Sunni Central Board Of Waqf, U.P. vs Sirajul Haq Khan And Ors. on 22 April, 1953

Equivalent citations: AIR1954ALL88, AIR 1954 ALLAHABAD 88

JUDGMENT

Bandhir Singh, J.

1. This is a defendant's appeal from the judgment and decree of the Civil Judge of Bahraich and the subject of dispute in this case is an endowment described as waqf Syed Salaar Masood Ghazi.

2. The facts of this case are a trifle complicated and the endowment has been the subject of litigation for a long time. In order, therefore, to understand the nature of the controversy between the parties it is necessary to set out in brief a history of the institution, various proceedings, and the prolonged litigation extending almost over three quarters of a century. The origin of the shrine is shrouded in antiquity but a record, more or less authentic, is to be found in the Gazetteer of the Bahraich district, as also in the judgment of the Chief Court in an appeal case.

3. Syed Salaar Masood Ghazi was said to be a nephew of Mohammad Ghazi and while on a visit to Bahraich met his death at the hands of a local chieftain. His remains were buried in village Singha Parasi by his devoted followers and a tomb was subsequently constructed, which became, in course of time, an object of pilgrimage and veneration. An annual mela or Urs is held at the shrine and is attended by a large number of persons who make offerings at the shrine. The tomb is maintained out of the income from the offerings and from the receipts of certain properties partly endowed by the charitably disposed emperors of Delhi and partly acquired out of the savings from the income of the property and the offerings at the shrine.

4. A body of persons known as the Khuddam of Dargah has been looking after and performing ceremonies and other services at the shrine generation after generation. They had been receiving income from the properties attached to the shrine as also the charhawa or offerings. The annexation of Oudh in 1856 was followed by a War of Independence, described by the British Rulers as Mutiny of 1857. As a sequel to this revolt, Lord Canning issued a proclamation confiscating all private property, which put an end to all previous titles. Fresh settlements were then made by the Government and rights which existed previously were, in most cases, revived by fresh grants or decrees of Settlement Courts. The property appertaining to the Dargah in this case also met the same fate.

5. In the year 1859 or 1860 a sanad is said to have been granted to one Faqirullah, who was the head of the Khadims of rent free tenure of village Singha Parasi and he was given the right to collect the usufruct of the village to be appropriated to the maintenance of the Dargah. Not satisfied with this

limited grant, Inayatullah son of Faqirullah filed a suit in 1865 in the court of the Settlement Officer for a declaration of his proprietary rights in the village. This suit was, in effect, dismissed and Inayatullah was held entitled only to the usufruct of the village under the terms of the Sanad. Some of the Khadims also filed similar suits claiming proprietary rights in various other plots of land surrounding the shrine but all these suits were also dismissed.

6. Some years later in 1872, it was brought to the notice of the Chief Commissioner that the Khadims at the Dargah had been mismanaging the affairs of the Dargah and had not been maintaining the Dargah properly and a committee of Musalmans was appointed to examine the affairs and make a report. This committee submitted its report on 20-2-1877, and made certain recommendations. The committee suggested the appointment of a jury of five persons including two khadims to manage the Dargah and its properties.

7. Once again in 1892 Inayatullah and two others instituted a suit for the possession of the Dargah together with the buildings appertaining thereto and village Singha Parasi and also for certain other reliefs. This suit was decreed by the Subordinate Judge but was ultimately dismissed by the Court of the Judicial Commissioners, which also held that the property was waqf and it was neither proper nor open to the Government to interfere in the management of any land or other property belonging to this waqf and that this prohibition also extended to the Government of Oudh. In the opinion of the Judicial Commissioners, the Dargah was a religious establishment within the meaning of Act 20 of 1863 and the Government acted without authority in interfering in the management of the waqf property.

As a sequel to this judgment, in the year 1902 a suit was instituted by the Legal Remembrancer to the Government of the United Provinces of Agra and Oudh under Section 539 (now Section 92), Civil P. C. for settling the management of the waqf, and a scheme for the administration of the trust was sanctioned by the District Judge of Gonda. Under the terms of the decree, a committee of management of ten members was appointed and the property was vested in a board of two trustees, one of whom was the president of the committee of management. The Junctions of the committee and the limitation under which they were to work were clearly indicated in the decree passed by the District Judge in the suit instituted by the Legal Remembrancer. It was also clearly mentioned that the property would vest in the two trustees and that cases shall be instituted and defended and investments made in their names. They were prohibited from incurring any expenditure in instituting or defending a case without the sanction of the committee.

8. Rot seems to have set in again in the management, and an application was made by Ashraf All and others in 1934 to the District Judge of Gonda, which was registered as Regular Suit No. 1 of 1934, praying for the issue of an interim injunction restraining certain persons from taking part in the affairs of the Dargah or in any way interfering with its management on the ground that they were not duly elected members and were guilty of misfeasance of the trust. It was also prayed that the defendants in that suit be prohibited from spending money belonging to the waqf on frivolous litigation due to party feelings. The District Judge issued an order directing the committee that no money out of the Dargah funds be spent in litigation without the sanction of the District Judge.

9. No other suit of importance was filed till we come to the year 1940 when a suit No. 1 of 1940 was instituted with the sanction of the Advocate General by five Musalmans against the managing committee and the trustees for their removal and for the settlement of a fresh scheme. This suit was decreed on 16-10-1941. The losing party, viz., the managing committee and the trustees, then went in appeal to the Chief Court and the decree was set aside on 7-3-1946 and some minor amendments of little consequence were made in the already existing scheme of management.

10. The Muslims Waqfs Act was passed in 1936 for the better governance, administration and supervision of certain classes of Muslim Waqfs in U. P. It was provided in Section 4 of this Act that within three months of the commencement of this Act the State Government shall by notification in the Official Gazette appoint for each district a gazetted officer, either by name or by official designation, for the purpose of making a survey of all waqfs in such district, "whether subject to this Act or not". Such officer was to be called the 'Commissioner of Waqfs'. It was the function of the Commissioner of Waqfs to make enquiries ascertaining (a) the number of all Shia and Sunni waqfs in the district, (b) the nature of such waqfs, (c) the gross income of the property comprised in the waqf; and certain other particulars.

In addition to these Commissioners of Waqfs, there were to be Provincial Commissioners of waqfs and the Chief Provincial Commissioner of Waqfs. The Act also constituted two Central Boards known as the Sunni Central Board and the Shia Central Board and these boards were required to notify in the official Gazette the waqfs relating to the particular sect to which, according to the report of the Commissioners, the provisions of the Muslim Waqfs Act applied. In pursuance of the enquiry required to be done under the Muslim Waqfs Act the Sunni Central Board notified the waqfs in the official Gazette of 26-2-1944, and the waqf which is the subject of dispute in this case was also mentioned in the list of Sunni waqfs. Most of the property appertaining to the waqf was also notified in the relevant column against this waqf. After this notification had been made, the Sunni Central Board asked the committee of management of the waqf to submit the annual budget to the Sunni Central Board for approval and also to get the accounts audited by the auditors of the Board. It also levied the usual contributions to be made by waqfs under Section 54, Muslim Waqfs Act.

The management was dissatisfied with these directions and probably felt that any contribution asked for by the Sunni Central Board wag unauthorised. The management was further of opinion that the waqf in the dispute in this case could not come within the purview of the Muslim Waqfs Act. The members of the Committee of management and the trustees, barring two of them who were joined as 'pro forma' defendants, then instituted a suit against the Sunni Central Board of Waqfs, U. P., which has given rise to this appeal. It was alleged by the plaintiffs, after a brief history of the shrine had been given in the plaint, that the publication made in the Government Gazette of 28-2-1944, according to Section 5 of the Waqfs Act in which village Singha Parasi and other property were also mentioned, was improper and contrary to law and that the shrine and its property were not affected by Act 13 of 1936. It was also alleged that the Dargah waqf was of such a nature as made it safe from the purview of the said Act in view of the provisions of Section 2 thereof. The plaintiffs, therefore, claimed that

(a) it be declared that the shrine (Dargah Sharif) and village Singha Parasi and the property in suit noted in list (a) annexed to the plaint and the offerings presented at the shrine, mentioned in para. 1 of the plaint, was not such property as may be covered by the provisions of Act 13 of 1933,

(b) the defendant, the Sunni Central Board of Waqf, had no right to sanction the budget or check the accounts of the said waqf in the suit,

(c) a sum of Rs. 5,1777- be ordered to be repaid by defendant 1, and

(d) the defendant be perpetually restrained from taking any proceedings which may result in the suspension or termination of the membership of the plaintiffs.

The suit was resisted by the Sunni Central Board of Waqfs and various pleas were raised. It was contended that the property claimed by the plaintiffs was waqf property and that it could not be excluded from the purview of the Muslim Waqfs Act. It was further contended that the suit was barred by limitation, as also by the provisions of Section 53, Muslim Waqfs Act inasmuch as no notice, as required by Section 53 of the Act, was served upon the Board before the suit was instituted. The other allegations regarding the recovery of Rs. 5,177/- were also traversed.

11. As many as 16 issues were framed by the learned Civil Judge and he has given his findings on all those issues. The main issues, however, related to the fact whether village Singha Parasi & the other properties mentioned in the plaint were waqf properties & whether they came within the purview of the Muslim Waqfs Act. The points of law raised were whether the suit was barred by limitation and whether the suit was maintainable without a notice having been served under Section 53, Muslim Waqfs Act.

12. The lower Courts found that village Singha Parasi was not the subject of waqf and that it was only the usufruct of the property which was sought to be endowed to the shrine and that such an endowment of the usufruct only did not constitute a valid waqf. The learned Civil Judge also held that the muafi of village Singha Parasi was held under conditions of resumption and there being no permanent dedication, it could not be said to be a valid waqf under the Mohammedan law. He, however, held that the suit was within time and that the properties which had not been expressly mentioned in the notification of 26-2-1944, could not be subject to the Muslim Waqfs Act inasmuch as they were not notified as such. The learned Civil Judge brushed aside the objection raised by the defendant with regard to Section 53, Muslim Waqfs Act and came to the conclusion that no notice was necessary and that if a notice was at all necessary, it had been served though during the pendency of the suit,; dissatisfied with the decree of the Civil Judge, the Sunni Central Board of Waqfs has come up in appeal.

13. The first point which has been urged in arguments on behalf of the appellant is that the lower Court's finding that the Dargah property, viz., the village of Singha Parasi, was not waqf, was incorrect and should be set aside. For a correct appreciation as to whether the property comprised in the suit is or is not waqf property, a reference to the plaint may be necessary. The plaintiffs came to the Court with clear allegations that the shrine and the properties appertaining to the shrine were

waqf properties and their only contention was that they were not of such a nature as brought them within the purview of the Muslim waqfs Act. In essence, their objection was that the waqf in this case was excluded from the operation of the Muslim Waqfs Act under the provisions of Section 2. It was not definitely mentioned as to which of the several clauses of Section 2 was applicable to the plaintiffs' case but in arguments it has been conceded that the plaintiffs claimed that the waqf in dispute was excluded under the provisions of Section 2 (2) (ii) (a) and (c).

The stand taken up in the plaint seems to have been modified by the replication made by the plaintiffs' Counsel presumably under Order 10, Civil P. C. The replication read with the statement made under Order 10 shows that the plaintiffs latterly took up the position that the endowment described by them as waqf in the plaint was in fact a trust and not strictly speaking a waqf within the Muslim law and as such no question of the application of the Muslim Waqfs Act to the endowment arose. It has been pointed out by the learned Counsel for the respondents that the replication and the subsequent statement made under Order 10 were only a clarification of the points in dispute in the case, but to us it appears that it was much more than a clarification. The plaintiffs in fact seem to have taken up almost a new case inasmuch as the point which was never raised in the plaint was taken up in the replication and the alleged clarification. Nevertheless, the lower Court seems to have discussed both points of view and has come to the conclusion mentioned above. The main point, therefore, for decision is whether the property in dispute in this case is waqf property or not.

14. A waqf has been defined in the various books on Muslim law as a permanent dedication by a Muslim of any property for charity or for religious objects or purposes and for an object of public utility. The definition of a Muslim Waqf, as given by the various authors of commentaries on Muslim law, has been enlarged to some extent in the Muslim Waqfs Act, where a waqf has been defined to mean "the permanent dedication or grant of any property for any purposes recognised by the Musalman law or usage as religious, pious or charitable and, where no deed of waqf is traceable, includes waqf by user." It would thus appear that the definition of 'waqf given in the Muslim Waqfs Act would cover permanent dedications and grants recognised not only by the Musalman law but also by usage as religious, pious or charitable. The plaintiffs, in para. 1 of the plaint, described the Dargah as a place of veneration and devotion by the general public. They also admit that a fair and Urs are held at the shrine and they are and have been attended by a large number of devotees since times immemorial.

15. The learned Counsel for the respondents has argued that dedication for the purposes of a tomb would not constitute a valid waqf and he has referred to Tyabji's Muhammadan Law (1940 edition) at page 584 where a list of what could be valid objects of waqf is given. This list is evidently not exhaustive and only main heads and instances have been given. In the present case it is admitted that the shrine is held in reverence by a large number of devotees and people flock to it for pilgrimage and make offerings to the shrine. This object is evidently pious and such an object would be covered within the wide definition of "waqf" under the Muslim Waqfs Act. It is, therefore, not necessary to discuss the implications of a purely Muslim Waqf as interpreted before the Muslim Waqfs Act was passed.

Reference was made on behalf of the appellant to a ruling in -- 'Mahomed Oosman v. Essak Sale-mahomed Vanjara', I. L. R. (1938) Bom 184 at p. 191 (A) where an observation has been made that "in spite of traditions, beliefs have grown up in India and the Courts have recognised these beliefs as having binding force, that great religious reverence may customarily be shown to the burial place of a person sufficiently holy to be styled a saint; insomuch as to raise his tomb to the standing of a religious object: so that property may validly be dedicated for its upkeep and' preservation."

The definition of waqf under the Muslim Waqfs Act being much wider, objects held in reverence and veneration by usage will also be covered as valid objects of waqf. There is, therefore, no force in the contention of the' learned Counsel for the respondents that the Dargah or shrine in this case could not be an object of a valid waqf.

16. It has further been argued on behalf of the respondents in support of the judgment of the lower Court that the waqf in this case could not be a valid waqf inasmuch as there was only a conditional grant of the usufruct of the property and the corpus of the property continued to belong to the Government.

It is not disputed that all private property in Oudh was confiscated by the proclamation of Lord Canning in 1858 and properties were regranted or settled by settlement Courts on the applications of persons, whose properties had been confiscated. Although the properties had been confiscated, it was perhaps not the intention of the Government to retain such properties to itself and, as a matter of fact, a large bulk of these properties was given back to the previous owners on the same terms on which they held it previously. In the present case the property appertaining to the waqf was also dealt with by the settlement Court in the year 1870. A 'sanad' was originally granted in 1859 to Faqirul-]ah, father of Inayatullah, of the rent free tenure of village Singha Parasi and he was given the right to appropriate the usufruct of the village subject to the conditions of the 'sanad' granted to him. Inayatullah, son of Faqirullah, was however not satisfied with this limited grant and he filed a suit in the Court of the Settlement Officer claiming proprietary rights in the property of Singha Parasi.

The judgment and decree of the Settlement Court is an important document and reliance has been placed by both parties on this document as the origin of the rights to the property of the waqf after the confiscation. The word "decree" used at the end of the judgment only indicates the operative part of the judgment and is not to be interpreted in the sense of a separate decree following the judgment). In this claim of Inayatullah, the learned Settlement Officer came to a definite conclusion, that it was cle'ar beyond all doubts that the proprietary right in the endowed property rested neither in the appropriator nor in the trustee.

He also came to the conclusion that the grant of village Singha Parasi which had been made to the Dargah was dedicated to the service of God and that the Government of the day which made' the grant had divested itself of all proprietary rights for ever but it exercised a power of management as representative of the divine power of God Almighty. The Settlement Officer, therefore, came to the conclusion that the proprietary rights in the village had been granted by the Government to the

shrine or to God Almighty and that it did not vest in the Government in that form. The decree, which is the operative part of the judgment, however, is so worded that if it is read quite apart from the rest of the judgment, it may be construed to mean that the settlement Court declared the proprietary right in village Singha Parasi, to vest in the Government.

If the whole of the judgment is read together, it is clear beyond a shadow of doubt that the Settlement Officer clearly came to the conclusion that the village being waqf property the Government was entitled to hold it as waqf property in trust for God Almighty. The claim of Inayatullah to the proprietary right of the Singha Parasi village was rejected by the Settlement Officer. The plaintiffs also do not dispute that village Singha Parasi was granted for the use and benefit of the Dargah by the Emperors of Delhi. The Settlement Court, in a very large majority of cases, granted to the original proprietors the same rights as they held before the confiscation and in this case also the Settlement Officer did not adopt a different course. The Settlement Officer held that the property in village Singha Parasi was waqf property and that could be the only construction which could be validly put upon the judgment and decree of the Settlement Officer.

16A. Apart from this judgment, another very important document is the judgment of the Court of the Judicial Commissioner passed in the year 1897. In this judgment the history of the disputes which arose from time to time till the case came up before the Judicial Commissioner's Court in appeal has been traced, and the Judicial Commissioners came to a definite conclusion that the property in dispute was waqf property. It is not necessary to refer to the various passages and observations made in the course of the judgment and it would suffice to state that the Judicial Commissioners came to a definite finding that the property was waqf property. In their judgment they also made an observation that as the property was waqf property dedicated to religious or pious pur-poseis, it was not lawful for the Government to interfere in the management or supervision of this property. Acting upon the findings and observations made in this judgment in appeal, of the Court of the Judicial Commissioners, a suit was instituted by the Legal Remembrancer of U. P., Agra and Oudh in 1902.

It has been contended by the learned Counsel for the appellant that institution of a suit under Section 92, C. P. C., in itself is a proof of the fact that the property in this case is waqf property and is a permanent dedication. A suit under Section 92 (formerly Section 539), Civil P. C. could main be tained only in respect of a public trust of a permanent character and the judgment in such a suit would be a judgment in rem and not a judgment in petrsonam. Nobody raised any objection in this suit with regard to the public or permanent nature of the trust of Dargah Syed Salaar Masood Ghazi and after the decision given by the District Judge holding the property to be a public trust and laying down a scheme for its administration it was not open to any party to challenge the permanent public nature of the trust.

16B. The main argument of the learned Counsel for the respondents in this case was that the grant given to the mutawalli or to the Dargah of village Singha Parasi was a conditional grant. We are unable to agree with this contention for the simple reason that it was only the usufruct of the property which was to be utilised for the benefit of the Dargah. The corpus of the property of village Singha Parasi had been tied up with God Almighty and the mere fact that a 'sanad' was granted to

Faqirullah or to his son Inayatullah permitting him to utilise the usufruct of the property on certain conditions would not make the entire trust conditional.

The condition was attached only to the user of the profits of the waqf by the person to whom a right to apply the usufruct of the property was given and the condition was that if the person to whom the right to utilise the usufruct of the property was given did not put the usufruct to the use for which it was given his rights so to use the profits would come to an end. This condition had nothing to do with the dedication of the property which had been made much earlier. The learned Counsel for the appellant has cited -- 'Farman Ali Khan y. Mohammad Raza Khan', A. I. R. 1950 All 62 (B) and -- 'Ram Das v. Mst. Basanti', AIR 1922 All 519 (C) in support of his contention that it was not open to parties to question the permanent character of the trust after the decree under Secticn 92, Civil P. C. had been passed. In view of what has been stated above, it is not necessary to discuss these rulings in this case. We have, therefore, no doubt that the property in this case was waqf property.

16C. It remains now to be seen if the property could be excluded from the purview of the Muslim Waqfs Act in view of the provisions of Section 2 relied upon by the respondents. Exemption is claimed by the respondents under clauses (2) (ii) (a) and (2) (ii) (c). Clause (2) (ii) (a) excludes waqfs from the purview of the Act if the same is for the maintenance and support of any person other than the waqif or his descendants or any member of his family. In all the various judgments passed in connection with disputes relating to the waqf of the Dargah Salaar Masood Chazi it has been held that the offerings of the shrine were for the benefit of the shrine and not for the benefit: of the Khadims. All other properties pertaining to the waqf were also dedications to the waqf and not to any private individual. The respondents have' not, therefore, been able to establish that the property, moveable or immoveable, appertaining to the waqf was for the maintenance and support of any person.

All these dedications were for the benefit of the shrine or the Dargah and as such clause (2) (ii) (a) has no application to the facts of the case.

16D. The other provision of Section 2 relied upon by the respondents is the one which excludes waqfs for the maintenance of private Imambaras, tombs and graveyards. It has been argued on behalf of the respondents that the word "private" ap-

pearing before "Imambaras" governs only the word "Imambaras" and is not an adjective of the words "tombs and grave-yards". We are unable to agree with this contention and we are fortified' in our view by a ruling of the Allahabad High Court in -- 'Sunni Central Board of Wakis v. Sardar Khan', A. I. R. 1943 All 255 (D). Apart from any ruling also a plain reading of the words of the section clearly indicates that the word "private" qualifies both "tombs" and grave-yards". It has already been found that the tomb in dispute in this case was not a private tomb. The respondents could not, therefore, rely on this provision of law also for their contention that the property in this case is excluded from the purview of Act 13 of 1936.

16E. Another point pressed in arguments on be-half of the respondents was that the property, which was not mentioned in the notification of 26-2-1944, could not be subject to the Muslim Waqfs Act

even if it was originally waqf property. This contention is evidently unsound. Firstly, it does not appear to us to be necessary under the law that all the property appertaining to a waqf should also be notified in the Gazette under the provisions of Section 5, Muslim Waqfs Act. All that is necessary is that the waqf which is sought to be claimed as a Muslim waqf should be clearly indicated in the notification. In the present ease the notification regarding the property did not make a mention of all the items a the property and the word "waghaira" was put at the end to cover items of such property as were omitted. The learned Civil Judge has come to the conclusion that properties which were not mentioned in the notification would go out of the purview of the Muslim Waqfs Act because of that omission. A waqf property would not cease to be a waqf property, if there is no notification in respect of it, and if any item of property was left out either by an oversight or due to the impression that the word "waghaira" would include all such property, the items of property not clearly mentioned would not cease to be waqf property.

The distinction drawn by the learned Civil Judge does not appear to be correct. He has held that Singha Parasi was not the subject of endowment and the usufruct of the village could not be the subject of a valid endowment and has, therefore, come to the conclusion that none of these could be waqf property. We are wholly unable to agree with the learned Civil Judge on this point and we are clearly of opinion that village Singha Parasi or the usufruct thereof was waqf property.

17. It may not be necessary to discuss the other points of law involved in this case in view of our findings on questions of fact. It has been held by the lower Court that the suit was not barred by limitation and that the plaintiffs could avail themselves of Section 14 for extending the limitation for institution of a suit in this case. It is not dis-puted that a suit for a declaration under Section 5, Muslim Waqfs Act, has to be brought within one year of the date of publication of the waqf or trust in the notification. The notification of the waqf in this case was made on 26-2-1944, and a suit for a declaration that a certain property was or was not waqf property could be brought within a year of this date of notification.

18. The present suit was, however, filed in October 1946 more than a year after the expiry of the normal period of limitation prescribed by Section 5 and the plaintiffs sought to take advantage of Sections 14, 15 and 18, Limitation Act, to put the case within limitation. The learned Counsel for the respondents has given up Section 18 and has confined his arguments only to Sections 14 end 15. Limitation Act. Section 14, Limitation Act, runs is follows:

> "(1) In computing the period of limitation prescribed lor any suit, the time during which the plaintiff has oeen prosecuting with cme diligence another civil proceeding, whether in a Court of first instance or in a court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it."

In order, therefore, to attract the application of Section 14, Limitation Act, the subsequent suit must be against the defendant in the previous case. In the two proceedings there should be the same cause of action and the Court in which the earlier suit was being prosecuted should be unable to

entertain it from defect of jurisdiction or other cause of a like nature. It has been argued on behalf of the appellant that none of these conditions had been fulfilled in the present case and Section 14, Limitation Act, was inapplicable. The previous suit was not in respect of the same cause of action on which the present suit was based nor was the previous suit thrown out on the ground of jurisdiction or on any other ground of a like nature. It would also be difficult to say that the defendants in the previous suit were the same as the plaintiffs in the present suit. Section 14 would not, therefore, come to the rescue of the plaintiffs in this case. We are, therefore, unable to endorse the view taken by the lower Court that the plaintiffs were entitled to maintain the suit and the suit was within time.

19. The other provision of the Limitation Act on which reliance has been placed on behalf of the plaintiffs is Section 15 of the Act. Section 15 provides that "in computing the period of limitation prescribed for any suit ..... the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded."

it is alleged on behalf of the plaintiffs that the plaintiffs were unable to institute the present suit, as notices had been served on them not to interfere 'in any way' in the affairs of the Dargah as a result of the decree passed on 16-10-1941, removing the trustees and the members of the committee of management from their offices. The learned counsel for the respondents has laid great stress on the words "in any way" and has argued that these words were wide enough to prohibit the trustees from bringing the present suit till the judgment of the Civil Judge dated 16-10-1941, had been set aside by the Chief Court in 1946.

The notices are Exs. 8 to 10 printed in the paper book at pages 89, 90 and 91. After the decree had been passed on 16-10-1941, by the Civil Judge the successful party asked the Court for the issue of notices to the trustees who had been removed to restrain them from interfering in any way in the affairs of the Dargah. This evidently did not mean that the present plaintiffs were debarred from bringing the present suit and the construction sought to be put by the learned Counsel for the respondents does not appear to us to be sound. It could never be the intention of the notices to restrain the defendants from bringing a suit for a declaration that the properties comprised in the waqf were not to be governed by the provisions of the Muslim Waqfs Act. It was, therefore, open. to the plaintiffs to bring a suit within the time prescribed by law and they could not take advantage of the provisions of Section 1 5 for extending the prescribed period of limitation. The suit was, therefore, barred by limitation and Section 1 5 also did not extend tne period of limitation.

20. The only other point which arises for consideration is wnether a notice under Section 53, Muslim Waqfs Act, was necessary before the present suit couid be instituted. Section 53, Muslim Waqfs Act, provides that "no suit shall be instituted against a Central Board in respect of any act purporting to be done by such Central Board under colour of this Act or for any relief in respect of any waqf, until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of such Central Board stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims."

These provisions are almost analogous to the provisions of Section 80, Civil P. C- In view of the fact that it has been found that the subject matter of dispute in this case was waqf property it was necessary for the plaintiffs to serve the statutory notice provided under Section 53, Muslim Waqfs Act, before the institution of the suit. It is admitted that no such notice was served on the defendant and a suit would be barred in the absence of the prescribed notice. The lower Court held that a notice was not necessary in view of the fact that the subject matter of the suit was not waqf property. We have already come to the definite conclusion that the property is waqf property and any suit claiming relief in respect of the waqf property should have been preceded by the statutory notice provided under Section 53, Muslim Waqfs Act.

21. One other small point which was raised in arguments on behalf of the respondents is that that committee of management and the board of trustees was not a committee of supervision and it was not open to the defendant to threaten their removal. It is not necessary to express any opinion on this point in view of the finding that the property in this case was waqf property.

22. No other point has been pressed in arguments.

23. As a result, the appeal is allowed and the decree passed by the lower Court is set aside. The suit stands dismissed with costs in both the Courts.