁴

As already noted above, neither the Constitution nor any legislative enactment prevents the State from intervening in matters if they relate to religious doctrine or is otherwise of a purely religious nature. A major issue on which the State has adopted a policy is whether certain religions of India are variations of the same religion or represent different faith traditions independent of each other. Because there are no certain boundary for religion. Three minority religious communities Sikhs, Buddhists and Jains believe their respective religions to be independent faiths different from Hinduism.

While empowering the State to remove by law caste-based restrictions on entry into Hindu temples, the Constitution declares that the word “Hindu” in this context would include Buddhists, Jains and Sikhs.⁵ As the practice is not in vogue among any of these three communities. The related idea probably was to allow them entry into the

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⁵ Constitution of India 1950, Art. 25, Explanation II.
Hindu temples with a view to fostering solidarity among the four religious groups. The titled “Hindu” laws clarify that the word “Hindu” used in their text includes Buddhists, Jains and Sikhs. The four family laws were enacted in 1955-56 under the title of Hindu Law.6

There was a controversy on the term of secular to provide benefit to religion. But India accepts it. Contrary to the practice of secular countries in the West, the judiciary in India has never prevented himself in discussing, explaining and adjudicating on purely religious issues including the nature and characteristics of various religions of India. “Acceptance of the Vedas with reverence, recognition of the fact that means of salvation are diverse and realization of the truth that the number of gods to be worshipped is large, that indeed is the distinguishing feature of Hindu religion,” observed by the Supreme Court of India in a leading judicial decision.7

It was discussed on the issue of sale of non-vegetarian food and some places were declared as holy place. There have judicial decisions ruling that a ban on sale of non-vegetarian food in the cities regarded holy by the Hindus, and teaching of astrology drawn on Hindu scriptures in State universities, do not contravene provisions of the Constitution relating to freedom of trade and vocation and religious freedom respectively.8 While the Hindu family-law enactments of 1955-56 clarify that the word “Hindu” applies

to all its “forms and developments” especially signifying some of these including the Aryasamaj, in numerous cases the courts have examined the tenets of various denominations and cults to rule that they are part and parcel of the Hindu religion. In some cases, the courts have adjudicated also on religious disputes between the Hindus and one or another of the other three communities. In a leading case, a High Court had to adjudicate a dispute between Hindus and Jains on the issue of a Jain temple could house a Hindu religious symbol.

Disputes relating to Islamic beliefs and practices also often reach before the judiciary. Besides entertaining and deciding in some case Sunni-Shias' disputes over use of mosques and religious rituals, the courts have also examined the creed of the Ahmadiya community regarded by mainstream. Muslims as heretics since they regard its founder a “sub-prophet”. They raised running contrary to the mainstream. Muslim belief that there can be no prophet after Muhammad, and decided that they are Muslim.

Faith of religion was discussed in many cases. The pivotal place of the Holy Qur’an in the Muslim faith, and of the Granth Sahib in the Sikh religion, have been examined and testified in some judicial decisions. The courts have

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10. Among these are the Anand Marg Panth, the Swami Narayan Satsang and the Sri Aurbindo sect.
13. See, e.g., Chandanmal Chopra v. State AIR 1986 Cal 104, Shiromani Gurdwara Praabandhak Committee Amritsar v. SN Dass AIR 2000 SC 1421. The petition in the former case which sought proscription of the Muslim holy book on the plea that it excites violence against non-Muslims was forcefully dismissed by a non-Muslim judge of the Calcutta High Court.
also observed and decided religious disputes among various denominations and groups of the Christians and their churches. In a recent case the right of Parsi Zoroastrians to build a residential colony on a state-allotted land reserved for their co-religionists was upheld. Administrative bans on offering prayers on the roads outside the mosques have always been upheld. Similar restrictions on the use of voice-amplifiers in the religious places of Hindus, Muslims and Christians, have been uniformly upheld by the courts. The Jehovah’s Witnesses, who consider singing of the National Anthem to be against their faith, have succeeded in obtaining a Supreme Court verdict in their favour.

4.2 Financial Support of State for Religion:

State is free to provide financial and logistic support to any religious organization or institution. Religious endowments of all communities not only enjoy certain exemptions under tax laws, there are State-appointed and financially supported bodies to oversee their management. Educational and technical training centers controlled by religious organizations are also given periodic subsidies. State-aided management boards of religious endowments and shrines pay salaries to their staff. In one of the case, a state-controlled Muslim endowment board was recently

directed by the Supreme Court to pay regular salaries to religious officials of the mosques under its management. All state-subsidized religious bodies have, of course, to strictly comply with official accounts and audit regulations every financial year.

In past, the State has subsidized special celebrations of religious figures and other similar activities, including centenaries of the founders of Sikh and Jain religions and an international Eucharistic Conference organized by the Christians. Under constitutional validity of the subsidy being provided for a long time by the government to airlines carrying Muslim pilgrims to Saudi Arabia for the great Haj pilgrimage has recently been challenged in the Supreme Court which has yet to pronounce its decision.

India’s judicial system owes a great deal to the English was set up in the later part of the nineteenth century to put into reality the ideas and theories of the English utilitarian philosopher Jeremy Bentham, James Mill, his son John Stuart Mill and Lord Macaulay and their associates. The initial graft must have been quite panic for the Indian people. After passed a century the system has taken deep roots in the Indian soil. In recent times there have been a number of changes in the superstructure but basically the system remain very much the same.

The Supreme Court gave a very expansive interpretation of the right under Article 30. It was held that the right under Article 30 was not restricted only to institutions set up for conservation and promotion of

culture, language and religion. A religious minority could establish and administer an educational institution of any kind depending upon its "choice". In exercise of the right guaranteed under Article 30 a minority community was free to set up a primary school as well as an institution of higher education teaching in regard of Arts, Social Sciences, Natural Sciences or even professional courses. The Court held that Article 30 was a stand-alone article and the right guaranteed to the minorities under it was not controlled either by Article 29 or any other article in the chapter of fundamental rights or even Article 45 in the chapter of directive principles relating to education to children below the age of six years. Speaking for the Court S.R. Das, C.J. said in *Kerala Education Bill case* 20

So long as the Constitution stands as it is and is not altered, it is we conceive the duty of this Court to uphold the fundamental rights and thereby honour our sacred obligation to the minority communities who are our own.

The decision in the case of Kerala Education Bill, 1957 pronounced by the Supreme Court was not unanimous. There was at least one dissenting voice of T.L. Venkatarama Aiyar, J. He took the view that Article 30 was primarily intended to protect educational institutions established for the conservation and promotion of the culture, language or religion of a minority group Aiyar, J. observed that Article 30 created a purely negative obligation on the State and prevented it from interfering with minorities living their own

cultural life as regards religion or language. Aiyar, J. observed:21

Now, to compel the State to recognize those institutions would conflict with the fundamental concept on which the Constitution is framed *that the State should be secular in character.*

It has been directed two views opposing each other and both relying upon the principles of secularism that were manifested in Kerala Education Bill,22 appear to run through the decisions of the Supreme Court on all aspects of secularism. For about the next thirty-five years, however, with the sole exception in *S. Azeez Basha v. Union of India*23 *Aligarh Muslim University case*, the majority decision in *Kerala Education Bill*, was by far the dominant view on the issue of the rights of the religious minority. The Court went on expanding the scope of the right under Article 30 and five years later in *Sidhrajbhai Sabbai v. State of Gujarat*24 a six-Judge Bench considered.25

The right under Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, *it is not subject to reasonable restrictions.*

In the following years, the Court mostly dealt with cases26 in which specific regulations sought to be enforced by the State came under challenge and examined how far

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21. Ibid.
22. Ibid.
23. AIR 1968 SC 662.
25. AIR p. 547, para 15.
those regulations could be said to ensure academic excellence and how far those tended to interfere with the right guarantee under Article 30. In 1974 came Ahmedabad St. Xavier College Society v. State of Gujarat. The decision in St. Xavier's College made a resounding reiteration of the Court's position on the question of minority rights. It reaffirmed the decisions in Kerala Education Bill, and other earlier cases and in some respects expanded the scope of Article 30 even further five years later, in Lily Kurian v. Sr. Lewina, A.P. Sen, J. observed.

The decision in T.M.A. Pai is very heavy on secular rhetoric but at the end of the judgment the minority rights appear to be considerably restricted in comparison to their earlier position. T.M.A. Pai blurred the line between a minority institution and a non–minority private institution.

Within less than a year another Constitution Bench took up the case of Islamic Academy in order to clear the doubts and anomalies arising from the Pai decision and two years thereafter another seven Judges Bench of the Supreme Court assembled to hear the case of Inamdar to clear the confusion arising from T.M.A. Pai and Islamic Academy. At the end of the exercise Article 30 lost its independent identity. The position that emerges from the three decisions may be summarised in this way;

28. Ibid.
29. (1979) 2 SCC 124.
30. Ibid.
31. Ibid.
• The right to set up educational institutions and impart any kind of education at any level is available to every Indian citizen under Article 19(1)(g) of the Constitution as the right to carry on any occupation, trade or business.\footnote{36}{(1993) 1 SCC 645.}

• Article 30 does not give to the religious minorities any additional or separate right. The religious minority has no special right that the majority does not have under the Constitution.

• Articles 29 and 30 do not confer any rights but afford certain protection to the minorities. The two articles can be better understood as a protection or a privilege of the minority rather than an abstract right. (View of Venkatarama, J. in minority of 1 : 6 in \textit{Kerala Education Bill}.\footnote{37}{1959 1 SCR 995.})

• The right under Article 30 is not absolute. It is subject to Article 29(2) and other laws. It can be restricted in public interest and national interest.

• The decision in \textit{Inamdar}\footnote{38}{P.A. \textit{Inamdar v. State of Maharashtra}, (2005) 6 SCC 537.} also laid clown guidelines relating to the manner of admission and composition of students that render the minority status of an institution quite precarious.

• It also needs to be pointed out that the three decisions indeed brought about a basic shift in the Court's position in regard to the right of the religious minority to establish educational institutions but the greater
and equally significant shift was towards privatization of education,

To sum up, for about forty or forty-five years the Supreme Court observed that through the Constitution did not permit community-specific political rights, it recognized community-specific social rights. But in the last fifteen years the Court seems to have come to the view that under the Constitution there cannot be any community-specific rights, either political or social.

Coming now to the second part of our discussion about the Court’s perception of secularism, its decisions in the last fifteen years show the tendency to see Indian secularism more from a mono-culturist rather than a pluralist point of view. In 1994, in *Bommai*, Reddy, J. speaking for himself and two other Judges of the Court said, the Constitution requires the State to be secular in thought and action, the same requirement attaches to political parties as well because, political parties are formed and exist to capture or share State power”. Barely two years later the Court had before it four appeals in which the Bombay High Court had voided the ejections of the winning candidates for indulging in corrupt practice” by making appeals for votes in the name of religion. The Supreme Court dismissed one of the appeals on behalf of Dr. Ramesh Yeshwant Prabhoo but allowed the other three appeals

40. SCC p. 236, para 310.
restoring the elections of the three appellants. The four decisions, commonly referred to collectively as the “Hindutva decisions” are highly significant and among them the most important one is in Manohar Joshi.

In his election speeches Manohar Joshi, the winning candidate had said that the first Hindu State will be established in Maharashtra”, one of the States of India. The Court, studiously avoiding any reference to the seven-Judge Bench decision in Bommai, set aside the decision of the High Court and restored the appellant’s election observing that "a mere statement that the first Hindu State will be established in Maharashtra is by itself not an appeal for votes on the ground of his religion but the expression, at best, of such a hope."

The Court further used the words "Hindu", "Hinduism" and Hindutva” interchangeably observed that those terms were not amenable to any precise definition and no meaning in the abstract would confine the term “Hindutva” to the narrow limits of religion alone. The Court further observed, the term 'Hindutva' is related more to the way of life of the people in the sub continent. It is difficult to appreciate how in the face of prior rulings. The term "Hindutva" or “Hinduism” in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry.

It has been observed in a decided case that the doctrine of the State’s neutrality towards all religions was a

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42. Ibid.
43. Ibid.
narrow concept of secularism. He further observed that the policy of complete neutrality towards religion and apathy for all kinds of religious teachings in institutions of the State had not done any good to the country. The real meaning of secularism in the language of Gandhi is "sarva dharma samabhav" meaning equal treatment and respect for all religions, but we misunderstood the meaning of secularism as negation of all religions. In Aruna Roy case\textsuperscript{45} the Court upheld the constitutional validity of the national curriculum overlooking that what was included in the curriculum was not religious teachings of all kinds but only of one particular kind. It also unfolded, on the authority of Gandhi, a view of secularism\textsuperscript{46} that one would find very difficult to reconcile with Gandhi's idea on religion and State. After the independence of India, Gandhi wrote:

"The State should undoubtedly be secular. It could never promote denominational education out of public funds. Every one living in it should be free to profess his religion without let or hindrance."\textsuperscript{47}

Apart from the reformist explanation, one may also attribute the interventionist position of courts to the fact that in a country like India, it is easier to say something is not essentially religious than to say that religion is against public order. This may be another reason why courts have generally preferred the essential practices test as compared to subjecting religious freedom to secular public order

\textsuperscript{45} Ibid.
\textsuperscript{46} Dharmadhikari, J. observed : (SCC pp. 406-07, paras 86-88).
\textsuperscript{47} The Good Boatman by Rajmohan Gandhi, p. 402.
restrictions. The inherent limitation and danger in this approach to the construction and interpretation of constitutional rights was exposed in Anand Margis case\textsuperscript{48} and more severely in Shah Bano,\textsuperscript{49} one of the most controversial decisions by the Court involving religion.

In Shah Bano\textsuperscript{50} the question before the Court was whether the statutory provisions of maintenance of divorced wives were applicable to Muslims, in view of the Muslim Personal Law (Shariat) Application Act, 1937. The Court held that there was nothing in the Muslim Personal Law that conflicted with the statutory provisions for maintenance. But the Court arrived at its conclusion by beginning the judgment with a Hadith of doubtful veracity and proceeding with the observation, "there can be no greater authority on this question than the holy Quran". The decision came under a lot of criticism and there was great resentment against the Court arrogating to itself the right and the authority to interpret the Quran, forgetting that the Court had consistently resorted to scriptural interpretation while applying the essential practices test to the Hindu religion.

For political considerations the Central Government codified the law on Muslims wives right to maintenance and had Parliament pass the legislation. The new Act was challenged in Danial Latifi case\textsuperscript{51} as violative of the constitutional right of the Muslim woman to obtain statutory maintenance beyond the Iddat period, which had

\textsuperscript{50} Ibid.
been upheld in *Shah Bano case*.\textsuperscript{52} The Court, while upholding the constitutional validity of the Act was also able to preserve all the rights given to a Muslim divorcee woman in *Shah Bano case*,\textsuperscript{53} triumphantly observing that “it may look ironical that the enactment intended to reverse the decision in *Shah Bano case*, actually codifies the very rationale contained therein”. What, however, is of great significance is that in *Danial Latifi*,\textsuperscript{54} the Court reached the same reformist conclusion as in *Shah Bano*\textsuperscript{55} but through a different, and more acceptable, route. The Court subjected the Act to the test of Articles 14,\textsuperscript{56} 15\textsuperscript{57} and 21 of the Constitution and concluded that the Act did not offend the principles contained in these articles. It effectively held that the Act would be unconstitutional if interpreted to give Muslim women less than other women by way of maintenance.

\textbf{4.3 Charitable and Religious Trusts Act, 1920 :}

An Act to provide more effectual control over the administration of Charitable and Religious Trusts.

Whereas it is expedient to provide facilities for the obtaining of information regarding trust created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a Court on certain matters, and to make special provision for


\textsuperscript{53}Ibid.

\textsuperscript{54}Danial Latif v. Union of India, (2001) 7 SCC 740.

\textsuperscript{55}Mohd. Ahmed Khan v. Shah Bano Begum (1985) SCR (3) 844. (Available at .en.m.wikipedia.org/.../Mohd._Ahmed_K...)

\textsuperscript{56}Article 14 of the Constitution.

\textsuperscript{57}Article 15 of the Constitution.
the payment of the expenditure incurred in certain suits against the trustees of such trusts;

Power grants to the Court to apply in respect of trusts of a charitable or religious nature.\textsuperscript{58}

Save as hereinafter provided in this Act, any person having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely:-

(1) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as any of these matters, and

(2) directing that the accounts of the trusts shall be examined and audited:

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

Procedure to apply for petition.\textsuperscript{59} (1) If the court on receipt of a petition under section 3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion that the trust to which the petition relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for

\textsuperscript{58} Section 3 (Charitable and Religious Trust Act, 1920).

\textsuperscript{59} Section 5.
the hearing of the petition, and shall cause a copy thereof, together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.

(2) On the date fixed for the hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may and, if so required by the court, shall at the time of the first hearing or within such time as the Court may permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for signing and verifying pleadings.

(3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided.

(4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.
On completion of the inquiry provided for in sub-section (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit:

Provided that, where a suit has been instituted in accordance with the provisions of subsection

No order shall be passed by the Court which conflicts with the final decision therein.

Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.

**Failure of trustee to comply with order under section 5.** If a trustee without reasonable excuse fails to comply with an order made under sub-section (5) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the time being in force, be deemed to have committed a breach of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure, 1908 (5 of 1908), and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate General.

**Certain Powers of trustee to apply for directions.**

(1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the

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60. Section 6.
61. Section 7.
trust is situate, for the opinion, advise or direction of the Court on any question affecting the management or administration of the trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal. (2) The Court on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.

(3) On any date fixed under sub-section (2) or any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.

(4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.
Applicability of costs of petition: The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, under the foregoing provisions of this Act, shall be in the discretion of the Court, which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made, or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that no such order shall be made against any person (other than the petitioner) who has not received notification of the petition and had a reasonable opportunity of being heard thereon.

Provision of Saving: According to the Section 9 of the Act, no petition under the foregoing provisions of this Act in relation to any trust shall be entertained in any of the following circumstances, namely:

(a) If a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure, 1908 (5 of 1908), is pending in respect of the trust in question;
(b) If the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee, or any Society registered under the Societies Registration Act, 1860 (21 of 1860); or
(c) If a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction, or by any other authority acting under the provisions of any enactment.

62. Section 8.
63. Section 9.
Power to Courts as to costs in certain suits against trustees of charitable and religious trusts: It is described as, (1) In any suit instituted under section 14 of the Religious Endowments Act, 1863, (20 of 1863) or under section 92 of the Code of Civil Procedure, 1908 (5 of 1908), the Court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustee of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

(2) When any money has been deposited in accordance with an order made under subsection (1), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being subsequently ordered by the Court.


(a) the proof of facts by affidavit,
(b) the enforcing of the attendance of any person and his examination oath,

64. Section 10.
65. Section 11.
the enforcing of the production of documents, and
the issuing of commissions, shall apply to all
proceedings under this Act, and the provisions relating
to the service of summonses shall apply to the service
of notice there under.

(2) The provisions of the said Code relating to the
execution of decrees shall, so far as they are
applicable, apply to the execution of orders under this
Act.

**Barring of appeals.**66 No appeal shall lie from any
order passed or against any opinion, advice or direction
given under this Act.67

### 4.4 Hindu Religious Charitable Endowment Act,
1925:68

#### Membership for Endowment Board.69

(1) The Board shall consist of —
(a) a Chairman;
(b) a Vice-Chairman;
(c) a Finance member; and
(d) not less than 8 and not more than 12 other
members, all of whom shall be appointed by the
Minister.

(2) Subject to the provisions of this Act and unless
the contrary intention appears in the instrument of
appointment, the appointment of members under

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66. Section 12.
68. Available at www.tnhrce.org/
69. Section 5.
subsection (1) shall be for a period of 3 years from the date thereof.

(3) The members of the Board shall be eligible for reappointment except that a Finance member shall not be appointed for more than two consecutive terms as a Finance member but may, at the end of the second consecutive term, be appointed in any capacity in the Board except as a Finance member.

(4) No person shall be appointed a member of the Board under subsection (1) unless he —

(a) is a Hindu; and
(b) is a citizen of Singapore.

(5) The members of the Board shall be deemed to be public servants for the purposes of the Penal Code.

**Role of Secretary:**

(1) The Secretary of the Board shall be a public officer and shall be appointed by the Minister.

(2) The Secretary of the Board shall convene and attend all meetings of the Board but shall not have the right to vote.

**Power to Board to appoint committee of management**

(1) For the purpose of the management of each such endowment or part thereof the Board shall, subject to the approval of the Minister, appoint a committee of management to act under the control of the Board.

(2) Every such committee shall consist of at least one member of the Board, and of not more than 7 other persons.

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70. Section 20 Hindu Religious Charitable Endowment Act 1925.
(3) Every such committee shall meet at least once a month and the quorum at all meetings of the committee shall be 4 members present.

(4) The members of every such committee shall be appointed for a period of two years and shall be eligible for reappointment.

(5) No person shall be appointed a member of such a committee unless he —

General Powers of Board Endowment: 71

The Board shall with respect to any such endowment have all such powers as it would have had if it had been named as trustee in the instrument creating the endowment, and in any case may —

(a) appoint and remove any employee of any such endowment;

(b) receive and collect the income of the endowment;

(c) expend the income —

(i) in defraying the expenses of the management of the endowment and of the Board; and

(ii) in carrying out the purposes of the endowment;

(d) raise funds by means of voluntary subscriptions, donations or contributions for the purposes of exercising its powers, performing its duties and discharging its obligations under this Act; and

(e) promote or undertake publicity in any form.

71. Section 21.
Certain Power to require accounts from any trustee and others.\textsuperscript{72}

(1) The Board may at any time require written accounts and statements and answers to enquiries relating to any endowment or the property or income thereof to be rendered by any of the following persons:

(a) trustees or persons who are or have been at any time acting or concerned in the administration of the endowment or income or in the receipt or payment of any moneys thereof;

(b) agents of any such trustees or persons;

(c) persons having possession, custody or control of any funds or moneys of the endowment;

(d) persons in the beneficial receipt of any funds thereof or of any income or stipend there from;

(e) persons in the possession or occupation or management of any property thereof; and

(f) persons having the possession, custody or control of any documents concerning the endowment or any property thereof.

(2) All such accounts, statements and answers shall be verified by the oath or affirmation of the person rendering them, which the Secretary of the Board is hereby authorized to administer or take.

Power to require trustees and others to attend and be examined\textsuperscript{73}

The Board may require all or any of such trustees and persons as aforesaid to attend before it respectively at such

\textsuperscript{72} Section 22.\\
\textsuperscript{73} Section 23.
times and places as are reasonably appointed, for the purpose of being examined in relation to the endowment, and to answer the questions put to them, and to produce upon their examination any documents in their custody or power relating to the endowment or the property thereof, and may examine upon oath or otherwise all such persons and all persons voluntarily attending and may administer oaths.

**Penalty for non-compliance.**

Any person who refuses or willfully neglects to comply with any requisition or order of the Board made under this Act, or destroys or withholds any document required to be produced or transmitted by him, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $400 and, in the case of a continuing offence, to a further fine not exceeding $100 for every day during which the offence continues after conviction.

**Certain Power to sanction improvements to the Board**

Whenever it appears to the Board that any endowment administered by it would be benefited by —

(a) letting any part of the lands or buildings thereof, other than any temple or the grounds thereof, on occupation or lease;

(b) digging for or raising stone, clay, sand, gravel or other minerals;

(c) cutting timber or other vegetation;

(d) forming any new road or street;

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74.  Section 24.
75.  Section 28.
(e) making, renewing or improving any drains or sewers;
(f) erecting new buildings or fences;
(g) the repair, alteration, extension, rebuilding or removal of any existing building;
(h) making any improvements or alterations in the state or condition of the lands of the endowment;
or
(i) the sale or exchange of any lands or buildings, other than any temple or the grounds thereof, belonging to the endowment, the Board may grant any such lease or do any such act, although such leases or acts are not specifically authorised or permitted by the trusts of the endowment, and may apply any moneys belonging to the endowment for any of the purposes or acts.

Power to the Board to frame new scheme.76

Whenever it appears to the Board to be desirable that a scheme should be framed and approved for the application or management or a change in the management of any endowment, or for the closing and winding up of any endowment, the Board may frame such a scheme and submit it for the approval of the High Court in the manner and subject to the provisions hereinafter mentioned.

 Provision of Certain Rules77

The Minister, acting on the advice of the Board, may make such rules as seem to him necessary or expedient for the purpose of carrying out the provisions of this Act. Such

76. Section 31.
77. Section 35.
rules shall be presented to Parliament as soon as possible after publication in the Gazette.

**Prohibition of use of Temple for political purposes.** The Board or any committee of management shall not permit the temples administered by the Board or any part of any land or premises belonging to any endowment to be used for political purposes.

**Transfer and vesting of property vested in Muslim and Hindu Endowments Board.**

Upon the date of commencement of this Act, all property, movable and immovable, belonging to Hindu endowments, that was, immediately before that date, vested in the Muslim and Hindu Endowments Board incorporated under the Muslim and Hindu Endowments Ordinance shall be transferred to and vest in the Board without further assurance upon the same tenure and subject to the same trusts and conditions as those upon which it was previously held by the Muslim and Hindu Endowments Board; and all rights relating to Hindu endowments vested in that Board immediately before that date and all liabilities relating to Hindu endowments to which that Board was subject immediately before that date in respect of that property shall be transferred to and vest in the Board.

Any reference in any written law, order of court, deed, contract, instrument or other documents whatsoever to the Muslim and Hindu Endowments Board incorporated under the Muslim and Hindu Endowments Ordinance in its capacity as trustee of Hindu endowments shall be construed

78. Section 36
79. Section 37.
as a reference to the Board and all rights, powers, obligations and duties conferred, imposed on, undertaken or incurred by the Muslim and Hindu Endowments Board in that capacity under that written law, order of court, deed, contract, instrument or other documents shall be deemed to be conferred or imposed on or undertaken or incurred by the Board.

In a decided case of *Nityananda Panigrahi v. Basudeb Patra and Ors.* one position of the act has been accepted. The preamble of that Act stated. "An Act to provide for the better administration and governance of certain Hindu religious endowments and to remove certain doubts as to the legality of the action taken and things done under the Madras Hindu Religious Endowments Act 1923."

This Act was however, not a validating Act, but was absolutely a new measure of re-enacting the entire previous law.

In this background and on the aforesaid analysis of the provision in the Government of India Act and the defective process adopted for bringing Madras Act 1 of 1925 into the Statute Book, we think the only conclusion that can emerge is to hold Madras Act 1 of 1925 was *ultra vires* the Government of India Act, 1915.

Mr. Mohanty, however, placed some decisions of the Madras High Court where the legality or otherwise of that Act came for consideration. According to him the case directly on the point is in AIR 1936 Mad 223, *Kuttikrishna*

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Menon v. Purushothaman Nambudiri. The facts of the case which came up for consideration before Pandrang Row, J. were as follows: Two suits by a melcharthdar for redemption were filed

Madras Act 2 of 1927 was ultra vires. When we come to discuss that section it will clearly appear to be a section to validate certain actions under the earlier Madras Act (Act 1 of 1925). The learned Judge, however, did not decide as to whether Madras Act 1 of 1925 was an invalid piece of legislation. He noticed the contention and proceeded to assume that conclusion. In his own language the matter is expressed thus:-

"It is argued by Mr. Rangachari for the plaintiffs that Madras Act 1 of 1925 is not a valid Act as it was not passed in accordance with the provisions of the Government of India Act of 1919 and that it was not competent for the local Legislature to validate the act or acts done under that Act by any subsequent enactment as it would virtually be doing indirectly what the law prohibits to be done directly. For the purpose of this argument I shall assume that Madras Act 1 of 1925 was invalid and it is, therefore, not necessary for me to discuss the various reasons given in the plaints and the question is, where an Act of subordinate Legislature is invalid owing.

Act of Parliament which constitutes the subordinate Legislature, whether the passing of a fresh enactment which complies with the requirements of the Imperial Act and which is validly passed and which validates acts done or

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81. AIR 1936 Mad 223.
Boards appointed under the provisions of the Act would be _ultra vires_ of the Legislature and invalid."

The three other decisions which have been cited at the Bar are: AIR 1933 Mad 57, _Chengayya v. Kottayya_; 82 _Gangadhara v. Ramanuja Pedda Jeeyangar Tirumalai_, 83 _Arumuga Thambiran v. Namasivaya Pandara Sannadhi_. These decisions, however, in our opinion, do not throw any direct light on the point for determination. We do not, therefore, find any precedent properly taking one or the other view. On the aforesaid analysis we would, therefore, conclude that Madras Act 1 of 1925 was _ultra vires_ the provisions of the Government of India Act 1915 and was not a valid piece of legislation.

It has been observed in a decided case of Chintamanisahoo (Deceased By ... v. _Commissioner of Orissa Hindu_ 84 ... that Current neither for legal necessity nor for the benefit of the deity and held that they were hit by Section 58 of the Orissa Hindu Religious Endowments Act, 1939. On the question of adverse possession, it came to hold that Article 134-B of the old Limitation Act was applicable and since the lesser was removed from the office in the year 1965 and the suits were filed within 12 years from the date of removal of the lesser, the statutory period of 12 years for prescribing title by adverse possession had not been completed. Upon such findings, the appeals preferred by the plaintiff were dismissed.

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82. AIR 1928 Mad 905.
83. AIR 1926 Mad 162.
84. AIR 1983 Ori. 205.
When these two appeals came up for hearing' before one of us (P. K. Mohanti, J., as he then was) it was contended on behalf of the plaintiff-appellant that Article 134-B of the old Limitation Act corresponding to Article 96 of the new Limitation Act is not applicable to the case and that Article 144 of the old Act corresponding to Article 65 of the new Act is the relevant Article to govern this case. It was urged that the permanent leases being void ab initio, the plaintiff's possession became adverse namely, 26-7-1943, 8-1-1944 and 15-7-1944. The proceeding under Section 25 of the Orissa Hindu Religious Endowments Act, 1951 was allowed on 30-10-69 and direction was issued to the Collector for delivery of possession. The right to evict the plaintiff would be barred by limitation after expiry of 12 years which comes to 1956 if the starting point would be the dates of the respective leases. If, however, it is held that adverse possession of the plaintiff would start only after the dismissal of the Mahant, the right to recover in 1969 would be in time. It is contended on behalf of the respondents that the correct Article to apply is Article 96 of the new Limitation Act. On the other hand, it is contended on behalf of the appellant that Article 65 of the new Limitation Act is the governing Article. The applicability of either Article 65 or Article 96 would depend on whether the transfer was void ab initio or only voidable.

Section 58 of the Orissa Hindu Religious Endowments Act, 1939, runs as follows:
"58. Alienation, of immovable trust property.-- (1) No exchange, sale or mortgage and no lease limitation Act is applicable to the case.

This Article refers to a transfer for valuable consideration. A transfer which is void ab initio is, in the eye of law, no transfer at all and hence will not cornel within the scope of this Article. This Article obviously applies to cases where the transfer can be avoided or is voidable. But if the transfer is void ab initio then Article 65 of the new Limitation Act would apply. The transferee's possession since the date of the transfer becomes adverse from the date of the transfer inasmuch as the transferee had no right in respect of the property statutory recognition of the position existing before the enactment of the Orissa Hindu Religious Endowments Act of 1939. By the Orissa Hindu Religious Endowments Act of 1939, the right to transfer endowed property has been restricted. But there has been no corresponding change in the Limitation Act after the restriction to the right of transfer was introduced by the Act of 1939. We are, therefore, of the view that Article 134-B applies to transfers which are voidable. Article 96 of the new Limitation Act has not effected in this respect any change in principle. The only change brought about by this Article is that the date of appointment of a new manager is also made the starting point of limitation. In a decided case of *Srinivasa Reddiar v. N. Ramaswamy Reddiar*, the question for decision before their Lordships was "Does Article 134-B permit any distinction to be made

85. AIR 1966 SC 859.
between transfers effected by a previous manager on the basis that the property transferred belongs to the religious endowment and those made by him on the basis that the said property is his own private property?" Their Lordships held that Article 134-B does not permit any such distinction.

In the decided case of A.V.G.P. Chettiar & Sons & Ors v. T. Palanisamy Gounder\textsuperscript{86} view relating to religious endowments act was brought before the Subordinate Judge, Erode. The appellants brought this fact to the notice of the Rent Controller by filing an additional counter on 17th January, 1991.

The respondent impugned the order granting leave under Section 92 before the High Court under Section 115 CPC. The High Court allowed the Revision Application by an order dated 23rd August, 1991 and held that the trust was a religious endowment and religious charity within the meaning of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and that Section 92 of the Code of Civil Procedure had ceased to apply to Hindu Religious Institutions and Endowments by virtue of Section 5 of that Act. The order granting leave under Section 92 was accordingly set aside and the application of the appellants under Section 92 CPC was dismissed as not maintainable.

On 4th November 1991 the Rent Controller allowed the petition of the respondent and directed the eviction of the appellants from the suit premises. He upheld each of the grounds of eviction urged by the respondent. The specific

\textsuperscript{86} AIR 2002 (SC) 2171.
issue viz., "whether the respondents (the appellants before us) are justified in denying the title of the petitioner (the respondent before granting leave to the appellants to sue under Section 92 in respect of the suit property. It had been held that the Trust deeds showed that "the endowment is a religious endowment or religious charity within the meaning of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959".

The excepted enactments include Section 92 of the Code of Civil Procedure, 1908 and Section 108 of the Endowments Act provides:

"Bar of suits in respect of administration of management, or religious institutions, etc. No suit or other legal proceedings in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions trusts has been taken away and vested in authorities constituted under the Endowments Act. Perhaps because of the special procedure to be followed in respect of religious endowments, a notification was issued by the State Government in exercise of powers under Section 29 of the Act to exempt any building or class of buildings from all or any of the provisions of the Act. The notification was issued on 16th August, 1976 and reads as follows:

The constitutional validity of this notification has been considered by this Court and found submission is unacceptable. There were on record the two Trust deeds as
also the earlier decision intra-parties on the effect and scope of the deeds. Since the High Court had, on a construction of the Trust deeds, held that the Trust was a "religious endowment" or "religious charity", within the meaning of the Endowments Act, it cannot be said without more having regard to the definition of those words in the Endowments Act, that the claim of the appellants to be covered by the said exemption, notification was patently wrong or unfounded. 'Religious endowment' has been defined in Section 6(17) of the Endowments Act, as follows: "'Religious endowment' or 'endowment' means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof; but does not include gifts of property made as personal gifts to the archakas, service-holders or other employees of a religious institution." "Religious charity" has been defined in Section 6(16) as: "religious charity" means a public.

It has been stated in a decided case of *Sri Jagannadhaswamy Temple, Rep. v Garuda Venkata Rao (Died) By Lrs.*\(^87\) ... stated that the deities will be decorated every day in one 'avataram' during the said 10 days and the devotees will offer prayers and give donations. The festival was stated to be celebrated since times immemorial and thus, it is clear that Indrayumna Temple is part of the plaintiff temple as stated in Ex.A.1 deed dated 8-4-1908.

\(^{87}\) (2006)(6) ALD 532, 2007 (1) ALT 86.
Though P.W.1 could not trace the origin of the endowment or produce any documents, the suit site belonging to the plaintiff temple is not in dispute and it was entered as one of the properties of the plaintiff temple in Ex.A.2 register of properties. Exs.A.3 to A.5 about the exemption under Urban Land (Ceiling and Regulation) Act, Ex.A.6 extract from the town survey register, Exs.A.7 to A.10 D.C.B. registers, apart from Ex.A.11 plan corroborate the suit site to be belonging to the plaintiff temple and even the 3rd defendant as D.W.1 admitted his grandfather coming into possession of the suit site under Ex.A.1. While the suit site belonging to the plaintiff is, thus, not seriously in dispute also mentioned rents of Rs. 1,369-50 ps. per annum to be due from 14 persons apparently for sites in municipal area, apart from the permanent leases including Ex.A.1 fetching Rs. 51-50 ps. The total income per annum in 1948 as per pages 5 and 6 of Ex.A.2, therefore, is Rs. 2,167-25 ps.

The entries at page 14 of Ex.A.2 show the annual expenditure at Rs. 2,306/-. Ex.A.2 prepared and authenticated by the hereditary trustee (P.W.1) and the Inspector, Hindu Religious Endowments in 1948 obviously without any eye on any litigation, can be taken as showing the real state of affairs and if so, it is obvious that the income of the plaintiff temple was patently less than its requirements of expenditure and what was obtaining in 1948 can be safely presumed to be the probable financial position of the temple even in 1908, the temple having the same properties to fetch any income and the same responsibilities to discharge. Ex.A.2 also shows at page 12
that the only amounts lying to the credit of the temple were Rs. 200/- in a bank extents of lands and other properties. Administrative control or management of temples under Hindu Kings and Muslim Rulers were broadly in tune with the personal law of Hindus and after the advert of the British rule, the Madras Endowments and Escheats Regulation 1817, VII of 1817 was the first legislative measure in the Presidency of Madras, whereby the general superintendence of all religious and charitable endowments was vested in the Board of Revenue. This regulation gave way to the religious Endowments Act, XX of 1863 and this was followed by the Madras Hindu Religious Endowments Act, I of 1925, the Madras Hindu Religious Endowments Act, II of 1927 and Madras Hindu Religious and Charitable Endowments Act, XIX of 1951.

The Madras Regulation VII of 1817 made appropriation of the rents and produce of lands granted for the support of Hindu temples, etc, by providing for general superintendence of such endowments by the Board of Revenue or the Religious Endowments Act XX of 1863 made to divest the Government of the management of Religious Endowments and providing for appointment of committees did not make any provisions governing alienation of endowments and consequently, one has to fall back upon the Hindu personal law as interpreted and applied by judicial precedents in considering the validity or otherwise of an alienation made during that period. The restrictions on any lease of any immovable property belonging to any math or temple exceeding the specified periods or otherwise
came to be imposed only since the introduction of Section 76 in the Madras Hindu Religious Endowments Act II of 1927. But the said Act or the subsequent legislations were not shown to have been construed as invalidating or otherwise prejudicially affecting any anterior leases which are otherwise valid.

It has been discussed and observed in a decided case of *Sri Sabhanayagar Temple v. The State of Tamil Nadu*\(^8\) whether the temple at Chidambaram is a public institution or private temple. The first native Judge of British India Hon'ble Mr. Justice Muthuswani Ayer sitting with Hon'ble Mr. Justice Shephard, in the judgment dated 17.03.1890 in A.S.No.108 and 159 of 1888 declared the temple as a place of public worship from time immemorial in the presidency and accordingly held that the Board has got jurisdiction to frame scheme under section 63 of the Madras Hindu Religious Endowment Act of 1923, (Act I of 1925). This is seen in an old judgment reported in 1939 (2) MLJ 11 (*Ponnuman Dikshitar v. The Board of Commissioners for the Hindu Religious Endowments, Madras*).\(^9\)

The second controversial question which arose for consideration by the Division Bench of this court under section 62 of the Madras Hindu Religious Endowment Act (11 of 1927), was also answered therein by precisely holding even in the year 1939, more than 160 years back, that once the Board takes action suo moto under section 62, even though, it may ultimately find that there was no

\(^9\) (1939) 2 MLJ 11.
mismanagement, nevertheless, it can frame a scheme, if it is necessary for the proper administration of the temple Endowment Act of 1923 (Act I of 1925) came into force, on behalf of the Dikshidars of the temple, a memorial was submitted to His Excellency the Governor in Council, Fort St. George, in which they referred to the history of the temple, its endowments and the usages obtaining therein.

The Writ Petition filed in the year 1987 challenging the appointment of Executive Officer was taken up in 1997, after 10 years, and during this interregnum period, in view of the stay granted, the Podhu Dikshidars were in full enjoyment of the temple management and administration. When the learned Single Judge indicated to the Writ Petitioner/appellant to challenge the correctness of the order appointing the Executive Officer by way of Revision under Section 114 of Hindu Religious and Charitable Endowments Act, the same was opposed by the petitioner/appellant herein by objecting that more than 10 years had been lapsed, and therefore, going back before Court dated 13.12.1951 will bind the respondents as Res Judicata.

In a decided case of *The Commissioner v. P.K. Doraisamy*\(^90\) observed that trusteeship is always hereditary in the family of the plaintiff within the meaning of Sections 6(11) and 63(b) of the Act XXII of 1959.

The plaintiff, though holding office as hereditary trustee, got himself appointed as a trustee at the hands of the Hindu Religious and Charitable Endowments

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\(^{90}\) Available at indiankanoon.org/doc/946286/ (Decided on April 29, 2011).
Department, on one or two occasions, during the tiruppani work in the temple. It has been held by the High Court of Judicature at Madras that getting appointment as trustee under the Act XXII of 1959, cannot and will not take away the rights of a person, who has been holding the office as hereditary trustee in religious institution.

The Hindu Religious and Charitable Endowments Department has also appointed an executive officer for the temple under Section 45(1) of the Act, which was also accepted by the hereditary trustee in office, without any hindrance to his office. For the purpose of obtaining statutory declaration under Section 63(b) of the Act, the plaintiff had filed an original application in O.A.No.1 of 1981 on the file of the Deputy Commissioner, Hindu Religious and Charitable Endowments Administration Department, Coimbatore claiming the office of the trusteeship hereditary within the meaning of Sections 6(11) and 63(b) of the Act. This application was dismissed on 30.04.1985 on an erroneous application of law and facts.

Challenging the order of dismissal, the plaintiff had preferred a statutory appeal under Section 69(1) of the Act XXII of 1959 in Appeal No.40 of 1985 on the file of the Commissioner, Hindu Religious and Charitable Endowments Administration Department, Madras, which was also dismissed on an erroneous application of law on 11.07.1988. Against the said order, the plaintiff has filed the statutory suit under Section 70(1) of the Act XXII of 1959.
Section 6(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 defines the term hereditary trustee in the following manner: Section 6(11) "Hereditary trustee" means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force.

Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 contemplates that if any dispute arose in respect of a religious institution, trusteeship, the property of religious institution or any property or money related to specific endowment, Joint Commissioner or the Deputy Commissioner is empowered to decide those disputes and matters.

It has been discussed in a case of Sumit Kumar Bose & Ors. v. State of Orissa & Ors.\(^\text{91}\) in context of religious endowments act properties of the said deity, even if, it is assumed that the deity existed and the deity's name has been recorded in the settlement record. Hence, he contended that section 19-A of the Act could not be made applicable to the case land.

The learned counsel Dr. A.K. Rath, urged that the Commissioner in the impugned order has taken a holistic view of the matter and rightly rejected the application made by the petitioners, which is legal and valid and, therefore having been found inadequate for meeting the fast increasing problems of religious institutions, the Madras

\(^\text{91}\) Available at www.indiankanoon.org/search/ (Decided on March 27, 2012)
Hindu Religious and Charitable Endowments Act, 1927 was legislated as a comprehensive local legislation. The Orissa Hindu Religious Endowments Act, 1939 followed the Madras legislation, which operated with effect from 4th day of November, 1939. For assuming more effective control over the religious institutions, the State of Madras consolidated and amended its Act into the Madras Hindu Religious and Charitable Endowments Act, 1951. In the same manner, the State of Orissa also consolidated the 1939 Act. But as certain provisions of Madras Act and sections 38 and 39 of the Orissa Act were declared *ultra vires* the Constitution of India, both Acts needed further amendments. Consequently the Orissa Hindu Religious Endowments Act, 1951 was brought into force with its amending Act in 1954 on the 1st day of January, 1955. Till date, though there are many other pieces of such State legislations in other States, which are in force, there is no requirement to refer to such legislations for deciding the present list. Apart from the legislative enactment, there is huge contribution on the part of the Judiciary by pronouncing various judgments by different High without a sanction granted under section 19 shall be an invalid and inoperative transfer. While such a provision as section 19 is in existence in the Act, the Legislature in its wisdom felt necessary to introduce a further provision with regard to restriction on transfer of immovable property belonging to or given or endowed for the purpose of any public religious institution by amending the Act and introducing section 19-A into the Act under the amending Act, 1989. The statement of objects and reasons
for bringing the amendments into the Act by the Legislature is as follows:

In course of implementation of the Orissa Hindu Religion Endowments Act, 1951, certain difficulties and deficiencies have come to the notice of Government. In order to remove them and provide for more effective administration of the endowments, amendments to the following effect are felt necessary.

1. For preventing renewal of the lease of debottar lands beyond a term of five years.

2. Before registration of documents relating to alienation of any property of a public religious institutions permission from the Commissioner of Hindu Religious Endowments, Orissa is required for the purpose of preventing unauthorized alienation of properties prescribed format for "No Objection Certificate" as per section 19-A, which makes the said section redundant as a transferee of immovable property of the nature mentioned in the said section cannot produce a "No Objection Certificate" in the prescribed form since no such prescribed form has been provided in the rules under the Act.

It is, therefore, inevitable that till the rules are amended and a form is prescribed for grant of "No Objection Certificate" under section 19-A, the said section cannot be operated. In addition to the above, it is clear from the aforesaid section 19-A that such "No Objection Certificate" is required when transfer is proposed to be made by a deed compulsorily registerable in relation to any property
belonging to a public religious institution. Though specific rules have been made under the Orissa Hindu Religious Endowments Rules, 1959 with regard to the procedure for obtaining sanction under section 19, there is absence of rules with regard to the procedure to be followed for making an application for grant of "No Objection Certificate" under section 19-A of the Act and the manner in which application is to be dealt with.

4.5 The Muslim Personal Law (Shariat) Application Act, 1937

This Act has been amended in Madras by Madras Act 18 of 1949

Application of Personal Law to Muslims

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal law (Shariat).

Power has been granted as per section 3 of the Muslim Personal Law Application Act, 1937 to make a Declaration

92. Act No. 26 of 1937 Dated 7th. October, 1937
(1) Any person who satisfies the prescribed authority-
   (a) that he is a Muslim, and
   (b) that he is competent to contract within the
       meaning of section 11 of the Indian Contract Act,
       1872, and
   (c) that he is a resident of 6[the territories to which
       this Act extends] may by declaration in the
       prescribed form and filed before the prescribed
       authority declare that he desires to obtain the
       benefit of 7[the provisions of this section], and
       thereafter the provisions of section 2 shall apply
       to the declarant and all his minor children and
       their descendants as if in addition to the matters
       enumerated therein adoption, wills and legacies
       were also specified.

(2) Where the prescribed authority refuses to accept a
    declaration under sub-section (1), the person desiring
    to make the same may appeal to such officer as the
    8[State] Government may, if he is satisfied that the
    appellant is entitled to make the declaration, order the
    prescribed authority to accept the same.

Powers have been granted to make rule according to
Section 4 of the Act :

(1) The 8[State] Government may make rules to carry into
    effect the purposes of this Act.

(2) In particular and without prejudice to the generality of
    the foregoing powers, such rules may provide for all or
    any of the following matters, namely:-
(a) for prescribing the authority before whom and the form in which declarations under this Act shall be made;

(b) for prescribing the fees to be paid for the filing of declaration and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.

(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

5. Dissolution of marriage by Court in certain circumstances- Repealed by the Dissolution of Muslim Marriages Act, 1939]

Repeals provisions are laid down as per section 6 of the Act. 94[The under mentioned provisions] of the Acts and Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely:-

(1) Section 26 of the Bombay Regulation IV of 1827;
(2) Section 16 of the Madras Civil Courts Act, 1873;
(4) Section 3 of the Oudh Laws Act, 1876;
(5) Section 5 of the Punjab Laws Act, 1872;
(6) Section 5 of the Central Provinces Laws Act, 1875; and

94. Substituted by the Muslim Personal Law (Shariat) Application (Amendment) Act, 1943, for the words "Provisions".

95. The brackets, figures and words "(3) Section 37 of the Bengal, Agra and Assam Civil Courts Act, 1887" omitted by the Muslim Personal Law (Shariat) Application (Amendment) Act, 1943. This omission has the effect of reviving the operation of section 37 of that Act.
(7) Section 4 of the Ajmer Laws Regulation, 1877.

4.6 Wakf Act, 1954:

As per Wakf Act 1954 (later Wakf Act 1993) enacted by Government of India, Wakfs are categorized as (a) Wakf by user such as Graveyards, Musafir Khanas (Sarai) and Chowltries etc., (b) Wakf under Mashrutul-khidmat (Service Inam) such as Khazi service, Nirkhi service, Pesh Imam service and Khateeb service etc., and (c) Wakf Alal-aulad is dedicated by the Donor (Wakif) for the benefit of their kith and kin and for any purpose recognized by Muslim law as pious, religious or charitable. After the enactment Wakf Act 1954, the Union government directed to all the states governments to implement the Act for administering the wakf institutions like Mosques, Dargah, Ashurkhanas, Graveyards, Takhiyas, Iddgahs, Imambara, Anjumans and various religious and charitable institutions.96

In India, the management of Wakf is undertaken by the Central Wakf Council, India, a statutory body under Government of India, which also oversees State Wakf Boards.97 In turn the State Wakf Boards work towards management, regulation and protect the Wakf properties by constituting District Wakf Committees, Mandal Wakf Committees and Committees for the individual Wakf Institutions.98 As per the report of Sachar Committee (2006) there are about 5 lakh registered Wakfs with 600,000 acres (2,400 km²) land in India, and Rs. 6,000 crore book value.99

96. What is Wakf Andhra Pradesh Wakf Board website
97. Subjects allocated Ministry of Minority Affairs website.
98. What is Wakf Andhra Pradesh Wakf Board website
Certain developments were made in a decided case of *All India Imam Organization and others, Petitioners v. Union of India and others*.100

"Imam" - Is entitled to emoluments even in absence of provisions under Wakf Act.

Muslim Law - Imam - Entitled to emoluments even in the absence of statutory provision.

The objective and purpose of every mosque being community worship and it being the obligation of Board under the Act to ensure that the objectives of the Wakf is carried on, Board can not escape from its responsibility for proper maintenance of religious service in a mosque. To say, therefore, that the Board has no control over the mosque or Imam is not correct. In the absence of any provision in the Act or the rules providing for appointment of Imam or laying down condition of their service is probable because they are not considered as employees. At the same time, it cannot be disputed that due to change in social and economic set-up they too need sustenance. Nature of their job is such that they may be required to be present in the mosque nearly for the whole day. There may be some who may perform the duty as part of their religious observance. Still others may be ordained by the community to do so. But there are large number of such persons who have no other occupation or profession or service for their livelihood except doing duty as Imam. What should be their fate? Should they be paid any remuneration and if so how much and by whom? According to the Board they are appointed by the

100. AIR 1993 SC 2086
mutawallis and, therefore, any payment by the Board was out of question. Prima facie it is not correct as the letter of appointments issued in some States are from the Board. But assuming that they are appointed by the Mutawallis as the Mutawallis too under section 36 of the Act are under the supervision and control of the Board. The right to life enshrined in Art. 21 means right to live with human dignity. It is too late in the day, therefore, to claim or urge that since Imams perform religious duties they are not entitled to any emoluments. Whatever may have been the ancient concept but it has undergone change and even in the Muslim countries mosques are subsidised and the Imams are paid their, remuneration. Therefore, it can not be said that in our set up or in absence of any statutory provision in the Wakf Act the Imams who look after the religious activities of mosques are not entitled to any remuneration. Financial difficulties of the institution can not be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading community prayer in a mosque the very purpose for which it is created.\[101\]

In the circumstances the Supreme Court issued the directions to the Union of India and the Central Wakf Board to prepare a Scheme within a period of six months in respect of different types of mosques. Mr. Gobinda Mukhoty, Mr. R.K. Jain, Mr. Yusuf H. Machhale, Ms. K. Amreswari

\[101\] Ibid.
R.M. Sahai J., Imams, 'incharge of religious activities of the mosque' approached this Court by way of this, representative petition under Article 32 of the constitution for enforcement of fundamental right against their exploitation by Wakf Board. Relief sought is direction to Central and State Wakf Boards to treat the petitioner as employees of the Board and to pay them basic wages to enable them to survive. Basis of claim is glaring disparity between the nature of work and amount of remuneration. Higher pay scale is claimed for degree holders. 102

The mosque differs from a church or a temple in many respects. 'Ceremonies and service connected with marriages and birth are never performed in mosques. The rites that are important and integral functions of many churches such as confession, penitence and confirmations do not exist in the mosques. Nor any offerings are made as is common in Hindu temples. Ministry of Wakf (Endowments) appoints the servant, preachers and readers of the Quran. Mosques in

102. Ibid.
non-Muslim countries are subsidised by individuals. They are administered by their founder or by their special fund. A caretaker is appointed to keep the place clean. The Muazzin calls to prayer five times a day from the minaret (7) In our country in 1954 Wakf Act was passed by the Parliament for better administration and supervision of Wakfs.

Certain directions have been issued in consideration of present situation of religion.¹⁰³

(i) The Union of India and the Central Wakf Board will prepare a scheme within a period of six months in respect of different types of mosques, some detail of which has been furnished in the counter affidavit filed by the Delhi Wakf Board.

(ii) Mosques which are under control of the government shall not be governed by this order. But if their Imams are not paid any remuneration and they have no independent income. The Government may fix their emoluments on the basis as the Central Wakf Board may do for other mosques in pursuance of our order.

(iii) For other mosques, except those which are not registered with the Board of their respective States or which are not manned by members of Islamic faith the scheme shall provide for payment of remuneration of such Imams taking guidance from the scale of pay prevalent in the State of Punjab and Haryana.

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¹⁰³. Section 9, Wakf Board Act, 1954.
(iv) The State Boards shall ascertain income of each mosque the number and nature of Imams required by it namely full time or part time.

(v) For the full time Punjab Wakf Board may be treated as guideline. That shall also furnish guideline for payment to part time Imam.

(vi) In all those mosques where full time Imams are working they shall be paid the remuneration determined in pursuance of this order.

(vii) Part time and honorary Imam shall be paid such remuneration and allowance as is determined under the scheme.

(viii) The scheme shall also take into account those mosques which are small or are in the rural area or are such as mentioned in the affidavit of Pondichery Board and have no source of income and find out ways and means to raise its income.

(ix) The exercise should be completed and the Scheme be enforced within six months.

(x) Our order for payment to Imams shall come into operation from 1st Dec. 1993. In case the scheme is not prepared within the time allowed then it shall operate retrospectively from 1st Dec. 1993.

(xi) The scheme framed by the Central Wakf Board shall be implemented by every State Board.

It has been stated in a decided case of Haryana Wakf Board Ambala Cantt., v. Savitri Devi and Others.104 Learned Wakf Tribunal vide impugned judgment dated 5.12.2008

held the suit land to be Gair Mumkin Kabristan, but found that only the land CR No. 2123 of 2009-2- comprised in Khasra No. 133 (4-13) is presently sufficient for use as graveyard in view of the fact that only two Muslim families are residing in the village. Accordingly, the Tribunal declared that the suit land vests in Haryana Wakf Board and the suit land is reserved for Kabristan. Defendant No. 6 lessee of the Wakf Board has been restrained from raising any construction over the land comprised in Khasra No. 133 and from using it as residence. The defendants have also been restrained from changing the user of land comprised in Khasra No. 133 from Kabristan to any other purpose. Defendant No. 6 has also been restrained from lifting and selling any earth from the land of Khasra No. 134 for brick kiln. It was ordered that land of Khasra No. 134 shall be kept reserved for Kabristan but the same can be leased out by the Wakf Board for generating income until the said land may also be needed, in future, to be used as graveyard. Feeling aggrieved by the aforesaid judgment of the Wakf Tribunal, the instant revision petition has been preferred by Haryana Wakf Board and its officers under Article 227 of the Constitution of India read with Section 83(9) of the Wakf Act, 1995.

In a decided case of *Mohd. Ahmed Khan v. Shah Bano Begum And Ors.*\(^\text{105}\) observed that, showing of the contexts in which laws of Muslim appears in the document.

Iyer, J. and reported in [1979] 2 SCR 75, and [1980] 3 SCR 1127, to the effect that section 125 of the Code applies

\(^{105}\) AIR 1985, 945, 1985 SCR(3) 884.
to Muslims also and that therefore, the divorced Muslim wife is entitled to apply for maintenance was doubted, by the Bench consisting of Fazal Ali and Varadarajan, JJ., since in their opinion the said decisions required reconsideration by a larger Bench consisting of more than three judges as the decisions are not only in direct contravention of the plain and unambiguous language of section 127 (3) (b) of the Code which far from overriding the Muslim law on the subject protects and applies the same in case where a wife has been divorced by the husband and the dower specified has been paid and the period of iddat has been observed but also militates against the fundamental concept of divorce by the husband and its consequences under the Muslim law which has been expressly protected by section 2 of the Muslim Personal Law (Shariat) Application Act, 1937-an Act which was not noticed in the said two decisions.

Chandrachud, C.J. held in The Judgments of the Supreme Court wife, which cannot be less than 10 Dirhams which is equivalent to three or four rupees. But one must have regard to the realities of life. Mahr is a mark of respect to the wife. The sum settled by way of Mahr is generally expected to take care of the ordinary requirements of the wife, during the marriage and after. But these provisions of the Muslim Personal Law do not countenance cases in which the wife is unable to maintain herself after the divorce. The application of those statements of law to the contrary in text-books on Muslim Law must be restricted to that class of cases, in which there is no possibility of
vagrancy or destitution arising out of the indigence of the divorced wife.

It is true under the Muslim Personal Law, the amount of Mahr is usually split into two parts, one of which is called 'prompt' which is payable on demand, and the other is called "deferred", which is payable on the dissolution of the marriage by death cases are not correctly decided. Therefore, they referred this appeal to a larger Bench by an order dated February 3, 1981, which reads thus: "As this case involves substantial questions of law of far-reaching consequences, we feel that the decisions of this Court in Bai Tahira v. Ali Hussain Fidaalli Chothia & Anr\textsuperscript{106} and Fuzlunbi v. K. Khader Vnli & Anr.\textsuperscript{107} require reconsideration because, in our opinion, they are not only in direct contravention of the plain and an unambiguous language of s. 127(3)(b) of the Code of Criminal Procedure, 1973 which far from overriding the Muslim Law on the subject protects and applies the same in case where a wife has been divorced by the husband and the dower specified has been paid and the period of iddat has been observed. The decision also appear to us to be against the fundamental concept of divorce by the husband and its consequences (1) 1979 (2) SCR 75 (2) 1980 (3)SCR 1127 852 under the Muslim law which has been expressly protected by s. 2 of the Muslim Personal Law (Shariat) Application Act, 1937-an Act which was not noticed by the aforesaid decisions.

\textsuperscript{106} AIR 1979 2 SCC 316.
\textsuperscript{107} AIR 1980 SC 1730.95.
It has been observed in a decided case of that, *Chhutkao v. Gambhir Mal*,\(^{108}\) wherein it was held as under:

"Where a plot of land is described as a takia and has been used for many years as a place for burial by Muhammadans whether they are members of one family or not, a presumption arises that there is a wakf by user.

A cemetery or graveyard is consecrated ground and cannot be sold or partitioned. Even lands which are not expressly dedicated but are covered by graves are regarded as consecrated and consequently inalienable and non-transferable."

It is further observed:

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

"In Mohommadan Law land once used as a cemetery is always regarded as cemetery unless for any reason it turns out to be unfit for use as such."

The facts of that case are entirely different from the facts of the instant case. It had been found as a fact that dead bodies had all along been buried in that land for a very long time and that the plot was a takia and in the year 1875, permission was given to Maula Shah to bury dead bodies in this takia. There was no evidence of dedication of this land because it was a takia, its dedication was

\(^{108}\) AIR 1931 Oudh 45.
presumed. No such facts have been proved in the instant case. It has not even been mentioned how many graves there are and admittedly this land was never used as a graveyard since 1947 and as there is no Muslim living in this village, there is no necessity of keeping it as a graveyard for the followers of Islam.

In decided case of *Noor Mohammad v. Ballabh Das*,\(^{109}\) observed, "In any case if one portion of a continuous plot of land where the entire plot is shown in the settlement khasra as qabrastan is covered with graves, the entire plot must be deemed to bear the same character."

It was further held that "there was no distinction between a 'public' graveyard and a graveyard simpliciter. The user of a piece of land as a graveyard establishes dedication and the land thereby becomes wakf property."

Against this judgment, appeal was taken to the Privy Council which is reported as *Ballabh Das v. Noor Mohammad*,\(^{110}\) Their Lordships observed,

"The owner who permits one or two burials to take place in his orchard would not describe his orchard as qabristan. If the plaintiff had to make out dedication entirely by direct evidence of burials being made in the ground, and without any record such as the khasra of 1868, to help them, they would undoubtedly have to prove a number

\(^{109}\) AIR 1931 Oudh 293.

\(^{110}\) AIR 1936 PC 83.
of instances adequate in character, number and extent to justify the inference that the plot of land in suit was a cemetery. The plaintiffs, however, are not in this position. The entry 'qabristan' in the khasra of 186 has to be taken together with the map which shows the whole of plot 108 to be a graveyard”.

It was observed in a decided case of Mehar Din v. Hakim Ali,\textsuperscript{111}

"It is well established that an express dedication is not necessary to create a wakf and that dedication may be assumed from long user, if it is clear that the intention of the owners was to make the dedication."

In that case long and uninterrupted user had been clearly established. The land was described as gher mumkin takia and kabrastan in possession of the Ahl-e-Islam and was not described as Shamlat Deh although an adjoining plot of land was so recorded. In the present case, the land has been recorded as Shamlat Deh throughout and not in the possession of the Ahle-e-Islam till 1957-58, but in possession of the Kunjra tribe of Sonepat.

A notable decided case Arur Singh v. Badar Din,\textsuperscript{112} in which it was observed as under:

\textsuperscript{111} AIR 1935 Lah 912.
\textsuperscript{112} AIR 1940 Lah 119.
"The finding of the Court below that the land in dispute was used as a Mahomedan graveyard is amply supported by the entries in the revenue records and the mere fact that in recent years it has not been so used does not deprive it of its character as a 'wakf'" and that -

"There seems to be no clear authority to show that dedication of land by a Hindu for the purpose of a Muslim graveyard would be invalid either according to Hindu or Muslim law."

In the present case, it has not been proved that the land was being used as a Mohammedan graveyard. The mere entry in the revenue record is not sufficient to make it wakf. The dedication by a Hindu will not make any land wakf in view of the definition given in Section 3 (1) of the Act, whereunder dedication made by a person professing Islam only constitutes wakf.

A remarkable decided case of Motishah v. Abdul Gaffar Khan,113 in which it was held that a wakf may be defined to mean the detention of the Corpus in the ownership of God in such a manner that its profits may be applied for the benefit of his servants, and stated that,

"as a general rule all persons who are competent to make a valid gift are also competent to constitute a valid wakf. Islam is not a necessary condition for the constitution

113. AIR 1956 Nag 38.
of a wakf. Any person of whatever creed may create a wakf but the object for which dedication is to be made should be lawful according to the creed of the dedicatory as well as Islamic doctrines."

In view of the definition of Wakf in the Act, this observation no more holds good. It was further held that-

"A cemetery or graveyard is a consecrated ground and is not a private property. Whether a place is a makbra not depends on the number of persons buried there or evidence of dedication derived from the testimony of witness or reputation."

No evidence has been given with regard to the number of persons buried in the land in dispute nor has any evidence of dedication or reputation been given.

Decided case of *Khati v. Mirza Hossain Beg*,¹¹⁴ in which it was held as under:

"A Wakf normally requires express dedication, but if it had been used from time immemorial for religious purpose, then the land is by user wakf through there is no evidence of express dedication." and

"When a long period has elapsed since the origin of the alleged wakf, user can be the only available evidence to show if the property is or is not wakf; where there is no evidence to show how and when the alleged wakf was

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¹¹⁴. AIR 1962 Ori 95.
created, the wakf may be established by evidence of user; if land had been used from time immemorial for religious purpose such as Masjid, the land is constituted wakf, though there is no evidence of express dedication; the title of the original owner is extinguished and the ownership of the property vests in God and accordingly the public character of the institution may be presumed."

In the present case there is neither any evidence of dedication nor of long user from time immemorial. The only evidence relied upon is the entry in the Jamabandis which, in my opinion, is not sufficient.

In a decided case of Mohammed Shah v. Fashihuddin Ansari, in which their Lordships held that,  
"it can also be accepted as a matter of law that a wakf normally requires express dedication but if land has been used form time immemorial for a religious purpose, then the land is by user wakf although there is no evidence of express dedication."

It has not been proved in this case that the land was used from time immemorial as graveyard. Time immemorial means not the recent past but a hoary past, that is, the time beyond which the memory does not go. A period of fifty years or so cannot be said to be time immemorial.

The learned counsel for the appellant has, in reply relied upon the following judgments:--

115. AIR 1956 SC 713.
In a decided case of Jiwan Singh v. Karam Din,116 observed "nobody can acquire by prescription a right to bury the dead inland belonging to other persons, such an easement being unknown to the law."

Decided case of Kirpa Singh v. Nabi Bakhsh,117 is a remarkable case in which it has been observed that:

"The right to bury or burn dead bodies on land belonging to another person is not an easement recognized by law and cannot be acquired by prescription and where a party claiming right of easement in certain land as being sanctioned by custom, does not raise the plea of customary right or that of implied dedication from long user in the lower Courts, it cannot be allowed to take up those pleas in second appeal and thus set up a new case."

In a decided case of K. Raushan Din v. H. Mohd. Sharif,118 in which it was held as under:

"A wakf in respect of a burial ground may, in the absence of direct evidence of dedication, be established by evidence of user; but the user from which dedication can be implied must be clearly established and must be of such a character as to be

116. AIR 1927 Lah 664.
117. AIR 1932 Lah 256.
118. AIR 1936 Lah 87.
consistent with dedication. Such user or dedication is required to be public user or dedication. Where the evidence shows no more than that certain persons were many years ago buried in the place user".

As stated above, this land has not been used as a graveyard at least since 1947 and therefore, it cannot be said that it was wakf property merely because some dead bodies were buried there of which even there is no reliable evidence.

It has been decided in a case of Zafar Hussain v. Mohammed Ghiasud-Din,\textsuperscript{119} in which it was held as under,

"Even an owners' unexpressed intention to dedicate property cannot have the effect of a formal dedication. In the absence of any such intention or declaration, no wakf can be said to have been created. It is true that a wakf can be created by user but that user too must be preceded by an intention on the part of the owner to create a wakf. If no such intention is established user alone will no be sufficient to divest the property of its private character." There is no evidence of intention to create a wakf by anybody whatsoever in the present case and only from an entry in the jamabandis without proof of user, it cannot be held that the land comprised in khasra No. 247 was wakf properly and vested in the Punjab Wakf Board.

\textsuperscript{119} AIR N1937 Lah 552.
The suits were also barred by time as it was admitted on behalf of the plaintiff-Board that it had not been in possession of the land at any time within twelve years preceding the filing of the suits; Even wakf property can be adversely possessed as has been held in a full Bench of the Lahore High Court in *Masjid Shahid Ganj v. Shromani Gurdwara Parbandhak Committee, Amristasar.*

"The title of a person claiming adverse possession over dedicated property rests not on Mohammdan or Hindu law but on the law of limitation and prescription as it prevails in British India and if personal law has been modified by to statute of Limitation. The Courts in British India have no option but to give effect to that statute. Hence no mosque can be adversely possessed. It is difficult to see why the building of a mosque or its site cannot be looked upon as 'property' merely because the 'mosque' has been held to be capable of suing or being sued as a 'juristic' person. A mosque is the house of God but is not the deity.

4.7 The Sikh Gurudwara Prabandhak Committee and its function:

The management of the Sikhs Gurudwaras was carried on by a committee constituted under the Punjab Sikh Gurudwara Act, 1925. After the reorganization it became necessary to reconstitute the committee for the reorganized

120. AIR 1938 Lah 369.
state of Punjab and with a view to do this an amending Act was passed, which provided for constitution of an interim body pending the constitution of the regular committee according to the provisions of the Act. In the interim body persons were admitted without direct election from those who were members of the board for the Patiala state which had to be dissolved. It was contended that the constitution of the interim body on the basis of nomination in preference to direct election was unconstitutional, being a denial of the right of management of the gurudwara property to the Sikh community, and exercisable by members of the denominational committee. The Supreme Court held that the contention was unsustainable as there was no religious sanctity in the rule of direct election. The manner of constitution of the Parbandhak committee by direct election, or nomination was a secular mutter, and could be regulated by statute.

Most of the cases in which the question of religious freedom was raised were concerned immediately with denominational rights in respect of matters of religion under Article 26(b). Hardly ever a case has dealt with the individual religious freedom in a direct manner. The direct issue of religious freedom of the individual citizen has suffered judicial review only in an indirect manner. In the Swamiar case the question was arose related to administration of the denominational trusts and endowments. In the Devaru the issue centred around a denominational temple, and in the Saifuddin it dealt with
the authority vested by the denominational head of the Bhora community over its members. One result of this was that article 26(b) relating to the denominational rights received a greater judicial exposition than the main provision of individual religious freedom under article 25.

**Scope of Beliefs and Practices:**

Sikhs workshop organized three times a day early in the morning and twice at night. The morning prayer takes about 50 minutes, has three segments, and is usually said just before breakfast. The evening prayer is said just before super and takes about 20 minutes. The third prayer of the day takes about 5 minutes and is offered just before bedtime. Whenever possible, it is best to say the morning and evening prayers in congregation. The third prayer can be done individually.

On 22\textsuperscript{nd} July 2009, the CIC held the DSGMC, which is established under Section 3 of the Delhi Sikh Gurudwaras Act, 1971 (a DSG Acta) to be a public authority under the RTI Act. The Respondents in both writ petitions were initially unsuccessful in seeking information from the DSGMC pursuant to the applications filed by them under the RTI Act. In the second appeal filed by each of them the CIC passed orders directing the DSGMC to provide them the information before 5th August, 2009. When there was continued non-compliance by the DSGMC, the CIC directed notice to the Public Information Officer.

Thereafter, a notice was sent to the General Manager of the DSGMC. He was unable to give any valid explanation
for not complying with the CIC’s orders. Accordingly, a penalty of Rs.25,000/- was levied on the General Manager and the penalty was asked to be recovered from his salary. Aggrieved by the said orders, the DSGMC has filed these writ petitions.

Mr. Tulsi placed reliance on the Judgment of the Division Bench of the Bombay High Court in *Nagar Yuwak Shikshan Sanstha v. Maharashtra State Information Commission*\(^{122}\) in support of his submissions. Referring to the provisions of the DSG Act, Mr. Tulsi submitted that the Petitioner was intended to be an autonomous statutory body without interference by the Government. Relevant to the RTI Act, Mr. Tulsi has placed reliance upon the decisions of other High Courts including *Asian Education Charitable Society v. State of Uttarakhand*,\(^{123}\) *The Public Information Officer and Secretary v. Karnataka State Information Commission*,\(^{124}\) *Dattaprasad Co-operative Housing Society Ltd. v. Karnataka State Chief Information Commissioner*,\(^{125}\) *The Bidar District Center Co-op Bank Ltd. v. Karnataka Information Commission*,\(^{126}\) *Dr. Panjbrao Deshmukh Urban Co-operative Bank Ltd. v. The State Information Commission*,\(^{127}\) *Smt. Amba Joshi v. Army Welfare Education*

\(^{123}\) MANU/UC/0014/2010 (Decided on June 6, 2014).
\(^{125}\) AIR 2009 Kant 1.
\(^{126}\) ILR 2008 KAR 3830.
\(^{127}\) AIR 2009 Bom 75.
Society,128 Shri Girdhari Lal Bhargava v. All India Chess Federation.129


Mr. Gurbaksh Singh, on the other hand, referred to the fact that the DSGMC was constituted by the DSG Act. He submitted that as far as the Petitioner was concerned, it squarely fell within the definition of Section 2(h)(b) of the

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128. CIC/WB/A/2008/000634 dated 06.10.2009.
129. Available at www.indiankanoon.org/doc/264020/
133. AIR 1957 SC 699
139. AIR 1997 SC 3968.
Act and there was no need to look further to examine if the body was substantially financed\textsuperscript{141} "directly or indirectly by funds provided by the appropriate Government".

The decisions referred to by Mr. Tulsi on the interpretation to be placed on the RTI Act were delivered in the context of bodies, none of which fell within the definition of Section 2(h)(b) of the RTI Act. It is not possible, therefore, to adopt the approach adopted by those High Courts in the said decisions for determining whether the bodies concerned were public authorities or not. It is also not possible to read the long title and the Preamble in the manner suggested by Mr. Tulsi so as to confine the entire RTI Act only to Government or instrumentalities of the Government. The fact that the legislature has enacted Section 2(h) in the manner it has, clearly indicates that a whole range of public authorities are sought to be brought within the ambit of RTI Act. It hardly needs mention that there are a large number of bodies that are constituted by enactments both of the Parliament as well as the State Legislatures. Once it is shown that a body has been constituted by an enactment by Parliament or State Legislature, then nothing more need be shown in order to demonstrate that such a body is a public authority within the meaning of Section 2(h) (b) or (c) of the RTI Act.

\textsuperscript{141} WP (C) Nos. 720/2010 & 721/2010 Page 5 of 11.
In that view of the matter, this Court concurs with the view expressed by the CIC that the Petitioner DSGMC is a public authority under Section 2(h) of the RTI Act.\footnote{WP (C) Nos.720/2010 & 721/2010 Page 10 of 11.}

However, considering that the above question of law had not earlier been examined for its correctness by this Court, this Court is of the view that the penalty of Rs.25,000/- levied on the General Manager of the Petitioner may have been a bit too harsh. In the circumstances, the penalty amount is reduced to Rs.5000/- in both petitions and directed to be paid by the Petitioner DSGMC itself to the CIC within a period of two weeks without recovering it from the salary of its General Manager.

\footnote{WP (C) Nos.720/2010 & 721/2010 Page 10 of 11.}