FULL BENCH

Before S. S. Sandhawalia, C.J., K. S. Tiwana and S. P. Goyal, JJ.

BACHAN CHAND,—*Appellant.*

versus

PUNJAB WAKF BOARD,—*Respondent.*

Regular Second Appeal No. 535 of 1979.

September 19, 1983.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 4(1) and 11—Wakf Act (XXIX of 1954)—Sections 15 and 69—Wakf property of a evacuee trust—No trustee appointed under section 11 of the Evacuee Act—Wakf Board constituted under the Wakf Act—Suit by the Board for possession of land allegedly in wrongful possession of a person—Wakf Board—Whether has a locus standi *to file such a suit—Doctrine of implied repeal and Rules of interpretation of Statutes—Section 11 of the Evacuee Act—Whether stands impliedly repealed by section 15 of the Wakf Act—Effect of the repealing provisions of section 69 of the Wakf Act.*

Held, (per majority S. S. Sandhawalia, C.J. and K. S. Tiwana, J., S. P. Goyal, J. contra) that sub-section (1) of section 11 of the Administration of Evacuee Property Act, 1950 was substituted in 1956 nearly two years after section 15 of the Wakf Act, 1954 had been enacted . It is well settled that implied repeal invariably arises in the situation of a latter statute repealing or overriding an earlier one. One cannot easily imagine a provision later in time being impliedly repealed by an earlier provision. The legislature cannot possibly be attributed the absurdity of an intent of this nature. It cannot be held that it substituted sub-section (1) of section 11 only to have it overridden and rendered virtually *non est* by the already existing provision of section 15 of the Wakf Act. Again, the amendment of section 11 in 1956 is the strongest pointer to the fact that the said section far from being repealed was intended to override other laws. In view of the amendment of section 11 of the Evacuee Act and the *non obstante clause* with particularity in the context of the same having been done later in time than section 15 of the Wakf Act cannot possibly be overemphasised with the consequence that section 11 of the Evacuee Act far from being impliedly repealed, in fact overrides, if necessary, the provisions of the Wakf Act. Another factor which militates against the concept of an implied repeal of Section 11 is the plain fact that it can obviously

co-exist with section 15 of the Wakf Act. Section 11 of the Evacuee Act was applicable not merely to Muslim Wakf alone but to all other categories of trusts whose property had come to be vested in the Custodian by virtue of its wide ranging provisions. Therefore, a trust created by a Muslim under the general law, public and private Wakf *stricto sensu* under the Mohammadan Law, and trusts created by Christians and those of other communities whose trustees had become evacuees, would all come within the umbrella of section 11 of Evacuee Act. Consequently, whilst section 15 of the Wakf Act can possibly apply only to Muslim Wakf, section 11 of the Evacuee Act applicable to the 'evacuee trusts' alone would be attracted equally to non-Muslim trusts as well, if other conditions stood satisfied. The true field or arena of section 11 of the Evacuee Act and section 15 of the Wakf Act will thus be separate and distinct and in any case divisible and consequently there is neither any direct conflict nor inflexible repugnance which can attract the doctrine of implied repeal. Lastly, the tests for inferentially arriving at the conclusion that a provision is impliedly repealed are stringent and the presumption is heavily against it. It is, therefore, held that there is no implied repeal or overiding of the provisions of section 11 of the Administration of Evacuee Property Act, 1950 by those of section 15 of the Wakf Act.

(Paras 10, 11, 12, 15 and 24).

Held; (per majority S. S. Sandhawalia, C.J. and K. S. Tiwana, J., S. P. Goyal J, contra) that the scheme of section 69 of the Wakf Act would indicate that Parliament expressly named the Central statutes which were not to be applicable to the Wakfs to which this Act applied. In the larger perspective, sub-section (1) excluded from the particular field, now sought to be occupied by the Wakf Act, the earlier Central enactments with regard to religious and charitable trusts and endowments including therein even the Mussalman Wakf Act, 1923. Sub-section (1) made reference not necessarily to the whole of a Central statute, but Parliament was even careful to specify even an individual section, when it was intended that the same was not to be made applicable. Sub-section (1) took meticulous care of the Central statutes which were now to be held as inapplicable to the Wakfs to which the present Act applied. The significant fact herein is that section 11 of the Evacuee Act specifically or the Evacuee Act generally finds not the least hint or mention in sub-section (1) dealing with the Central statutes. The twin repetition of the language with regard to the enforceability within a particular State only and of any law in that State leaves no manner of doubt that in contra-distinction to sub-section (1), sub-section (2) was meant to and is confined to only State laws. In essence, it dealt with the situation that prior to the enforcement of the Wakf Act individual States had made provision for the Muslim Wakf by their own legislatures. It was noticed that the working of these State Acts had brought about the necessity for

amending the law and it had been renderd necessary that one uniform and consolidated legislation may be passed by the Centre which may be adopted as a model by the various States. It would thus be manifest on principle and the language of section 69(2) of the Wakf Act that this meant only to repeal the corresponding State law and did not intend to repeal the provisions of any Central law, which were specifically taken care of in sub-section (1). Thus, it is held that section 69(2) of the Wakf Act is no warrant for tthe proposition that section 11 of the Evacuee Act stands expressly repealed thereby.

(Paras 26, 27 and 28).

Held, (per majority S. S. Sandhawalia, C.J. and K. S. Tiwana J., S. P. Goyal, J. contra) that if it is held that section 11 of the Evacuee Act was in no way expressly or impliedly repealed and, therefore, excludes section 15 of the Wakf Act, it is axiomatic that the right to institute legal proceedings inheres in the person in whom property vests. Consequently, if it is once held that the property of 'evacuee trust' had vested in the Custodian or the right to manage the same is so vested, a *fortiori*, a right to file the suit would be a necessary consequential right flowing therefrom. Therefore, the Custodian, in the first instance or in the event of new trustees being appointed in place of the evacuee trustees, under section 11, the latter would be entitled to institute and defend legal proceedings in a court of law. A lawfully entitled trustee would have an inherent right to make resort to the Court to defend all the trust property is too elementary to call for elaboration. Now once section 11 of the Evacuee Act was applicable and continues to be so, and if no new trustees were appointed under the said section with regard to the particular Wakf property, the same would thus continue to vest in the Custodian and he alone is entitled to institute the proceedings and it is not open to the Wakf Board to maintain the action.

(Paras 29 and 30).

Held, (per S. P. Goyal, J., contra) that the public wakf property being not evacuee property within the meaning of section 2(f) of the Evacuee Act never vested in the Custodian; that after the enactment of the Wakf Act, public Wakfs are exclusively governed by its provisions and the Board constituted under this Act is the sole authority entitled to manage them; that the authority of the Custodian to manage the wakfs, if any, came to an end with the deletion of Explanation to section 11 of the Evacuee Act and that in case section 11 is taken to be still applicable to wakfs even after deletion of the said Explanation, its provisions stand expressly repealed by the provisions of section 69(2) of the Wakf Act and in the alternative by implication, the Wakf Act being special and later statute.

(Para 47).

(*Case referred by a Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. P. Goyal to a Full Bench on 25th March, 1982 for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice K. S. Tiwana and Hon'ble Mr. Justice S. P. Goyal finally decided the case on 19th September, 1983. However, Hon'ble Mr. Justice S. P. Goyal gave the dissenting judgment*).

Regular Second Appeal from the decree of the Court of Shri K. R. Mahajan, First Additional District Judge, Hoshiarpur, dated the 23rd December, 1978 reversing that of Shri G. S. Jhaj, Sub Judge IIIrd *Class, Hoshiarpur, dated the 6th August, 1976 decreeing the suit of the plaintiff for possession of the land in suit as prayed for in the plaint and passing no order as to costs through.*

M. L. Sarin as amicus Curaie with M. S. Kang, Advocate.

Anand Swarup, Sr. Advocate Sanjiv Pabbi, C. B. Goel and S. K. Aggarwal, Advocates with him).

JUDGMENT

S. S. Sandhawalia, C. J.

(1) Do the provisions of section 15 of the Wakf Act 1954 impliedly repeal or completely override those of section 11 of the Administration of Evacuee Property Act is the core question which has necessitated this reference to the Full Bench. Equally at issue is the correctness of the earlier judgment in *Prithipal Singh* v. *Punjab Waqf Board,* (1) and *Khushi Ram and another* v. *Punjab Waqf Board,* (2) holding categorically to the contrary.

(2) The Punjab Waqf Board had instituted the suit against the defendant-appellant for possession of the agricultural land measuring 9 Kanals 13 Marlas situated in village Bassi Babu Khan, tehsil and district Hoshiarpur. It was alleged that the property in dispute was Waqf Property in terms of section 66-C of the Waqf Act and was vested in the Custodian in trust for public purposes of religious and charitable nature. It was the stand that the Waqf Act 1954 (hereinafter called the Act) was applied and enforced in Punjab with

(1) 1977 P. L. J. 271.
(2) 1981 P. L. J. 572.

effect from the 10th of October, 1959 and this property was transferred by the Custodian to the plaintiff-Waqf Board registered under section 25 of the Waqf Act, 1954. It was alleged that the defendant-appellant was in forcible possession of the property in dispute since 1970 and was holding it on behalf of the Custodian and consequently his possession was of a permissible nature and in essence of a licencee.

(3) The defendant-appellant controverted the averments made on behalf of the plaintiff and claimed himself to be a tenant-at-will under the plaintiff Board at the rate of Rs. 15 per Kanal as its rent. Particularly the defendant-appellant challenged the jurisdiction of the Civil Court to try the suit.

(4) On the pleadings of the parties six issues were framed and the material one being No. 6 is in the terms following:—

> "6. If issue No. 4 is proved, whether the civil court has jurisdiction to try this suit?"

The trial Court came to the finding that the defendant-appellant was a tenant and consequently held that he could be only ejected under the tenancy laws for which the jurisdiction lay with the revenue Courts. The suit of the plaintiff-respondent was consequently dismissed. However, on appeal the learned Ist Additional District Judge, Hoshiarpur, held that the defendant-appellant was not proved to be tenant and allowing the appeal decreed the suit of the plaintifi-respondent.

(5) The judgment and decree of the lower appellate Court was impugned only on the ground that the respondent-Waqf Board has no *locus standi* to file the suit and reliance for this contention was placed primarily on the Single Bench judgment of this Court in *Prithipal Singh's case* (supra). As doubts were raised about the correctness of the view, the appeal was admitted to hearing by the Division Bench. By the time it came up for regular hearing, *Prithipal Singh's case* (supra) was affirmed by a Division Bench of this Court in *Khushi Ram's case* (supra). The correctness of these judgments was, however, assailed on behalf of the respondent-Waqf Board on the ground that the provisions of section 11 of the Administration of Evacuee Property Act stood superseded and repealed by section 15 of the Waqf Act 1954. Reliance also was sought to be

placed on section 69(2) of the Punjab Waqf Act. In view of the significant question involved, the matter was referred to the Full Bench and that is how it is before us.

(6) At the very thereshold it deserves pointed notice that in assence the identical question within this jurisdiction was first raised before O. Chinnappa Reddy, J. in *Prithipal Singh's case* (supra). With his usual perspicacity the learned Judge held as under in the categoric terms:—

> ".....Admittedly no trustees have so far been appointed and, therefore, the suit property must continue to vest in the Custodian of Evacuee Property. The lower appellate Court thought that section 15 of the Muslim Wakfs Act, which enables the Wakf Board to exercise general powers of superintendence over the Wakfs in the State, and enables the Wakf Board to take measures for the recovery of lost property and to institute and defend suits and proceeding in a Court of law relating to Wakfs, enables the wakfs Board to maintain the present suit. It is difficult to uphold this view of the lower appellate Court. As alredy mentioned, *section* 11(1) *of the Administration of Evacuee Property Act prevails over any other law for the time being in force and in view of the provisions of section* 11(1) *of Administration of Evacuee Property Act, it is not open to the Wakf Board to have recourse to the provision of Muslim Wakfs Act.* It is open to the Wakf Board to appoint new trustees by virtue of the notification dated February 27, 1961 and thereafter it will be open to the new trustees to take action to recover the property. As it is the property is vested in the Custodian and it is not open to the Wakf Board to maintain this action. The second appeal is, therefore, allowed and the suit is dismissed. There will be no order as to costs."

It was common ground before us that no view contrary to the above was ever expressed earlier and this enunciation continued to hold the field. Some doubts with regard thereto were raised at the motion stage but this ratio was reaffirmed unhesitatingly in the following terms in *Khushi Ram and another's case* (supra):—

> "In view of the aforesaid discussion, we have no hesitation to hold that the property in dispute had not vested in the

Punjab Wakf Board for the purpose of section 15 of the Wakf Act and it had only acquired the right to appoint trustees. *Prithipal Singh's case* correctly lays down the law in this regard and we are in respectful agreement with the views expressed by the learned Single Judge deciding the case, extracted above. The doubt thus entertained by the learned Single Bench admitting this case to a Division Bench also stands answered in this light."

Learned counsel for the respondent was fair enough to concede that within his jurisdiction, there was as yet no contrary view existent. Further, even 30 years after the enactment of the Wakf Act, 1954, no dissentient note to the above view in any other High Court of India was brought to our notice. It is against this backdrop that one has to examine and pronounce on the correctness of the consistent view in *Prithipal Singh;* and, *Khushi Ram and others cases* (supra) which is inevitably entitled to weight and respect.

(7) Now *de hors the* earlier precedent altogether, I propose to examine the issue first in its correct historical and legislative perspective. It would appear that prior to 1947, the Muslim Wakfs within the country were governed by the general principles of Mohammadan Law supplemented by the somewhat limited and procedural provisions of the Mussulman Wakf Act, 1923 and the cognate provisions of the Mussulman Wakf Validating Act, 1930. After the partition of the country and the holocaust of civil disturbances particularly in Punjab, a large number of people migrated from one country to the other. It was not possible for such people to make any satisfactory arrangements for the management of their properties (which included the trust properties as well) left behind by them in these peculiar circumstances. For the efficient management and administration of evacuee property, the government of East Punjab originally promulgated an Ordinance which was later converted into the East Punjab Evacuee and Administration of Property Act, 1947. This Act with certain modifications was extended to Delhi, Ajmer Merwara, and other States enacted legislations on similar lines. It was, however, felt that there should be a uniform legislation relating to the evacuee property and the Administration of Evacuee Property Ordinance was promulgated on October 18 1949 and later the Administration of Evacuee Property Act, 1950 was enacted and enforced. Section 7 thereof provided for the notification of evacuee property and after the procedural requisites were

satisfied, the same was to be deemed to have vested in the Custodian for the State by virtue of Section 8 thereof. It would appear that the migration of the *mutawallis* of private or public Muslim Wakfs as also of the trustees of other trusts for public purposes of a religious or charitable nature created a vacuum and a very peculiar situation with regard to the management of the properties of such wakfs and trusts. This was taken particular care of by specifically enacting Section 11 of the Administration of Evacuee Property Act, 1950, (to which detailed reference inevitably follows), which, as the heading indicated, made special provisions with respect to certain trust properties.

(8) It is common ground that the Administration of Evacuee Property Act, 1950 (hereinafter called 'the Evacuee Act') and in particular Section 11 thereof held unstinted sway till the enactment of the Wakf Act, 1954. It is significant to notice that this statute did not *ipso facto* become enforceable within the whole of the country, but was to be extended to different States on different dates which may be appointed by notification by the Central Government. It was so extended to the Patiala and East Punjab States Union only on January 15, 1955 and it was more than 4½ years later that it was made applicable to that part of Punjab in which it had not already been enforced from October 10, 1959. Section 9 of the Wakf Act, 1954 (hereinafter called 'the Wakf Act') provided for the incorporation of Boards and Section 15 thereof which calls for particular attention, provided that the general superintendence of all Wakfs in a State shall vest in the Board established for the State.

(9) Against the aforesaid background, it must now be noticed that as before the Division Bench making the reference, so before us, the basic stand of the respondents was that Section 15 of the Wakf Act had impliedly repealed and overridden Section 11 of the Evacuee Act. It was sought to be argued that Section 11 aforesaid was only an interim measure to provide for the peculiar situation of the migration of *mutwallis* or trustees of Muslim Wakfs in the wake of partition and after the enactment of the Wakf Act and in particular section 15 thereof, the said Section was completely eclipsed and indeed wiped off the satute book. In sum, it was suggested that Section 11 of the Evacuee Act and section 15 of the Wakf Act are inflevibly conflicting provisions which could not co-exist on the statute book and, therefore, Section 11 of the Evacuee Act stood repealed by necessary implication.

(10) To appraise the aforesaid contention, it is necessary to notice *in extenso* the provisions of Section 11 of the Evacuee Act both as originally enacted and as later amended by the Administration of Evacuee property (Amendment) Act, 1956 (Act No. 91 of 1956) and indeed it is apt to juxtapose them:—

The Administration of Evacuee Property Act, 1950 (Act No. XXXI of 1950).	The Administration of Evacuee Property (Amendment) Act, 1956 (Act No. 91 of 1956).
11. Special provisions with respect to certain trust properties—	11. Special provisions with respect to certain trust properties—
(1) Where any evacuee property which has vested in the Custodian is property in trust for a public purpose of a religious or charitable nature, the property shall remain vested in the custodian only until such time as fresh trustees are appointed in the manner provided by law, and pending the appointment of fresh trustees the trust property and the income thereof shall be applied by the Custodian for fulfilling, as far as possible, the purpose of the trust.	(1) Where any evacuee property which has vested in the Custodian is property in trust for public purpose of a religious or charitable nature, *it shall be lawful for the Central Government, not with standing anything contained in the instrument of trust or any law for the time being in force, to appoint by general or special order, new trustees in place of the evacuee trustees* and the property shall remain vested in the Custodian only until such time as the new trustees are so appointed; and pending the appointment of such new trustees the trust property and the income thereof shall be applied by the Custodian for fulfilling, as far as possible, the purpose of the trust.
Explanation.—In this sub-section "property in trust for a public purpose of a religious or charitable nature" includes public *wakf* and the expression in 'trustee' includes a *mutawalli* of such *wakf*.	Omitted.

(2) In respect of any *wakf-alal-aulad*—

(a) Where the *mutawalli* is an evacuee, the property forming the subject-matter of the *wakf* shall vest in the Custodian subject to the rights of the beneficiaries under the *wakf*, if any, who are not evacuees;

(b) where not all the beneficiaries are evacuees, the rights and interests of such of the beneficiaries as are evacuees shall alone vest in the Custodian."

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(b) Where not all the beneficiaries are evacuees, the rights and interests of such of the beneficiaries as are evacuees shall alone vest in the Custodian.

Now highliting the fact that sub-section (1) of Section 11 of the Evacuee Act was admittedly substituted in 1956, nearly two years after Section 15 of the Wakf Act had been enacted in 1954, would take the wind out of the sails of the argument raised on behalf of the respondent. Indeed, the chronology drives the basic nail in the coffin of the theory of implied repeal. It seems well-settled that implied repeal invariably arises in the situation of a latter statute repealing or overriding an earlier one. One cannot easily imagine a provision later in time being impliedly repealed by an earlier provision. The legislature cannot possibly be attributed the absurdity of an intent of this nature. In the particular context, it seems impossible to hold that it substituted sub-section (1) in Section 11 of the Evacuee Act, 1956 only to have it overridden and rendered virtually *non est* by the already existing provision of Section 15 of the Wakf Act. Obviously enough in 1956, Parliament was fully aware of the detailed provisions of the 70 Sections of the Wakf Act and if it was even remotely intended that Section 11 of the Evacuee Act stood repealed by Section 15, then expressly amending the same Section would be an exercise in futility, if not in absurdity.

(11) Again the amendment of Section 11 in 1956 is the strongest pointer to the fact that the said Section far from being repealed was intended to override other laws. As is obvious from the underlined portion of the aforequoted provisions, Parliament expressly inserted

the following words in the body of sub-section (1) of Section 11 of the Evacuee Act:—

> ".....It shall be lawful for the Central Government, notwithstanding anything contained in the instrument of trust or any law for the time being in force to appoint by general or special order, new trustee in place of the evacuee trustees and the property shall remain vested....."

The insertion of the aforesaid provision and in particular the *non obstante clause* thereof, was both meaningful and deliberate and may well be conclusive. It bears repetition that this was done when the Wakf Act had already been enacted two years earlier on May, 21, 1954 and enforced in many parts of the country. On settled canons of construction, Parliament must be conclusively planted with the fullest knowledge of the existing provisions of Section 15 of the Wakf Act. In this light, the deliberate assumption of power to appoint new trustees in place of evacuee trustees by the Central Government in Section 11 of the Evacuee Act, could not possibly have been intended to be otiose. The *non obstante* clause overriding any law for the time being in force would obviously and clearly include within its sweep Section 15 of the Wakf Act, if at all (without in any way holding so), it could be attracted in the said situation. In my view, the insertion of the aforequoted words in Section 11 of the Evacuee Act and the *non obstante* clause with particularity in the context of the same having been done later in time than Section 15 of the Wakf Act, cannot possibly be over-emphasised with the consequence that Section 11 of the Evacuee Act far from being impliedly repealed, in fact overrides, if necessary, the provisions of the Wakf Act.

12. Another factor which militates against the concept of an implied repeal of Section 11 of the Evacuee Act, is the plain fact that it can obviously co-exist with Section 15 of the Wakf Act. Mr. M. L. Sarin, for the appellant in his admirable argument had ably projected the fact that Section 11 of the Evacuee Act was applicable not merely to Muslim Wakfs alone but to all other categories of trusts whose property had come to be vested in the Custodian by virtue of its wide ranging provisions. Therefore, a trust created by a Muslim under the general law, public and private *wakfs stricto sensu* under the Mohammadan Law, and trusts created

by Christians or those of other communities whose trustees had become evacuees, would all come within the umbrella of Section 11 of the Evacuee Act. As an extreme logical example, Mr. Sarin pointed out that even a trust created by a Hindu for the secular purpose of education, but having all its trustees as Muslims, who may have migrated to Pakistan, would come within Section 11 of the Evacuee Act, if its property or management got vested in the Custodian. Obviously, Section 15 of the Wakf Act can possibly have no application to non-Muslim trusts which might well come within the terminology of 'evacuee trusts'. Consequently, whilst Section 15 of the Wakf Act can possibly apply only to Muslim Wakfs, Section 11 of the Evacuee Act applicable to the 'evacuee trusts' alone would be attracted equally to non-Muslim trusts as well if other conditions stood satisfied. The true field or arena of Section 11 of the Evacuee Act and Section 15 of the Wakf Act will thus be separate and distinct and in any case divisible, and consequently there is neither any direct conflict nor inflexible repugnance which can attract the doctrine of implied repeal.

13. Yet another factor which seems to give the lie direct to the implied repeal theory is the action of the State and the Central Governments themselves in effectuating the statute. The Government of India issued notification No. SD 766, dated March 18, 1960, to the following effect :—

> "In exercise of the powers conferred by sub-section (1) of section 55 of the Administration of Evacuee Property Act, 1950 (31 of 1950), the Central Government hereby directs that the powers exercisable by it under sub-section (1) of Section 11 of the said Act shall be exercisable also by the Government of Punjab in respect of Muslim evacuee properties in trust for a public purpose of a religious or charitable nature in that State".

It is plain from the above that six years after the enactment of Wakf Act, the Central Government was clearly of the opinion that trustees under Section 11 of the Evacuee Act had still to be appointed and delegated a co-ordinate power to the Government of Punjab in respect of Muslim evacuee properties in trust for a public purpose of religious or charitable nature in that State. If Section 11 stood impliedly repealed then the conferment of the power on the Punjab Government, would be nothing short of an exercise in absurdity. Indeed, this highlights the fact that Section 11 of

the Evacuee Act continued to be applicable to Muslim "evacuee trusts" as earlier to the exclusion of Section 15 of the Wakf Act, which was patently not attracted to the situation.

14. In sequence to the above, the Punjab Government issued notification No. 38(15)-7J-61/7527, dated 27th of February, 1961 to the following effect :—

> "In exercise of the powers conferred by sub-section (2) of section 55 of the Administration of Evacuee Property Act, 1950, the Governor of Punjab is pleased to direct that the powers under sub-section (1) of section 11 in respect of Muslim evacuee properties in trust for a public purpose of a religious or charitable nature in the Punjab State, exercisable by the Government of Punjab by virtue of Government of India, Ministry of Rehabilitation, notification No. 2(52)/57-Prop, dated 18th of March, 1960, shall also be exercisable by the Board of Wakfs established under section 9 of the Muslim Wakf Act, 1954".

A plain reading of the notification would show that the State Government did not abandon its powers altogether with regard to the appointment of trustees but gave co-ordinate powers to the Wakf Board as well. Therefore the tenuous argument that after the coming into force of Section 15 of the Wakf Act, the power to appoint trustees of an evacuee trust is rendered impotent in the hands of the Government or rendered redundant by virtue of the aforesaid notification, has necessarily to be rejected. The express invocation of Section 55 of the Administration of Evacuee Property Act, 1950, as also the specific reference to Section 11 thereof is indicative of the fact that the State Government itself envisaged the application and continuation of Section 11 with regard to evacuee trusts despite the promulgation of the Wakf Act wayback in 1954. It would thus be manifest that both the State and the Central Government are still applying the statutory provisions on the firm foundation that so far as evacuee Muslim trusts and Wakfs are concerned, the legal position inhering at the time of the enactment of Section 11 of the Evacuee Act continues and fresh trustees have to be appointed thereunder in order to supplant the vesting thereof from the Custodian. This is indeed wholly in line and consistent with the basic stand taken on behalf of the appellants that the Wakf Act does not in any way affect or impinge on "evacuee

Wakfs or trusts" which come within the ambit of Section 11 of the Evacuee Act and consequently no repeal of the said provision is envisaged.

15. Lastly in this particular context, one has to recall that the tests for inferentially arriving at the conclusion that a provision is impliedly repealed are stringent and the presumption is heavily against it. This has been authoritatively laid down in the following terms in *Municipal Council, Palai, through, The Commissioner of Municipal Council, Palai, And, T. J. Joseph,* (3):—

> "It is undoubtedly true that the legislature can exercise the power of repeal by implication. But it is an equally well-settled principle of law that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject, the failure to add a repealing clause indicates that the intent was not to repeal existing legislation.....".

Again the acid tests which emerged from the aforesaid case for implying a repeal are as follows : —

> "(a) whether the two statutes relate to the same subject-matter and have the same purpose;
>
> (b) whether the new statute purports to repeal the old one in its entirety or only partially;
>
> (c) whether one of the statutes is one of general application and the other a local or a special statute; and,
>
> (d) whether there is any repugnancy between the; old and the new law; in ascertaining whether there is any repugnancy, the following principles will have to be borne in mind;
>
> (i) whether there is direct conflict between the two provisions;
>
> (ii) whether the legislature intended to lay down exhaustive code in respect of the subject-matter replacing the earlier law; and
>
> (iii) whether the two laws occupy the same field."

(3) 1964 S.C.A 442.

It seems plain that far from these tests being cumulatively satisfied, even one out of them is not conclusively established. It is unnecessary to labour the point and indeed the learned counsel for the respondents did not seriously press the issue on these anvils.

16. Equally apt it is to recall Section 4(1) of the Evacuee Act, which is in the following terms :—

Act to override other laws:—

"The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law."

Now as its very heading indicates, its provisions are to override other laws and it also contains in express terms a *non obstante* clause. The intent of the legislature to comprehensively govern the evacuee properties including the 'evacuee trusts' appears to be plain. It is true that sub-section (1) of the aforesaid Section 4 preceded the Wakf Act, 1954, but herein it again calls for notice that sub-section (2) thereof was inserted by the Amending Act 42 of 1954, which came into force on October 8, 1954, much later than the Wakf Act, 1954. This sub-section reiterates and dispels all doubts to declare the overriding nature of the Evacuee Act as against Rent or Eviction Laws. This, in terms, is a reiteration later of the overriding and exclusive nature of the provisions of the Evacuee Act, obviously including Section 11 within its sweep.

17. At this very stage, it is necessary, in fairness to the learned counsel for the respondent—Mr. Anand Swaroop—to notice his stand in reply. When pushed into a corner by the factum of the substitution of sub-section (1) of Section 11 of the Evacuee Act later in 1956, he took up an ingenious stand which ultimately seems to boomerang. As an alternative he did not seriously canvass for a blanket implied repeal of Section 11 of the Evacuee Act, but argued that it continues to remain on the statute book. The distinction, he sought to draw, was that the deletion of the Explanation to sub-section (1) of Section 11 of the Evacuee Act, in 1956 by Act No. 91 of 1956, had the effect that Muslim *wakfs* of religious nature were taken out of the ambit of Section 11 of the Evacuee Act and

would come to be governed by Section 15 of the Wakf Act. However, according to him, all other Muslim *wakfs* or trusts which were secular in nature, would still be deemed to be governed by Section 11 of the Evacuee Act. Reliance in this context was sought to be placed on *Nawab Zain Yar Jung (since deceased) and others* v. *Director of Endowments and another,* (4), wherein their Lordships had drawn a distinction between a religious Muslim *wakf, stricto sensu* and any other trust created by a Muslim under the general law for secular public purposes, e.g., a charitable educational trust by the former Nizam of Hyderabad. On these premises, the learned counsel for the respondents wished to sustain a somewhat anomalous stand of a partial implied repeal of Section 11 of the Evacuee Act as regards Muslim religious Wakfs and its continuance as regards other *wakfs* or trusts generally created by Muslims.

18. I am afraid no such abstruse inference can possibly be drawn from the mere deletion of the Explanation to sub-section (1) of Section 11 of the Evacuee Act in 1956. What has to be kept in mind is that by this time the Evacuee Act itself had been in force for more than six years and including the preceding evacuee legislation, it had continued for almost a decade from 1947 onwards. Therefore, any vesting of the property under the evacuee law generally, had already taken place. Fresh legislation including the Displaced Persons Compensation Act, 1954 had meantime come to occupy a considerable field of the area relating to evacuee properties. It was in this context that the Explanation to Section 11(1) of the Act was rendered somewhat redundant and was consequently deleted in 1956 by Act No. 91 of 1956. That Section 11 of the Evacuee Act was to continue to apply to Muslim *wakfs,* is equally manifest from the express retention and change wrought in sub-section (2) in respect of *wakf alal aulad,* specified therein. It could not be denied that *wakf alal aulad* may be *stricto sensu* religious in nature as well. Section 11 of the Evacuee Act, therefore, in terms was and would continue to be applicable to these *wakfs* and therefore, to Muslim *wakfs* of religious nature as well even on the anvil of the stand taken on behalf of the respondents. There is thus no merit in the stand that the amendment of Section 11 of the Evacuee Act in 1956 and the deletion of the Explanation, had the effect of taking the evacuee Muslim *wakfs* even partially out of the ambit thereof and place them all under Section 15 of the Wakfs Act.

(4) A.I.R. 1963 S.C. 985.

19. Now apart from the above, Mr. Anand Swaroop was fair enough to concede that on his stand the applicability of Section 11 of the Evacuee Act or Section 15 of the Wakf Act would depend upon the nature of the Muslim *wakf* or trust. This atonce highlights the anomalous and illogical results that flow from such a situation. On the respondents' curious stand if the Muslim *wakf* was of a religious nature, then Section 15 of the Wakf Act would be applicable, but if it was of a secular public nature, then Section 11 of the Evacuee Act would be attracted. Now it is well-settled that the applicability or otherwise of a statute to a *lis* has to be determined at the very threshold and cannot be dependant upon or remain suspended till the ultimate determination of the nature of the trust or *wakf*. As in the present case, the threshold question is—whether the Wakf Board has *locus standi* to file the suit at all, with regard to the *wakf* property. In such a situation who would determine at the very out-set as to whether the *wakf* or trust is religious in nature or is a secular public *wakf* or trust as such. Again, Mr. Anand Swaroop was compelled to concede that a Muslim *wakf* may be part secular and part religious. Could it then be said that to one part Section 11 of the Evacuee Act would apply and to the other Section 15 of the Wakf Act would be attracted ? I am clearly of the view that any such metaphysical hyper-technicalities with regard to the applicability or otherwise of a provision of law are plainly unwarranted. Certainty and uniformity are the first prerequisites of the law. The simple question that should arise herein is, whether the trust is an evacuee *wakf* or trust, or not. If it is, Section 11 of the Evacuee Act would be plainly attracted and would continue to apply. If it is not an "evacuee trust", then obviously the Evacuee Act has no applicability thereto and Section 15 of the Wakf Act may or may not be attracted. It seems to be plain that the somewhat anomalous and involved stand which Mr. Anand Swaroop on behalf of the respondents was compelled to take in the alternative, would make the law wholly unworkable in actual practice and one must, therefore, eschew such an interpretaion on sound canons of construction.

20. Yet, another anomaly arising from the respondents' stand that Section 15 of the Wakf Act wholly or partly overrides Section 11 of the Evacuee Act, would be that all *wakfs-alal-aulad*, which in terms are provided for in Section 11 of the Evacuee Act, would continue to be so governed irrespective of the fact whether they are religious, secular, public or private in nature. It is plain that

sub-section (2) of Section 11 of the Evacuee Act makes no exception of this nature and governs all evacuee *Wakf-alal-aulad.* Mr. Anand Swaroop's argument that Section 15 of the Wakf Act now embraces all religious *wakfs,* cannot thus be extended to *wakfs-alal-aulad.* Inevitably, therefore, Section 11 of the Evacuee Act would continue to apply even to religious *wakfs-alal-aulad,* whilst on the respondent's stand, Section 15 of the Wakf Act is applicable to *wakfs* of this nature. No rationale for such a duality could possibly be advanced. This would add another dimension of confusion earlier noticed in the stand taken on behalf of the respondents that different provisions will be applicable to religious and non-religious *wakfs.*

21. A brief reference to *Nawab Zain Yar Jung (now deceased) and others' case* (supra), relied upon by the respondent suffices. Therein all that was highlighted, was a distinction between public charitable trust as contemplated by English law on the one hand and the *wakf* recognized by Muslim law on the other. The judgment is a warrant only for ths proposition that a Muslim is not debarred because of his religion from creating a public charitable trust like any other citizen, if so minded. This ratio does not in any way aid or advance what appears to me as a somewhat curious stand in the alternative taken by the respondents.

22. The stage is now set for an examination of the true rationale for the enactment of Section 11 of the Evacuee Act in 1950 and its later amendment in 1956. In the wake of the partition, with a mass-scale migration of population there is no doubt that certain *wakfs* as also trusts created by Hindus, Muslims, Christians and even of other communities had been hamstrung by their *mutawallis,* trustees or managers migrating out of the country in the holocaust. The Evacuee Act, therefore, expressly provided for and recognized this particular class of trusts and made special provisions with regard thereto. The hallmark of this class was the factum of their properties having been vested in the Custodian by virtue of the migration of the evacuee trustees. This *inter alia* visualised the appointment of new trustees in place of the evacuee trustees where such property had come to be vested in the Custodian. To subserve to the cause of terminological exactitude, one might coin and label them as "evacuee trusts". The distinction and classification thereof is sharp and clear betwixt what would come to fall within the ambit of the "evacuee trusts" as such, and

other trusts which would not come within its ambit. It was these "evacuee trusts" or *wakfs* alone which were taken under the wing of the Custodian and were a class apart from the ordinary trusts or *wakfs*. The wide sweep of Section 11 of the Evacuee Act did not extend to Muslim *wakfs* alone, but equally to Christian Trusts or those of other communities whose properties came to be vested in the Custodian, by virtue of the wide ranging provisions of the Evacuee Act. There is no manner of doubt that from 1950 till 1954, and even much later till the Wakf Act was extended to specific territories, this situation not only continued but did so without any competition or contradiction. That Parliament treated and continued to treat these "evacuee trusts" as a particular class to which special provisions were needed and applied, seems both natural and rational and this is categroically reiterated by the deliberate amendment of Section 11 of Evacuee Act, in 1956, by which the Central Government was vested with the express power of appointing new trustees in place of evacuee trustees. The purpose and object of Parliament herein is clear and militates absolutely against any concept of implied repeal of Section 11 of the Evacuee Act. Indeed, its overriding effect would exclude the applicability of Section 15 of the Wakf Act at any stage to the particularised class of "evacuee trusts". It is in this context that the binding observations in *Custodian Evacuee Property, Punjab and others* v. *Jafran Begum,* (5) have to be recalled as under:—

> ".....A perusal of these provisions in our opinion shows that the Act is a complete code in itself in the matter of dealing with evacuee property. As observed by this Court in *Ram Gopal Reddy* v. *Additional Custodian, Evacuee Property,* (5-A).
>
> the Act thus provides a complete machinery for a person interested in any property to put forward his claims before the outhorities competent to deal with the question and to go in appeal and in revision if the person interested feels aggrieved. Having provided this complete machinery for adjudication of all claims with respect to evacuee property, the Act by Section 46, bars the jurisdiction of civil or revenue courts to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property".

(5) A.I.R. 1968 S.C. 169.

(5-A) A.I.R. 1966 S.C. 1438.

23. Now once it is held as it must be that the Evacuee Act is a complete code in itself and has in terms enacted special provisions with regard to evacuee trusts', then Section 11, thereof would continue to govern such trusts and cannot possibly be wiped off the statute book by the side wind of Section 15 of the Wakf Act and which admittedly was confined to Muslim Wakfs alone and did not even remotely deal with evacuee properties in general or "evacuee trusts" in particular.

24. To conclude on this aspect, I would hold that there is no implied repeal or overriding of the provisions of Section 11 of the Administration of Evacuee Property Act, 1950 by those of Section 15 of the Wakf Act, 1954. The answer to the question, posed at the out-set has, therefore, to be rendered in the negative.

25. Repelled on their basic premise of an implied repeal, counsel for the respondents made a flanking attack in attempting to contend that Section 11 of the Evacuee Act stood expressly repealed by virtue of sub-section (2) of Section 69 of the Wakf Act. The submission was that Section 11 of the Evacuee Act would, therefore, deem to have been repealed by virtue of the aforesaid sub-section (2).

26. To appreciate the contention, it is necessary to quote the relevant parts of Section 69 of the Wakf Act :—

> "69. *Repeal and savings.* (1) The following enactments, namely;—
>
> (1) The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810.
>
> (2) .....The Religious Endowments Act, 1963;
>
> (3) The Charitable Endowments Act, 1890;
>
> (4) The Charitable and Religious Trusts Act, 1920;
>
> (5) The Mussalman Wakf Act, 1923;
>
> shall apply to any *wakf* to which this Act applies.
>
> (2) If, immediately before the commencement of this Act in any State, there is in force in that State any law which corresponds to this Act (other than an enactment referred to in sub-section (1), that corresponding law shall stand repealed;

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken."

Now viewing sub-section (2) in its proper context, it would appear that the contention raised on behalf of the respondents, though it might do some credit to the ingenuity of the learned counsel, would not survive a close analysis. The scheme of Section 69 of the Wakf Act would indicate that Parliament expressly named the Central statutes which were not to be held as inapplicable to the Wakfs to which this Act applied. In the larger perspective, sub-section (1) excluded from the particular field, now sought to be occupied by the Wakf Act, the earlier Central enactments with regard to religious and charitable trusts and endowments including therein even the Mussalman Wakf Act, 1923. Mr. Sarin rightly highlighted the fact that sub-section (1) made reference not necessarily to the whole of a Central statute, but Parliament was even careful to specify even an individual Section, like Section 5 of the Religious Endowments Act, 1863, in clause (2), thereof, as originally enacted, when it was intended that the same was not to be made applicable. It bears reiteration that sub-section (1) took meticulous care of the Central statutes which were now to be held as inapplicable to the Wakfs to which the present Act applied. The significant fact herein is that Section 11 of the Evacuee Act specifically or the Evacuee Act generally finds not the least hint or mention in sub-section (1) dealing with the Central statutes.

27. It is within this mosaic that sub-section (2) of Section 69 has to be viewed. The twin repetition of language with regard to the enforceability within a particular State only and of any law in that State leaves no manner of doubt that in contra-distinction to sub-section (1), sub-section (2) was meant to and is confined to only State laws. In essence, it dealt with the situation that prior to the enforcement of the Wakf Act individual States had made provision for the Muslim Wakfs by their own legislation. Reference in this connection may be made to the Muslim Wakf (Bombay Amendment) Act, 1935; The Bengal Wakf Act, 1984; the United Provinces Muslim Wakf Act, 1986, etc., some of which find mention in the Statement of Objects and Reasons appended to the Bill for

enacting the Wakf Act. Therein it was expressly noticed that the working of these State Acts had brought about the necessity for amending the law and it had been rendered necessary that one uniform and consolidated legislation may be passed by the Centre which may be adopted as a model by the various States. It would thus be manifest on principle and the language of Section 69(2) of the Wakf Act that this meant only to repeal the corresponding State law and did not intend to repeal the provisions of any Central law, which were specifically taken care of sub-section (1). If the legislature had intended that all previous Central and State laws corresponding to the provisions of the Wakf Act would stand repealed, then it would not have indulged in the futile exercise of enumerating specific provisions in sub-sections (1) and (2), thereof. In their place, the Section would simply read as under :—

> "If, immediately before the commencement of this Act, there is in force any Central or State law, which corresponds to this Act, that corresponding law shall stand repealed."

It is a settled canon of construction that the legislature does not waste its words and a meaning has to be attributed to every word or phrase therein. The repeated use of the word in any State" in sub-section (2) is a clear pointer that this provision was directed to State laws alone, whilst sub-section (1) pertained to Central laws.

28. In the light of the aforesaid discussion, I would hold that Section 69(2) of the Wakf Act is no warrant for the proposition that Section 11 of the Administration of Evacuee Property Act, 1950, stands expressly repealed thereby.

29. In the wake of the aforesaid finding on the two basic legal issues, it suffices to make a passing reference to somewhat misplaced emphasis on clause (i) of sub-section (2) of Section 15 of the Wakf Act, pertaining to the express power to institute and defend suits. It seems to be plain that if it is held that Section 11 of the Evacuee Act was in no way expressly or impliedly repealed and therefore, inevitably excludes Section 15 of the Wakf Act, then the procedural provisions thereof can be of no aid what-so-ever to the respondents. It is axiomatic that the right to institute legal proceedings inheres in the person in whom property vests. Consquently, if it is once held that the property of "evacuee trust" had vested in the custodian or the right to manage the same is so vested, *a fortiori,* a right to

file the suit would be a necessary consequential right flowing therefrom. Therefore, the Custodian, in the first instance or in the event of new trustees being appointed in place of the evacuee trustees, under Section 11 of the Evacuee Act, the latter would be entitled to institute and defend legal proceedings in a court of law. That a lawfully entitled trustee would have an inherent right to make resort to the Court to defend all the trust property, etc., is too elementary to call for elaboration.

30. In view of the earlier discussion, I would respectfully agree with the settled view in this Court in *Prithipal Singh* v. *Punjab Waqf Board,* (supra), and *Khushi Ram and another* v. *Punjab Waqf Board,* (supra), which I hereby reaffirm.

31. Now applying the law, it deserves highlighting that in the plaintiff-Respondent-Wakf Board's plaint itself, the pleadings were categoric that the property had vested in the Custodian, under Section 11 of the Evacuee Act. Reference in this connection may be made to relevant paras 8 and 15 which in terms, stated that the property in dispute had come under the Custodian. Now once it is held that Section 11 of the Evacuee Act was applicable and continues to be so, it is common ground that no new trustees were in fact appointed under the said Section with regard to the particular *wakf* property. The same would thus continue to vest in the Custodian and he alone was entitled to institute the proceedings and, therefore, it is not open to the Punjab Wakf Board (which as yet has only a co-ordinate power to appoint trustees under the notification), to maintain the action. This Regular Second Appeal has, therefore, to be allowed and the suit is dismissed. In view of some intricacy of the issues involved, the parties are left to bear their own costs.

K. S. TIWANA, J.—I agree.

S. P. Goyal, J.—

(32) I had the privilege of going through the judgment prepared by the learned Chief Justice but with utmost respect, I regret my inability to agree with the proposed answer to the problem debated before us.

The question before the Full Bench is as to whether the Muslim Wakfs in Punjab are governed by the provisions of the

Wakf Act, 1954 (hereinafter called the Act) or continue to be governed by the provisions of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as the Evacuee Act), even after the enforcement of the former Act. The precise dispute between the parties is as to whether the Punjab Wakf Board constituted under the Act is the sole governing body of the Muslim Wakfs and entitled to institute suits to recover the Wakf property or such right continues to vest in the custodian by virtue of the provisions of section 11 of the Evacuee Act.

(33) The appellant against whom a decree for possession of the property in dispute was passed in a suit filed by the Punjab Wakf Board has impugned the decree solely on the ground that Wakf Board was not competent to maintain the suit as management and control of the Wakf vests in the Custodian till the new trustees are appointed by the Central Government in exercise of its powers under section 11 of the Evacuee Act or by the Punjab Government to whom that power has been delegated. In support of this contention reliance was placed on a Single Bench decision of this Court in *Prithipal Singh* v. *Punjab Wakf Board,* (supra), which was later on confirmed by a Division Bench in *Khushi Ram and another* v. *Punjab Wakf Board,* (supra). The precise ratio in *Prithipal Singh's case* (supra), which was approved in *Khushi Ram's case* (supra), without any further discussion runs as under :—

> ".....Admittedly no trustees have so far been appointed and, therefore, the suit property must continue to vest in the Custodian of Evacuee Property. The lower appellate Court thought that section 15 of the Muslim Wakfs Act, which enables the Wakf. Board to exercise general powers of superintendence over the Wakfs in the State, and enables the Wakfs Board to take measures for the recovery of lost property and to institute and defend suits and proceedings in a Court of law relating to Wakfs, enables the Wakf Board to maintain the present suit. It is difficult to uphold this view of the lower appellate Court. As already mentioned, section 11(1) of the Administration of Evacuee Property Act prevails over any other law for the time being in force and in view of the provisions of section 11(1) of Administration of Evacuee Property Act, it is not open to the Wakf Board to have recourse to the provisions of Muslim Wakfs

Act. It is open to the Wakf Board to appoint new trustees by virtue of the notification, dated February 27, 1961 and thereafter it will be open to the new trustees to take action to recover the property. As it is the property is vested in the Custodian and it is not open to Wakf Board to maintain this action. * * * "

Before embarking upon the analysis of the provisions of the two Acts, it is necessary first to understand the nature of a Mussalman Wakf and the rights and duties of a Mutawalli. The Wakf, as defined in section 2 of the Mussalman Wakf Validating Act, 1913 (for short, called the 1913 Act), means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognised by the Mussalman Law as religious, pious or charitable. Prior to the enforcement of 1913 Act doubts were expressed in certain judicial decisions that Wakf could not be created by a Mussalman for the maintenance and support wholly or partially of his family, children or decendants or for his own maintenance and support during his lifetime unless there was a simultaneous provision for religious, pious or charitable purpose. To validate such Wakfs, the said Act was passed but in case of those Wakfs also it was required that the ultimate benefit expressly or implied must be reserved for the poor or for any other purpose recognised by Mussalman law as religious, pious or charitable, of a permanent character. Thus Wakf under the Muslim Law came to be classified under two heads, that is, public Wakf and private Wakf, the latter being described as *Wakf-alal-aulad.*

(34) As stated in section 202 in the book on Principles of Mahomedan Law by Mulla, the moment a Wakf is created all rights in the property pass out of the Wakif and vest in the Almighty. The Mutawalli has no right in the property belonging to the Wakf, the property is not vested in him, and he is not a trustee in the technical sense. He is merely a superintendent or manager appointed to utilise the property for the purpose of the Wakf. As opposed to this, in case of a *Wakf-alal-aulad* though the property vests in the Almighty but the beneficiaries have a vested right in it and the Mutawalli is bound to utilise the property or its income for their benefit in accordance with the direction of the Wakif. On the extinction of the line of the descendants or the Wakif for whosoever's benefit the Wakf is created, the Wakf will automatically be converted into a public Wakf.

(35) Now let us examine the provisions of the Evacuee Act to find out if the Wakf property is an evacuee property within the meaning of that Act and as such vests in the Custodian and if not, what is the scope of section 11 of that Act so far as the Wakf property is concerned. Section 2(f) of the Evacuee Act defines the evacuee property as under :—

> "2(f). 'evacuee property' means any property of an evacuee (whether held by him as owner or as a trustee or as a beneficiary or as a tenant or in any other capacity) and includes any property which has been obtained by any person from an evacuee after the 14th day of August, 1947, by any mode of transfer which is not effective by reason of the provisions contained in section 40, but does not include,
>
> (i) any ornament and any wearing apparel cooking vessels, or any other household effect in the immediate possession of an evacuee;
>
> (ii) any property belonging to joint stock company, the registered office of which was situated before the 15th day of August, 1947 in any place now forming part of Pakistan and continues to be so situate after the said date."

In legal terminology to hold property means that the property vests in the person who is said to hold it. Though it is not necessary that he must have proprietary interest in it, but the property must vest in him may be even for the purpose of its administration for the benefit of others just as a trustee. According to this definition it is only the property of an evacuee or his interest in any property which can be declared as evacuee property. If an evacuee is not holding any interest in the property concerned it can never be an evacuee property within the meaning of the said Act. The definition also pre-supposes that there is an evacuee who was owner of the property or held any interest therein. As held in *Vidya Varuthi Thirtha Swamigal* v. *Baluswami Ayyar and others* (6); *(Haji) Abdur Rahim* v. *Narayan Dass Aurora and others*, (7); and *Saadat Kamel Hanum* v. *Attorney General Palestine*, (8), like Hindu

(6) A.I.R. 1922, Privy Council 123.
(7) 1923 Privy Council 44(2).
(8) A.I.R. 1939, Privy Council, 185.

Religious Endowments, in the case of Muslim Wakfs as well, the property does not vest in the Manager or Mutawalli and instead vests in the Almighty. The Mutawalli is only a manager entitled to manage the property for the purpose of the Wakf. Following the decision of the Privy Council in *Vidya Varuthi Thirtha Swamigal's* case (supra) the Supreme Court in *Nawab Zain Yar Jung (since deceased) and others* v. *Director of Endowments and another*, (supra) reiterated the characteristics of the Wakf and position of the Mutawalli in the following terms :

> "Similarly, the Muslim law relating to trusts differs fundamentally from the English law. The Mohammadan law owes its origin to a rule laid down by the Prophet of 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 belonging to 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."

Consequently, there could never be an evacuee as defined in the said Act having any interest whatsoever in the Wakf property and, therefore the property of the Wakf could never be an evacuee property. The only person having some concern with Wakf who became evacuee was Mutawalli. He being only a manager or office-holder having no interest in the Wakf property whatsoever, on his migration to Pakistan, the Wakf property could not be said to be evacuee property by any stretch of reasoning nor could it vest in the Custodian.

(36) So far as section 11 of the Evacuee Act is concerned it comes into operation only when any evacuee property which has vested in the Custodian is property in trust for a public purpose of religious or charitable nature. Consequently, if there is no evacuee property which has vested in the Custodian, the provisions of the section will not come into play nor the Custodian has jurisdiction to manage the property though the same may be Wakf

property or the property in trust for a public purpose of a religious or charitable nature. It may also be observed here that section 11 does not contain any provision by virtue of which any evacuee property would vest or is deemed to vest in the Custodian. The provisions in this respect are contained only in section 7 or section 8. Section 7 contains the procedure as to how any property is declared to be an evacuee property and thereafter it is under section 8 that it vests in the Custodian. By virtue of the provisions of section 11, therefore, the Custodian cannot hold charge of any property in trust for public purpose unless it is an evacuee property and has vested in the Custodian under section 8. The word, 'property' as defined in section 2(1) means the property of any kind, including any right or interest in such property. The office of Mutawalli by no stretch of reasoning can be said to be property within the meaning of this definition. The rights of the Mutawalli thus being not evacuee property could not vest in the Custodian by operation of the provisions of section 11. As already observed above, a Manager of a Hindu Endowment or Mutawalli is not even a trustee. As most of the Mutawallis had migrated to Pakistan and there was no one to look after and manage the Wakfs, explanation was added to sub-section (1) of section 11 of the Evacuee Act by virtue of which the property in trust for public purpose, religious or charitable nature was to include the public wakf and the expression 'trustee' a mutawalli of such wakf. The purpose of the explanation obviously was to enable the Custodian to exercise powers of mutawallis till some law was enacted for their appointment. However, the effect of the explanation could not be to vest the wakf property in the Custodian because all that the explanation says is that the property in trust for a public purpose of a religious or charitable nature would include public wakf and expression 'trustee', a mutawalli of such a wakf. The effect of the explanation was that though a mutawalli is not a trustee in strict sense of the term, he was deemed to be trustee by virtue of this provision. Similarly, public trust of religious or charitable nature was not necessarily a wakf because a Muslim was not debarred from creating a trust under the general law. But by virtue of the explanation, the wakf property was deemed to be the property in trust for a public purpose of a religious or charitable nature for the purpose of section 11 of the Evacuee Act. Unlike sub-section (2), the explanation never provided that the wakf property shall vest in the Custodian even for purpose of its management. At best, the effect of the explanation was that the Custodian as a time-gap arrangement got the right to manage the wakf to carry out its

purpose till a Mutawalli was appointed or some agency created by law competent to manage the wakfs. The conclusion that the public wakf property could never be evacuee property, nor it vests in the Custodian finds full support from the provisions of sub-section (2) of section 11 as well. As already observed above, in case of a *wakf-alal-aulad*, the beneficiaries are primarily the descendants or the wakif himself. The beneficiaries have a vested interest and enforceable right in the wakf property. So interest of the beneficiaries in the wakf was evacuee property and as such made to vest in the Custodian by virtue of the provisions of sub-section (2). If the Legislature had intended to vest the property of public wakf also in the Custodian, the scope of sub-section (2) would not have been confined to *wakf-alal-aulad* and a provision would have been made to include the property of public wakfs as well. So by virtue of the provisions of section 11(1) and the Explanation the property of the wakf never vested in the Custodian and the effect of the Explanation, at best, was only that the Custodian got the right to manage the wakf till a new mutawalli was appointed.

(37) Prior to the year 1923, Muslim public wakfs were managed by mutawallis without much check on their activities by Muslims. To provide some governing body over them and to check the misuse of the funds, for the first time the Mussalman Wakf Act, 1923 was enacted which made obligatory on the mutawallis to furnish particulars of the wakfs and the submission of accounts and their audit. The provisions of the Act also envisaged the constitution in each district a wakf committee to advise and assist the court in the matter relating to registration, superintendence, administration and control of wakfs. With the passage of time it was felt that the provisions of the Act were not sufficient to ensure proper management of the wakfs, so a fresh legislation providing more effective control of the State through Wakf Boards was considered necessary. Consequently in 1954, the Wakf Act was enacted which contains elaborate provisions for the registration of the wakfs, constitution of the Central Wakf Council and the State Wakf Boards including the appointment and removal of the mutawallis. Obviously with the enforcement of this Act, a statutory provision had been made for the management of the Muslim Public Wakfs and there was no purpose in allowing them to be managed by the Custodian, who as stated above, could not effectively perform the duties of a mutawalli. Consequently, the explanation to section 11 of the Evacuee Act was deleted in the year 1956 with the result

that the words, "property in trust for a public purpose of a religious or charitable nature" no more were deemed to include the wakf property and the word, "trustee" a mutawalli. As it was only by virtue of this explanation that the Custodian could act as mutawalli of a wakf its jurisdiction over the wakfs immediately ceased on its deletion.

(38) There is no provision in whole of the Evacuee Act which either makes the Custodian owner of the property or causes the extinction of ownership rights of an evacuee therein. The purpose of the Act is only to preserve and manage the properties of the evacuees. As held in *Ebrahim Aboobakar and another* v. *Tek Chand Dolwani*, (9) the provisions of the Act far from suggesting that the person declared an evacuee suffers a civil death and remains an evacuee for all times show, on the other hand that the person may cease to be an evacuee under certain circumstances and he is reinstated to his original position and his property restored to him subject to certain conditions and without prejudice to the rights, if any, in respect of the property which any other person may be entitled to enforce against him. Its provisions also establish that the fact of property being evacuee property is not a permanent attribute of such property and that it may cease to be so under given conditions. The property does not suffer from any inherit infirmity but becomes evacuee because of the disability attached to the owner. Once that disability ceases the property is rid of that disability and becomes liable to be restored to the owner. The property of the public wakfs was not an evacuee property as defined in the Evacuee Act and as such never vested in the Custodian. Mutawallis having migrated there was no person for the time being to manage the wakfs. As a transitory measure, a provision was made with the help of the said Explanation to enable the Custodian to manage the wakf property. The moment the statutory agency was created to control and manage the public wakfs, there was no reason to allow wakf property to remain under the charge of the Custodian and the property was, in fact, handed over by the Custodian to the Wakf Board for management on the extension of the Act to Punjab in the year 1959. It may be mentioned here that the correctness of the averment that the wakf property had been handed over to the Board was not disputed by the appellant and he instead claimed himself to be in its possession as tenant under the Board. The intention of the Legislature that

(9) A.I.R. 1953 S.C. 298.

henceforth public wakfs were to be governed by the Wakf Act was further made explicit by deleting the said Explanation as otherwise there was no purpose in doing so if the public wakfs were stil to be governed by the provisions of sub-section (1) of section 11 of the Evacuee Act.

(39) The learned counsel for the appellant, however, urged that once the property had vested in the Custodian and the management taken over by him, the deletion of Explanation would not result in divesting the Custodian of the wakf property or in its management. The argument has no basis because it pre-supposes that the wakf property had vested in the Custodian by virtue of the Explanation. As already discussed above, the Explanation did not have the effect of vesting the wakf property in the Custodian and at best it entitled him to manage the said property. Distinction was also tried to be drawn by the learned counsel between a wakf and an evacuee wakf and it was argued that the wakf would be governed by the Wakf Act whereas the evacuee wakf would continue to be governed by section 11. This contention again has to be rejected on the same ground that the wakf property did not fall within the definition of the evacuee property and the concept of evacuee wakf is, therefore, wholly misconceived. It was then contended that the wakf need not necessarily be for religious purpose and could as well be for a secular purpose. In the case of such wakf the control would be partly of the Custodian and partly of the Wakf Board and the Legislature cannot be expected to create such an anamoly. This contention is also not tenable because if the wakf is made for any purpose which is not religious or charitable according to Muslim law, the wakf would be invalid to the extent of such purpose and whole of the dedication would be deemed to be for the valid purpose. However, if some specified portion of the property is meant for invalid purpose the property to that extent would revert to the wakif and the wakf thus in no case can be partly for a religious and partly for a secular purpose. Reference in this connection may profitably be made to paragraph 180 of the book referred to above by Mulla and the decisions in *Ismail Haji Arat and another* v. *Umar Abdulla and another,* (10); *Pulin Behary Ghas* v. *M. A. Dayar,* (11); *Abdul Karim Adenwalla* v. *Rahimabai and*

(10) A.I.R. 1942 Bom. 155.

(11) A.I.R. 1946 Cal. 83.

others, (12); *Mr. Ruqia Begam and others* v. *L. Suraj Mal and others*, (13) and *Abdul Sattar Ismail* v. *Abdul Hamid Sait*, (14).

(40) The last argument raised in this regard was that even after the enforcement of the Wakf Act, section 11, Evacuee Act, was re-enacted with certain amendments by the Amendment Act, 1956 which according to the learned counsel clearly shows that the Legislature intended the Muslim Wakf property to be managed by the Custodian till new trustees were appointed by the Central Government. Section 11 had to be retained because apart from public wakfs provision had to be made for private wakfs that is, *wakf-alal-aulad* and the trusts, if any, created by Mahomedeans under the general law. So far as the *wakf-alal-aulad* are concerned, by virtue of sub-section (2) of section 11, the property of such wakfs has been made to vest in the Custodian subject to the interest of the non-evacuee beneficiaries, if any. *Wakf-alal-aulad* is not covered by the provisions of the Wakf Act except to the extent to which property is dedicated for any purpose recognised by the Muslims as pious, religious or charitable. The Board constituted under the Wakf Act, therefore, is not entitled to govern the property of *wakf-alal-aulad* and the same continues to be in the management of the Custodian till new trustees are appointed. Similarly, any trust made under the general law such as the one which is not for the benefit of the Muslim community would not fall within the purview of the Wakf Act and the Custodian only would be the person entitled to manage it till the appointment of the new trustees. Although section 11 provided that the Custodian was to manage till the appointment of the new trustees but neither in this section nor anywhere else in the Act the authority to appoint a new trustee was named. The new trustees, in the case of a trust created under the general law or the *wakf-alal-aulad* could be appointed either according to the provisions made in the deed of trust or by the Courts in confirmity with the principles of Mohamedan Law. As whole of the Muslim population had migrated to Pakistan, it was almost impossible to make appointment of fresh trustees to manage the said trusts. Consequently, provision was made in section 11 with *non obstante* clause empowering the Central Government to appoint fresh trustees. However, even in the case of these wakfs, the Central Government has delegated its powers of appointment

(12) A.I.R. 1946 Bombay 342.
(13) A.I.R. 1936 All 404.
(14) A.I.R. 1944 Madras 504.

of the trustees to the Punjab Government under section 55 of the Act who in turn has delegated it to the Wakf Board. The moment the new trustees are appointed by the Wakf Board the Custodian would cease to have any right of management *qua* them. This further shows that the Legislature has no intention to allow the Custodian to continue to govern the *wakf-alal-aulad* and other trusts created by Muslims and the authority has been delegated to the Wakf Board constituted under the Act, a representative body of the Muslims, to appoint new trustees. How in these circumstances can it be said that the public wakfs for the management and governance of which an Act has been enforced still continue to be governed by the provisions of section 11 of the Evacuee Act.

(41) The matter can be looked from another angle also. It is a cardial principle in the interpretation of statutes that if there is a conflict between the two statutes, an interpretation which could harmonize and make them co-exist should be adopted. The provisions of section 11, if are interpreted with that purpose in view, can safely be confined to trusts and private wakfs which are not covered by the provisions of the Wakf Act whereas Muslim Wakfs can be held to be beyond its purview and governed by the Wakf Act. It is, therefore, not possible at all from any angle to subscribe to the view that Muslim public wakfs are, even after the enforcement of the Wakf Act, governed by the provisions of section 11 and its management vests in the Custodian.

(42) Now, even if it be supposed for the sake of argument that the provisions of section 11 still continue to govern public wakfs, there being an apparent conflict between its provision and those of section 15 of the Act, it has to be resolved as to which provision will over-ride the other. For this contention that the provisions of section 11 of the Evacuee Act would prevail, the learned counsel for the appellant relied on section 4 and the *non-Obstante* clause in that section itself. Section 4 provides that the provisions of the Evacuee Act shall have effect notwithstanding anything inconsistant therewith contained in any other law for the time being in force. The provisions of the Evacuee Act obviously would prevail against all other statutes prevailing at the time when this Act was enforced but cannot override the provisions of the statutes which are enacted henceforth. Moreover, the Evacuee Act is a general statute relating to the Evacuee properties. The legislature passed the Wakf Act in the year 1954, four years after the Evacuee Act, making a detailed provision for the governance of the wakf property. The

Wakf Act is a special statute dealing only with the wakf properties. The Act was passed to consolidate and for uniform legislation governing the Muslim wakfs. So the existing statutes governing the wakfs or the provisions in various acts relating to the wakfs which were likely to come into conflict with the Wakf Act had to be repealed. Such a provision was consequently made in section 69 of the Act which reads as under:—

"69. *Repeal and savings*—(1) The following enactments namely:—

1. The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810.
2. The Religious Endowments Act, 1863.
3. The Charitable Endowments Act, 1890.
4. The Charitable and Religious Trusts Act, 1920.
5. The Mussalman Wakf Act, 1923 shall not apply to any wakf to which this Act applies.

(2) If immediately before the commencement of this Act in any State, there is in force in that State any law which corresponds to this Act [other than an enactment referred to in sub-section (1)] that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken."

Sub-section (1) of section 69 specifically ruled out certain acts which related to the wakfs or charitable and religious trusts. As it was not possible to enumerate various provisions contanied in the large number of acts which could come into conflict with the provisions of the Wakf Act a general and all prevading provision was made in sub-section (2) that if there was in force in any State a law other than the enactment referred to in sub-section (1) which corresponds to this Act, the corresponding law shall stand repealed. The provisions contained in the laws in force in the year 1954 *qua*

Muslim wakfs were thus expressly repealed by the provisions of sub-section (2). The learned counsel for the appellant, however, urged that sub-section (2) repeals only the provisions of State laws. It passes my comprehension as to how such interpretation can be put on this sub-section. The words contained therein are, "if there is in force in that State any law which corresponds to this Act that corresponding law shall stand repleaded." Reference is, thereto any law and not to a State statute which corresponds to this Act. The argument of the learned counsel that whichever Central Act was to be over-ridden by the provisions of the Wakf Act was specifically enumerated in sub-section (1) and this fact also shows that the provisions of sub-section (2) were intended only to apply to the State laws, is wholly fallacious. It was not possible to enumerate the large number of Acts in sub-section (1) containing small provisions like section 11 in the Evacuee Act which could come into conflict with the provisions of the Act. So, a general provision was made in sub-section (2). It is a well-known method adopted in the various enactments that after enumerating specific matters, a general provision is added because it is not possible for the Legislature to immagine all matters and situations while enacting the statutes. Therefore, simply because some Acts have been specifically named in sub-section (1), it cannot be said that sub-section (2) covers only the State Acts and the provisions contained in the Central Acts are beyond its purview.

(43) So far as the *non obstante* clause of section 11 is concerned that creates hardly any difficulty. This clause was inserted by the Amendment Act 1956. Prior thereto there was no provision in section 11 for the appointment of the new trustees of the trust whose properties had vested in the Custodian. As the intention was not to perpetuate the control of the Custodian over Muslim trusts and his control could come to an end only on the appointment of new trustees, section 11 was suitably amended so as to make a provision for the appointment of new trustees by the Central Government or by the authorities to whom powers may be delegated under section 55 of the Evacuee Act. The *non obstante* clause only saves this power of the Government against any provision contained in the instrument of trust or in any law for the time being in force. The scope of this *non obstante* clause is not beyond the power of the appointment of the new trustees and it cannot give over-riding effect to the provisions of this section against any statute which come into conflict with its provisions. Here, another argument by the learned counsel for the appellant may also be noticed that the re-enactment

of section 11 wih this *non obstante* clause also shows that the provisions of section 69(2) were not intended to override the provisions of the Evacuee Act. In view of the scope of the *non obstante* clause discussed above, this argument of the learned counsel obviously has no merit so far as the effect of the provisions of sub-section (2) of section 69 are concerned.

(44) It is also well-known principle of interpretation of statutes that Legislature does not enact conflicting statutes. However, if ever it happens the earlier statute gives way to the later statute and the general one to the special one. The Wakf Act is both later and a special statute as compared to the Evacuee Act. In spite of the fact that section 4 of the Evacuee Act has overriding effect over other contemporary laws, later on, the Legislature chose to enact a special law governing public wakfs which comes into direct conflict with the provisions of section 11 of the former Act. The provisions of the Wakf Act which is a special statute, therefore, must prevail over any conflicting provision in the Evacuee Act which is a prior and general Act.

(45) Instead of covering a vast field of case law on the principle of implied repeal, suffice it would to note down the following principles and guidelines as deducible from the detailed discussion on the subject by Maxwell in Chapter 7 of his wellknown treatise on "Interpretation of Statutes"

(i) where a statute contemplates in express terms that its enactments will repeal earlier acts by their inconsistency, the chief argument or objection against repeal by implication is removed and the earlier acts may be more readily treated as repealed.

(ii) If the provisions of later Act are so inconsistent with, or repugnant to those of earlier Act that the two cannot stand together, the earlier stands impliedly repealed by the later.

(iii) If the co-existence of two sets of provisions could be destructive of the object for which the later was passed, the earlier would be repealed by the later.

(iv) If incongruity of keeping two enactments in force justifies the conclusion that one impliedly repealed the other, for Legislature is presumed not to intend such consequences.

(v) When general Acts are incorporated into special one, the provisions of the later would prevail over any of the former with which they were inconsistent.

When the matter is judged in the light of the above principles the conclusion is irresistible that the provisions in the Evacuee Act so far as the management of the Wakf property is concerned, stand repealed by the Wakf Act.

(46) The matter can be looked at from another angle also. By virtue of the provisions of section 11 the Central Government or its delegatee is only empowered to appoint new trustees and they when appointed would be entitled to manage the wakf for all times to come if the contention of the learned counsel for the appellant is accepted. In that case, the extension of the Wakf Act to Punjab would have no meaning and the statute would remain a dead letter unless the Evacuee Act is repealed. This would certainly be an extremely incongruous situation and cannot be readily countenanced.

(47) To conclude the discussion, my answers to the various points canvassed before us would be that the public wakf property being not evacuee property within the meaning of section 2(f) of the Evacuee Act never vested in the Custodian; that after the enactment of the Wakf Act, public wakfs are exclusively governed by its provisions and the Board constituted under this Act is the sole authority entitled to manage them; that the authority of the Custodian to manage the wakfs if any, came to an end with the deletion of Explanation to section 11 of the Evacuee Act and that in case section 11 is taken to be still applicable to wakfs even after deletion of the said Explanation, its provisions stand expressly repealed by the provisions of section 69 (2) of the Wakf Act and in the alternative by implication, the Wakf Act being special and later statute.

(48) In view of the foregoing conclusions, this appeal is liable to be dismissed and I order accordingly.

ORDER OF THE COURT

(49) In accordance with the view of the majority, it is held:—

(i) that there is no implied repeal or overriding of the provisions of Section 11 of the Administration of Evacuee Property Act, 1950 by those of Section 15 of the Punjab Waqf Act, 1954;

(ii) that Section 69(2) of the Punjab Waqf Act, 1954 is no warrant for the proposition that Section 11 of the Administration of Evacuee Property Act, 1950, stands expressly repealed thereby;

(iii) the earlier view in *Prithipal Singh* v. *Punjab Waqf Board*, (supra) and *Khushi Ram and another* v. *Punjab Waqf Board* (supra), is hereby affirmed; and,

(iv) the Regular Second Appeal is allowed and the plaintiff's suit is dismissed and the parties are left to bear their own costs.

S. S. Sandhawalia, C.J.

Kulwant Snigh Tiwana, J.

S. P. Goyal, J.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital, JJ.

NAWAL SINGH,—*Petitioner.*

versus

THE ADMINISTRATOR, MUNICIPAL COMMITTEE, CHARKHI DADRI AND OTHERS,—*Respondents.*

Civil Writ Petition No. 467 *of* 1982.

October 11, 1983.

Punjab Town Improvement Act (IV of 1922) (as applicable to State of Haryana)—Sections 24, 28, 42(1) and 44-A—Improvement Scheme duly prepared by Trust and notified under section 42(1)—Such scheme not executed within a period of five years from the notification as provided by section 44-A—Such scheme—Whether liable to be quashed—Meaning of the word 'execute' in section 44-A—Explained.

Held, that a reading of section 44-A of the Punjab Town Improvement Act, 1922 (as applicable to the State of Haryana) indicates the intent of the Legislature to put a time limit for the execution of the scheme duly prepared under sections 24 and 28