Supreme Court of India
Nawab Zain Yar Jung And Others vs The Director Of Endowments And ... on 9 April, 1962
Equivalent citations: 1963 AIR 985, 1963 SCR Supl. (1) 469
Author: P Gajendragadkar
Bench: Sinha, Bhuvneshwar P.(Cj), Gajendragadkar, P.B., Wanchoo, K.N., Ayyangar, N. Rajagopala, Aiyyar, T.L. Venkatarama

PETITIONER:
NAWAB ZAIN YAR JUNG AND OTHERS

Vs.

RESPONDENT:
THE DIRECTOR OF ENDOWMENTS AND OTHERS

DATE OF JUDGMENT:
09/04/1962

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.(CJ)
WANCHOO, K.N.
AYYANGAR, N. RAJAGOPALA

CITATION:
1963 AIR 985 1963 SCR Supl. (1) 469
CITATOR INFO :
D 1976 SC1569 (58)

ACT:
Trust Property-Wakf and Public Charitable Trust--Distinction-Rule of interpretation of documents-The Wakf Act, 1954 (29 of 1954), ss. 3(1), 9, 28-Hyderabad Endowment Regulation, 1348-F (1939).

HEADNOTE:
The appellants were appointed trustees by the Nizam of Hyderabad by a trust deed executed on Tune 14, 1951. On March 2, 1959, respondent No. 1, who was the Director of Endowments and joint Secretary, Board of Revenue, served a notice on the appellants calling upon them to register the said
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trust under the Hyderabad Endowment Regulation, 1348-F (1939) and to render accounts of the same. The appellants contended that the trust was not governed by the said Regulation. Thereupon the first respondent scaled the pay

office of the said trust. Although the seal was subsequently removed by an order of the Government of Andhra Pradesh, the appellants were asked to produce their books of account and not to operate upon the banks in which the money of the trust was deposited, and also not to spend any amount till further orders.

Appellants 1 to 3 filed a writ petition in the High Court and prayed for a writ of prohibition and certiorari. The fourth appellant was subsequently appointed an additional trustee and added as a petitioner. The writ petition was dismissed by the High Court which held that s. 6 of Part B States (Laws) Act, 1951, did not apply, and the Hyderabad Endowment Regulation and the Rules framed thereunder could not be said to have been repealed. It also held that the Regulation and the Rules did not contravene the fundamental rights guaranteed by Arts. 14,19 and 31 of the Constitution of India. The appellants came to this Court by special leave.

While the appeal was pending in this Court, the Muslim Wakf Board, Hyderabad, constituted under s. 9 of the Wakf Act, 1954, wrote to the Secretary of the trust that the trust was a Wakf within the meaning of the Wakf Act, and steps should be taken for its registration under s. 28 of the Act. When the order was not complied with in spite of reminders, the Board itself caused the registration of the trust to be made. When the registration was published, respondent No. 2 moved the High Court for quashing the registration of the trust on the ground that the trust was not a Wakf and the provisions of the Wakf Act did not apply to it. Under these circumstances, the Wakf Board was also made a party in this Court. But the parties agreed that if the trust was held to be a wakf within the meaning of the relevant provisions of the Wakf Act and its registration under s. 28 was found to be valid, the impugned Regulation and the Rules framed thereunder would be inapplicable to the trust and the appeal would have to be allowed; on the other hand, if it was held that the trust was not a Wakf and the provisions of the Wakf Act were not applicable to it, its registration under s. 28 would be invalid.

Held, that the trust created is not a Wakf but a secular public charitable trust. The Wakf Act, 1934, does not apply to it, and its registration under s. 28 is invalid and inoperative. The whole scheme of the trust deed vests the title in the trustees and gives them absolute discretion to use the said property and its income for any of the charitable purposes

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specified in the document. The dominant intention of the settler in creating the trust was to help public charity in the best sense of the words, 'public charity' not confined to any caste, religion or creed. This is inconsistent with the concept of a Wakf The appointment of non-Muslims as trustees is indicative of the fact that a Wakf was not

intended. The document calls the author of the trust the settlor and the appellants trustees and that introduces the concept of the trust as contemplated by English Law, and that is against the concept of a Wakf.
Vidya Varuthi Thirtha v. Balusami Ayyar, (1921) L. R. 48 I. A. 302, referred to.
It is an elementary rule of construction that if two constructions arc reasonably possible, the one which gives effect to all the clauses of the document must be preferred to that which defeats some of its clauses.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 109 of 1961. Appeal by special leave from the Judgment and order dated October 20, 1959, of the Andhra Pradesh High Court in Writ Petition No. 337 of 1959.

C. K. Daphtary; Solicitor-General of India, A. V. Viswanatha Sastri, Anwaruallah Pasha, S. Ranganatham, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellants.

D. Narsaraju, Advocate-General for the State of Andhra Pradesh, G. R. Ekbote, D. Prasanna Kumari, D. Venkatappayya Sastri and P. D. Menon, for respondents Nos. 1 and 2. G. S. Pathak, S. M. Dubash and V. J. Merchant, for respondent No. 3.

1962. April 9. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-This appeal is directed against the order passed by the Andhra High Court dismissing an application for a writ filed by the appellants in that Court. The four appellants are the Trustees appointed by the Nizam of Hyderabad by a Trust- deed executed by him on June 14, 1954. On March 2, 1959, respondent No. 1 who is the Director of Endowments and Joint Secretary, Board Revenue, served a notice on the appellants calling upon them inter alia, to register the said Trust under the Hyderabad Endowment Regulation, 1348-F (1939) and to render accounts of the same from the date of its inception to the date of the notice within a week. The appellants disputed the authority of respondent No. 1 to issue the said notice and urged that the trust was not governed by the said Regulation. Thereupon, the first respondent issued an order on March 23, 1959, and in pursuance of it, sealed the Pay Office of the said Trust. Subsequently, on March 25, 1959, the said seal was removed in pursuance of the order issued by the second respondent, the Government of Andhra Pradesh. The appellants then were called upon to produce their books of accounts in order that the first respondent may scrutinize them and ascertain all the relevant facts in respect of the Trust as required by Rule 8 of the Rules framed under the said Regulation. The appellants were also directed not to operate upon the banks with which the moneys of the Trust were deposited and not to spend any sum on the objects of the Trust until further orders.

On March 24, 1959, appellants 1 to 3 filed the present writ petition and prayed inter alia that a writ of Prohibition and Certiorari or other writ or appropriate order or direction should be issued in respect of the notice served on them by the 1st respondent on March 2, 1959, and his subsequent

order of March 23, 1959. The 4th appellant was subsequently appointed an additional trustee and was thereafter added as a petitioner to the said petition on October 12, 1959.

In their writ petition, the appellants alleged that the said Regulation had ceased to be operative in Hyderabad by reason of section 6 of Part B States (Laws) Act 1951 (No. III of 1951) which had been extended to Hyderabad as from 1st April, 1951. Section 6 of the said Act provides that if immediately before the appointed day, there was in force in any Part B State any law corresponding to any of the Acts or Ordinances now extended to that State, that shall, save as otherwise expressly provided, stand repealed. Amongst the laws extended to Hyderabad by the said Act were the Indian Trust Act, 1882, Charitable Endowments Act (VI of 1890) and Charitable and Religious Trusts Act (XIV of 1920). Subsequently, by Central Act If of 1951, the Civil Procedure Code was made applicable to Hyderabad and section 92 of the said Code thus applied to proceedings contemplated by it. The appellants urged that the aforesaid laws which were thus extended to Hyderabad corresponded to the Hyderabad Endowments Regulation and so, by virtue of the provisions of s. 6 of the Part B States (Laws) Act, the said Regulation stood repealed as from April 1, 1951. According to the appellants, the said Regulation and the Rules framed thereunder were ultra vires also for the reason that they were violative of the fundamental rights guaranteed by Articles 14, 19 and 31 of the Constitution. It is broadly on these grounds that the appellants based their claim for an appropriate writ against both the respondents.

On the other hand, the respondents contended that the Regulation and the Rules framed thereunder were not coextensive with the provisions of the Acts which had been extended to Hyderabad by the Part B States (Laws) Act and so, s. 6 of the Act was inapplicable to them. The respondents also pleaded that the said Regulation and the Rules did not contravene any of the fundamental rights guaranteed by Part III of the Constitution. As to the orders issued by respondent No. 1, it was the respondents' case that the said orders were justified and could not be set aside.

The High Court held that the order passed by the 1st respondent prohibiting the disbursement of moneys by the appellants was inappropriate and that the 1st respondent was not justified in directing the seizure of account books and records and taking forcible possession of the same. However, on the main points raised by the appellants, the High Court has held that s. 6 of the Part B States (Laws) Act did not apply and so, the Regulation and the Rules framed thereunder cannot be said to have been repealed, as from April 1, 1951. The contention raised by the appellants that the said Regulation and the Rules contravened the fundamental rights guaranteed by Articles 14, 19 and 31 was likewise rejected. In the result, the High Court dismissed the writ petition filed by the appellants. The appellants then applied for a certificate to the High Court, but their application was rejected. That is why the appellants moved for and obtained special leave from this Court and it is with the special leave thus granted to them that they have come to this Court by the present appeal. The appeal seeks to raise the same two questions for our decision. While the appeal was pending in this Court, certain developments took place in regard to the trust in question and it is necessary to mention them. It appears that on September 10, 1956 the Muslim Wakf Board, Hyderabad, constituted under B. 9 of the Wakf Act, 1954 (Central Act No. 29 of 1954), wrote to the Secretary of the Trust that in the opinion of the Board, the Trust was a Wakf within the meaning of the Wakf Act and that steps should be taken for its registration under s. 28 of the said Act. For nearly three years

thereafter, no step was taken to register the wakf nor did the Board pursue its demand that the trust should be registered. In March, 1959, however, the Board sent a further communication to the Secretary and called upon him to get the trust registered. The appellants did not comply with this requisition. On December 18, 1960, the Board purported to exercise its authority under s. 28 of the Wakf Act and itself caused the registration of the trust to be made. The registration so made was published in the Andhra Pradesh Official Gazette on January 12, 1961. Respondent No. 2 then moved the Andhra High Court by a writ petition No. 791 of 1961 for quashing the said registration of the Trust. It urged that the trust in question was not a wakf and so, the provisions of the Wakf Act were inapplicable to it; and thus, the validity of the registration of the trust became a matter of dispute between the Wakf Board and respondent No. 2.

When this appeal was called on for hearing before this Court on December 6, 1961, the learned counsel for both the parties informed the Court about the developments in question and stated that the registration of the trust had changed the complexion of the dispute which made it necessary that this Court should consider the nature of the trust and decide whether the registration of the said trust under s. 28 of the Wakf Act was valid or not. Meanwhile, on August 9, 1961, the Wakf Board had applied to intervene in the present appeal, so that when the appeal was heard by this Court on December 6, 1961, the appellants, the respondents and the Wakf Board were all heard and by consent, an order was passed that the appellants should be allowed to urge additional grounds in support of their appeal, these grounds being based on the registration of the trust. It was also ordered that the Wakf Board be permitted to be added as a party to the appeal, and that all the parties should be permitted to file additional statements in the case within the time specified. When the parties obtained this order by consent, it was understood that they would make the necessary application to the Andhra High Court for adjournment of the hearing of the writ petition filed by respondent No. 2, No. 791 of 1961, pending the decision of the appeal in this Court. The result of this consent order is that all the points of dispute between the parties would be decided by this Court and so, the final decision of this Court would govern the decision of the writ petition filed by respondent No. 2 in the Andhra High Court against the Wakf Board. In pursuance of the said consent order, the appeal has now come before us for final disposal. It is common ground that if the trust is held to be a wakf within the meaning of the relevant provisions of the Wakf Act and its registration under a. 28 is found to be valid,, the impugned Regulation and the Rules framed thereunder would be inapplicable to the said trust and so, in that event, the appeal would have to be allowed. If on the other band, it is held that the trust is not a wakf and that the provisions of the Wakf Act are inapplicable to it, then its registration under s. 28 of the said Act would be invalid, and the contentions which the appellants initially wanted to raise in their appeal would fall to be considered. That is why, logically, the first point to consider in this altered situation would be whether the Wakf Board was justified in registering the trust under s. 28 of the Wakf Act (hereinafter called the Act): and that takes us first to consider the nature of the wakf to which the Act applies. The Act was passed in 1954 for the better administration and supervision of wakfs. Section 3(1) defines a wakf as meaning a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as points, religious or charitable and includes:-

(i) a wakf by user;

(ii) mashrut-ul-khidmat; and

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

and "wakif " means any person making such dedication. Consistently with this definition "wakf", a "beneficiary" has been defined by s. 3(a)as meaning a person or object for whose benefit a wakf is created and it includes religious, pious and charitable objects and any other objects of public utility established for the benefit of the Muslim community. It is thus clear that the purpose for which a wakf can be created must be one which is recognised by Muslim law was pious, religious, or charitable, and the objects of public utility which may constitute beneficiaries under the wakf must be objects for the benefit of the Muslim community. Naturally, the wakf contemplated by the Act can be either "Shia wakf " or "'Sunni wakf : Shia wakf meaning a wakf governed by Shia law Cs. 3(j)] and Sunni wakf meaning a wakf governed by Sunni law [s. 3(k)]. This broad division of wakf into two categories is reflected in other provisions of the Act. Section 4(3) provides, inter alia, that the Commissioner shall, after making such enquiry as he may consider necessary submit his report to the State Government containing the specified particulars-amongst them is the particular in regard to the number of wakf in the State, showing the Shia wakfs and Sunni wakfs separately. It would thus be clear that the preliminary survey of wakfs contemplated by s.4 is intended to collect data about the wakfs in the State to divide them into Shia wakfs and Sunni wakfs separately. Then in regard to the appointment of the members of the Board with which s. II deals, the proviso to the said section lays down that in determining the number of Sunni members or Shia members is the Board, the State Government shall have regard to the number and value of Sunni wakfs and Shia wakfs to be administered by the Board. Sections 6 provides for the settlement of a dispute is regard to the question as to whether a wakf is a Shia wakf or a Sunni wakf and a. 15 which deals with the functions of the Board has an explanation which provides that the powers of the Board shall be exercised-

(i) in the case of a Sunni wakf, by the Sunni members of the Board only; and

(ii) in the case of a Shia wakf, by the Shia members of the Board only.

it is thus clear that the wakf contemplated by the Act can be either a Shia wakf or a Sunni wakf and the provisions with regard to the management of the wakf are accordingly made on that basis.

The Muslim character of the wakf is also emphatically brought out by certain other provisions of the Act. The proviso to B. 15(1), for instance, requires that in exercising its powers under the Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the Muslim law. Similarly, s.15(2)(j) lays down that the Board has power to sanction leases of property for more than three years or mortgage or exchange properties according to the provisions of Muslim 'law-. Section 21 requires that there shall be a Secretary to the Board who shall be a Muslim and he shall be appointed by the State Government in consultation with the Board ; and s. 13 provides that a person shall be disqualified for being appointed a member of the Board if he is not a Muslim. There can, therefore, be no doubt that the wakfs with which the Act deals are trusts which are treated as wakfs under the

definition of s. 3(1) and as such, a trust which does not satisfy the tests prescribed by the said definition would be outside the Act. This position is not disputed.

At this stage, it is necessary to distinguish between wakfs recognised by Muslim law and religious endowments recognised by Hindu Law on the one hand and public charitable trusts as contemplated by the English Law on the other. This question has been considered by the Privy Council in Vidya Varuthi Thirtha v. Balusami Ayyar (1) Mr. Ameer Ali who delivered the judgment of the Board observed that "it is to be remembered that a "trust" in the sense in which the expression is used in English law, is unknown to the Hindu system, pure and simple. Hindu piety found expression in gifts to ideals and images consecrated and installed in temples, to religious institutions of every kind, and for all purposes considered meritorious in the Hindu social and religious system ; to Brahmins, Goswamis, Sanyasis, etc..... When the gift is directly to an idol or a temple, the seisin to complete the gift is necessarily effected by human agency. Called by whatever name, he is only the manager or custodian of the idol or the institution..... In no case is the property conveyed to or vested in' him, nor is he a trustee in the English sense of the term, although in view of the obligations and duties resting on him, he is answerable as a trustee in the general sense for maladministration." (p. 31 1). Thus, these observations show that the basis concept of a religious endowment under Hindu Law differs in essential particulars from the concept of trust known to English Law. Similarly, the Muslim law relating to trusts differs fundamentally from the English law. According to Mr. Ammer Ali, "the Mohammadan laws owes its origin to a rule laid down by the (1) (1921) L.R. 48 I.A 302 Prophet of Islam; and means "the tying" up of property in the ownership of God the Almighty and the devotion of the profits for the benefit of human beings." As a result of the creation of a wakf, the right of wakif is extinguished and the ownership is transferred to the Almighty. The manager of the wakf is the mutawalli, the governor, superintendent, or curator. But in that capacity, he has no right in the property belong into the wakf; the property is not vested in him and he is not a trustee in the legal sense." Therefore there is no doubt that the wakf to which the Act applies is, in essential features, different from the trust as is known to English law.

Having noticed this broad distinction between the wakf and the secular trust of a public and religious character, it is necessary to add that under Muslim law, there is no prohibition against the creation of a trust of the latter kind. Usually, followers of Islam would naturally prefer to dedicate their property to the Almighty and create a wakf in the conventional Mahommedan sense. But that is not to say that the followers of Islam is precluded from creating a public, religious or charitable trust which does not conform to the conventional notion of a wakf and which purports to create a public religious charity in a non-religious secular sense. This position is not in dispute. Therefore, the main question which calls for our decision is : Is the trust executed by the Nizam a wakf to which the provisions of the Act apply or is it a public charitable trust falling outside the said Act ? : and the decision of this question would obviously depend upon the construction of the document by which the trust is created and it is to that problem that we will now turn.

In construing the document by which the trust if; created by the Nizam, it is necessary to read its material portion. Clauses 1 to 4 are relevant for our purpose:-

"This indenture made at Hyderabad the 14th day of June, 1954 between his Exalted Highness Nawab Sir Osman Ali Khan Bahadur G.C.S.I., C. B. E., The Nizam of Hyderabad and Berar (hereinafter called "the settler" which expression shall unless repugnant to the context or meaning thereof be deemed to include his heirs, executors and administra- tors) of the one part and Nawab Zain Yar Jung Bahadur of Hyderabad, Muslim, inhabitant and Vapal Pangunni Menon of the Bangalore, Hindus, inhabitant (hereinafter called "the Trustees which expression shall unless repugnant to the context or meaning thereof be deemed to include the survivors or survivor of them and the Trustees for the time being of these presents and the heirs, executors and administrators of the last surviving Trustee their or his assigns) of the other part: Whereas the Settlor has prior, prior to the execution of these presents, made full and ample provisions for the several members of his family which enable them to maintain themselves in comfort in accordance with and benefiting the station of life in which Provi- dence has placed them and the Settlor has fulfilled his duty as the head of the family towards them so that with the help of God Almighty they will be able to live in reason- able comfort even in the altered conditions existing in the present times :

And whereas in so doing the Settlor has parted with a large portion of his wealth and assets :

And whereas the Settlor feels that he should now devote on dedicate a substantial part of his remaining assets for being utilised for the relief of the poor particularly in the State of Hyderabad and for the maintenance of religious institutions, particularly in the State of Hyderabad and for the advancement of education and for other charitable purpose without distinction of religion, caste or creed :

And whereas in view of the deteriorating economic conditions particularly in the State of Hyderabad the need to help the poor and the indigent is much greater now than before and the Settlor is therefore desirous of making Charitable trust of the shares, securities and moneys particularly described in the schedule hereunder written (including all the rights incidental or attached to his holding thereof) of which he is at present the sole owner : And whereas the Trustees have agreed to become the first Trustees of those presents as is testified by their being parties to and executing those presents ;

And whereas the sum of Es. 88,490/(Rupees eighty-eight thousand four hundred and ninety only) mentioned in the Schedule hereunder written has been paid by the Settlor to the Trustees by a cheque drawn in their favour this day before the execution of these presents.

Now this Indenture witnesseth as follows:

1. For effecting his said desire and in consideration of the promises the Settlor doth hereby declare that he has, prior to the execution of these presents, paid and transferred and he doth hereby confirm such payment and transfer unto the Trustees of all that the said sum of Rs,. 88, 490/ (rupees eighty-eight thousand four hundred and ninety only) included in the Schedule hereunder written and further the Settlor doth hereby assign and transfer unto the Trustees all those shares and securities described in the Schedule hereunder written together with all the rights of the Settlor incidental or attached to his holding of the said shares and securities and all the estate right, title and interest, property, claim and demand whatsoever at law and in equity of the Settlor of, in and to the said moneys, shares and securities and every part thereof to have and to hold receive and take' all and singular the said moneys shares and securities described in the Schedule hereunder written unto the Trustees for ever upon the Trusts and with and subject to the powers, provisions, agreements and declarations hereinafter appearing and contained of and concerning the same.

2. The Trustees do hereby declare that they, the Trustees shall hold and stand possessed of the said shares, securities and moneys described in the schedule hereunder written and all the lights incidental or attached to the holding of the said shares and securities by the Settlor (all which are hereinafter for brevity's sake referred to as "the Trust Fund" which expression shall also include cash and any other property and investments of any kind whatsoever into which the same or any part thereof might be converted, invested or varied from time to time or such as may be acquired by the Trustees or come to their hands by virtue of these presents or by operation of law or otherwise howsoever in relation to these presents) upon the Trusts and with and subject to the powers, provisions, agreements and declarations hereinafter declared and contained of and concerning the same.

3. The Trustees shall held and stand possessed of the Trust Fund upon the following Trusts :

(a) To manage the Trust Fund and collect and recover the interest, dividends and other income thereof :

(b) To pay and discharge out of the income of the Trust Fund all expenses and charges for collecting and recovering the income of Trust Fund and the remuneration of the Trustees payable under these presents and all other costs, charges and expenses and outgoing of and incidental to the trusts created by these present and the administration thereof :

(c) To pay or utilise the balance of such interest dividends and other income of the Trust Fund (hereinafter called "the net income of the Trust Fund" and if the Trustees so desire the corpus of the Trust of any part of the corpus or any one or more of the following charitable purposes in such shares and proportions and in such manner in all respects as the Trustees shall in their absolute discretion think fit, that this is to

say

(i) for the relief of the poor, particularly in the State of Hyderabad (Deccan) including the establishment, maintenance and support of institutions or funds for the relief of any form of poverty.

(ii) for the maintenance, upkeep and support of public religious, institutions, and otherwise for the advancement of religion particularly in the State of Hyderabad (Deccan) To The Intent that the benefit of the present clause shall not be restricted to any particular religion.

(iii) for the advancement and propagation of education and learning, particularly among the inhabitants of the State of Hyderabad (Deccan), including the establishment, maintenance and support of colleges, schools or other educational institutions, professorships, lectureships, scholarships and prizes, particularly for the benefit of the inhabitants of the State of Hyderabad (Deccan).

(iv) for giving medical aid and relief, particularly to the inhabitants of the State of Hyderabad (Deccan), including the establishment, maintenance and support of institutions or funds for medical aid and relief, and

(v) for the advancement of any other object of general public utility, particularly in the State of Hyderabad (Deccan).

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4.    The  trust  and charity  hereby  created
shall be   called    "H.    E.   H.    Nizam's
Charitable Trust."
5.     x                   x            x
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It is, urged by Mr. Pathak who appeared for the Board that the significant feature of the document is the desire of the settlor to devote and dedicate a substantial part of his remaining assets for being utilised for religious purposes, and that is the distinguishing feature of wakfs. His argument is that in dealing with the character of the trust created by the document, we should not attach importance to the words like the 'Settlor' and the 'Trustees' because words are a mere matter of form and the character of the document must be judged from the substance of its provisions and not their form. The intention of the document is the desire of the settlor to dedicate the property which is its subject-matter to purposes recognised as charitable by Muslim law and so though the appellants are described as Trustees and though there are certain expressions showing that the property has vested in them, we should not lose sight of the basic concept which actuated the settlor in executing the document and that concept is on of dedication on which wakf are based.

It is also urged that the effect of clauses relating to the vesting of the property in the appellant as Trustees should be judged in the light of the character of the property with which the document

deals. The subject matter of the trust is movable property and unless the said property was assigned to the appellants, they would not have been able to deal with it, and that alone is the basis and the justification for the vesting provisions in the document. Therefore, too much importance should not be attached to the said provisions and it should not be held that since there is a vesting of legal title in the appellants, the transaction is a trust and not a wakf. The pervading idea of the document is the dedication of the property to purposes recognised by Muslim law as valid for a wakf and it is only as a means to give effect to that idea that the property has been vested in the appellants that in brief, is the main argument in support of the plea that the trust is a wakf to which the provisions of the Act apply.

On the other hand, there are certain other broad features of the transaction which are wholly inconsistent with the notions of a wakf. The outstanding impression which the document creates is that the settlor wanted to create a trust for charitable purposes and objects in a secular and comprehensive sense, unfettered and unrestricted by the religious considerations which govern the creation of wakf. Even the clause on which Mr. Pathak relies for the purpose of showing the intention to dedicate the property to Almighty makes it perfectly clear that amongst the objects for which the trust was created were included other charitable purposes without distinction of religion, caste or creed, and that obviously transgresses the limits prescribed by the requirements of a valid wakf The same comprehensive character of the charitable purpose which the settlor has in mind is equally emphatically brought out by cl. 3(c)(ii). Clause 3 provides that the Trustees shall hold and stand possessed of the Trust Fund upon the Trusts specified in sub-cls. (a) to (c). Sub-clause (c)(ii) refers to the maintenance, upkeep and support of public religious institutions and otherwise for the advancement of religion, particularly in the State of Hyderabad; and it adds that the benefit of the present clause shall not be restricted to any particular religion. A public charitable purpose which is not limited by considerations pertaining to one religion or another could not have been more eloquently expressed. The dominant intention of the settlor in creating the trust was to help public charity in the beat sense of the words, public charity' not confined to any caste, religion or creed; and it is in that sense that the religious institu- tions which are within the purview of the trust are all religious institutions not confined to any particular religion. Then look at el. 3(c) (v). It provides that the trust property can be utilised for the advancement of any other object of general public utility, particularly in the State of Hyderabad. It is true that the settlor wanted the objects of general public utility in Hyderabad to be preferred and in that sense the document discloses a desire to prefer the objects of general public utility situated within the territorial limits of Hyderabad. But it is plain that it was farthest from the mind of the settlor to impose a limitation that the objects of general public utility should be confined to those recognised as such by Muslim law. It is thus clear that the outstanding feature of the trust disclosed by these provisions is plainly inconsistent with the concept of a wakf and that itself would rule out the view that the document creates a wakf and not a comprehensive public charitable trust.

It is true that a large number of provisions contained in the document are consistent with the view that the document creates a wakf as much as they are consistent with the view that it creates a public charitable trust as distinguished from wakf It is, however, patent that there are some clauses which are inconsistent with the first view, whereas with the latter view all the clauses are consistent. In other words, if the construction for which the Board contends is accepted, some clauses would be

defeated, whereas if the construction for which the respondents contend is upheld, all the clauses in the document become effective. In our opinion, it is an elementary rule of construction that if two constructions are reasonably possible, the one which gives effect to all the clauses of the document must be preferred to that which defeats some of its clauses. It is not in dispute that if the document is held to be a wakf, the directions in the document that charitable purposes should be selected without distinction of religion, caste or creed, would obviously be defeated and that undoubtedly supports the conclusion that the document evidences a public charitable trust and not a wakf.

Besides, the clause on which the argument of dedication is based cannot be divorced from the provision contained in the said clause which provides for charitable purposes without distinction of religion, caste or creed and so, the intention of the settlor was to help not only charities which would fall within the definition of a wakf but also charities which would be outside the definition; and so, the whole argument of dedication breaks down because the idea of dedication is not confined to purposes which are recognised at charitable by the definition of the Act but extends for beyond its narrow limits. In this connection, it may be relevant to recall that it would be competent to the Trustees to devote a substantial part of the income, and may be even the whole of the income, to a purpose which may be outside the limits of wakf by virtue of their powers under cl. 3(c) of the document, and that plainly suggests that the vision of the settlor was not confined in the narrow limits prescribed by the conditions as to a valid wakf It is in this context that the other provisions about vesting must be considered. The document calls the author of the trust as the 'Settlor' and the appellants as the Trustees' and that introduces the concept of the Trust as contemplated by English Law. Clause 1 of the document specifically assigns and transfers unto the appellants all these shares and securities described in the Schedule which are the subject-matter of the trust. This clause, in terms, transfers the shares and securities to the Trustees and so, the legal title in respect of the subject-matter of the trust vests in the Trustees. The argument that the provision for vesting had to be made because the property in question is movable property, does not carry conviction because the whole scheme of the document appears to be to vest the title in the Trustees and gives them absolute discretion to use said property and its income for any of the charitable purposes specified in the document. Thus, the vesting provision has not been adopted as a means to carry out the intention to dedicate the property to the Almighty but it constitutes the essential basis of the transaction and that is to transfer the legal title of the trust property to the Trustees. In that sense, cl. 14 which confers on the Trustees absolute discretion to deal with the property in any manner they like, as well as cls. 18 and 24 which clothe them with authority to employ servants is their uncontrolled discretion and to appoint a Committee for management of the Trust, become more easily intelligible. In this connection, we may also notice the fact that the appointment of non-Muslims as Trustees which is prohibited by the Act, is an indication that the settlor did not regard the trust as falling within the said statutory prohibition; likewise, the scheme of management of the trust which the Trustees are given liberty to adopt in administering the trust, is completely free from the regulations based on Muslim law which the relevant sections of the Act have prescribed. These several features of the trust support the conclusion that the trust is not a wakf and does not fall within the provision of the Act. We have carefully considered all the relevant provisions of the document and we are satisfied that on a fair and reasonable construction, the document must be held to have created a trust for public charitable purposes, some of which are outside the limits of the wakf and so, the conclusion is escapable that the trust created is not, a wakf but a secular

comprehensive public charitable trust. In that view of the matter, s. 3 (1) of the Act cannot apply to the trust and its registration under s. 28 is invalid and inoperative,