FULL BENCH

Before Harbans Singh, C.J., Gurdev Singh and P. C. Jain, JJ.

D.A.V. COLLEGE SOCIETY,—*Appellant.*

versus

SARVADA NAND ANGLO SANSKRIT HIGHER SECONDARY SCHOOL MANAGING COMMITTEE,—*Respondent.*

Letters Patent Appeal No. 122 of 1966.

September 9, 1971.

Hindu Law—Juristic person—Educational institution like a school—Whether a juristic person capable of holding property—Specific Relief Act (XLVII of 1963)—Section 34—Property owned by a juristic person—Dispute with regard to its management only—Person claiming management—Whether has to bring a suit for actual possession of such property.

Held, (per Full Bench, Harbans Singh, C.J., Gurdev Singh and P. C. Jain, JJ.) that under Hindu Law, when an endowment is made for a religious or charitable institution, without the instrumentality of a trust, and the object of the endowment is one which is recognised as pious either being religious or charitable under the accepted notions of Hindu Law, the institution will be treated as a juristic person capable of holding property. Hence if the object of an educational institution like a school is such as is recognised as charitable or religious under the Hindu Law, such an educational institution or school will be regarded as possessing a juristic personality and will be capable of holding property. (paras 23 and 30).

Held (per Division Bench Harbans Singh, CJ., and P.C. Jain, J.) that where the property belongs to a third party and the dispute is only with regard to the management, it is not necessary to mix up the ownership of the property with the rights of its managements. Hence if the property is owned by the diety or the math or some other juristic person capable of holding property and the dispute is only with regard to the human agency which is to administer the affairs of such an institution, the person claiming management not being for actual possession of the property as distinguished from possession of the management which can be enforced only by preventing the other party from interference. (para 9)

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh and Hon'ble Mr. Justice Prem Chand Jain on 20th November, 1970 *to a larger Bench for decision of an important question of law. The full Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh, Hon'ble Mr. Justice Gurdev Singh and Hon'ble Mr. Justice Prem Chand Jain, after deciding the important question of law, returned back the case to the Division Bench on 20th January,* 1971.

Letters Patent Appeal under Clause X of the Letters Patent of the Punjab High Court, against the judgement and decree passed by Hon'ble Mr. Justice P. D. Sharma on 23rd Feb., 1966 in R.S.A. No. 1406 of 1964, reversing that of Shri Gurnam Singh, Additional District Judge, Hoshiarpur, dated 28th September, 1964 and remanding the suit to the learned trial Judge with a direction that he should allow the plaintiff-Society to amend the plaint in order to remedy the defects pointed out in the earlier part of the order and after it had been done and proper court fee paid he should proceed to dispose it of according to law.

J. N. KAUSHAL, SENIOR ADVOCATE, WITH ASHOK BHAN, ADVOCATE, for the appellant.

K. N. TEWARI, ADVOCATE, for the respondents.

REFERRING ORDER

HARBANS SINGH, C.J.—The brief facts necessary for the decision of the two cross appeals, L.P.As Nos. 122 and 235 of 1966, may be stated as follows :

(2) There is a school known as Sarvanand Anglo Sanskrit Higher Secondary School (hereinafter referred to as 'the school') at Bassi Kalan, Tehsil and District Hoshiarpur. The management of this school was affiliated with the D.A.V. College, Hoshiarpur Society (hereinafter referred to as 'the plaintiff-society'), and as alleged by the plaintiff-society it was in effective management of the school for a number of years. They had a local managing committee which was, however, dissolved. In the year 1963 the management of the school was conducted by the plaintiff-society direct. It is alleged that on the 4th of July, 1963 an unruly mob assaulted the Principal of the school and belaboured Balbir Singh, the President of the plaintiff-society. Later some local residents purported to form the managing committee of the school and got the same registered. The suit, out of which the present appeals have arisen, was filed on 14th of August, 1963. The allegations made were, *inter alia*, as follows :—

(1) That the school was founded by the plaintiff-society in the year 1915 as D.A.V. Middle School and later on was named as Sarvdanand Anglo Sanskrit Middle School, which was subsequently raised to the standard of Higher Secondary School ;

(2) That land was acquired by the plaintiff-society over which the building was constructed out of its own funds,

and thus the school building and the site underneath were claimed to belong to the plaintiff-society; and

(3) That on 4th of July the possession of the plaintiff-society was disturbed by an unruly mob which formed a managing committee of the school, and the so-called managing committee has no right whatever to manage the school.

Consequently a prayer was made for a declaration that the plaintiff-society was the owner and in possession of the management of the school and the so-called managing committee had nothing to do with the school or its management, and, by way of consequential relief, a further prayer was made for permanent injunction restraining the defendant managing committee (hereinafter referred to as 'the defendant-committee'), from interfering with the plaintiff-society's possession of the management of the school.

(3) The defendant-committee denied the allegation that the school was founded or its land was purchased or its building was constructed by the plaintiff-society. It was averred that the site of the school was acquired by the defendant-committee and building over it was constructed out of its funds, that it rightly dispensed with the services of Om Parkash Bagga, the then Principal, and that the defendant-committee was the only organisation legally entitled to own the property and manage the school. Objection was also taken to the form of the suit.

(4) On these pleadings of the parties, the following issues were settled by the trial Court :—

(1) Whether the plaint has been properly valued for the purposes of court-fee and jurisdiction ?

(2) Whether Shri Balbir Singh has been duly authorised and as such has *locus standi* to bring the suit ?

(3) Whether the plaintiff's suit for declaration and injunction, as consequential relief, is maintainable in the present form in view of the objections in the written statement?

(4) Whether the plaintiff, as such, can file the suit ?

(5) What is the effect of the proceedings under section 145 Cr.P.C. between the parties?

(6) Whether the plaintiff is the owner of the school building and site under it?

(6A) Whether the plaintiff is the owner and is in possession of the management of the S.A.S. Higher Secondary School, Bassi Kalan ?

(7) Relief.

The trial Court found the main issues in favour of the plaintiff-society and granted a decree as prayed for. In appeal filed by the defendant-committee it was found by the learned Additional District Judge, after discussing the entire evidence, that the plaintiff-society was not the owner of the school though the management was controlled by it. In fact the evidence led indicated that some property was purchased in the name of the school and some other property was donated again to the school and the building was constructed by getting donations etc. However, in view of the finding that effective management immediately before 4th of July, 1963 was with the plaintiff-society, the learned Additional District Judge held that a mere declaration and injunction would not be sufficient to put the plaintiff society into possession of the management and that as the school could not be separated from its management, the plaintiff-society, in view of the provision of the section 42 of the Specific Relief Act, 1877, should have sued for possession. In view of this the learned Additional District Judge further held that the suit as framed was not maintainable and, consequently accepting the appeal, dismissed the suit of the plaintiff-society. The plaintiff society then filed a regular second appeal in this Court which was heard by a learned Single Judge who came to the conclusion that the plaintiff-society should have prayed for possession of the school building also, because it claimed ownership thereof and possession of the same was not with it but with the defendant-committee. The learned Single Judge further held that the suit should not have been dismissed by the learned Additional District Judge, but that an opportunity should have been given to the plaintiff-society to amend the plaint to bring it in the proper form. Thus the case was remanded to the trial Court for giving opportunity to the plaintiff-society to amend the plaint in order to remedy the defects pointed out and to pay a proper court-fee, and thereafter to proceed with the case in accordance with law. Against this order of the learned Single Judge, the plaintiff-society has filed L.P.A. No. 122 of 1966, and the defendant-committee has filed L.P.A. No. 235 of 1966, and both these appeals will be disposed of by this judgment.

(5) So far as L.P.A. No. 235 of 1966 filed by the defendant—committee is concerned, there is obviously no force. Amendment of the plaint would be allowed by the Court for the proper decision of the issues between the parties and the suit of the plaintiff-society cannot be dismissed simply on the ground that it was for a mere declaration and the plaintiff-society did not seek any further relief. In fact it was contended by the learned counsel for the plaintiff-society that there is no provision in section 42 of the Specific Relief Act, 1877 (hereinafter referred to as 'the Old Act'), now in section 34 of the Specific Relief Act, 1963 (hereinafter referred to as 'the New Act'), for a suit being dismissed, if it is for a mere declaration. Section 34 of the New Act provides as follows:—

> "34. Any person entitled to any legal character, or any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

Thus the only consequence of a person seeking a mere declaration where he is able to seek a further relief, is that the Court would decline to grant a decree for a declaration as prayed for.

(6) During the course of arguments, however, the learned counsel for the plaintiff-society conceded that the suit as originally framed was such that it was necessary for the plaintiff-society to claim a further relief than mere declaration of title. The suit, as originally framed, *inter alia* alleged that the school was founded and its building raised by the plaintiff-society and that the plaintiff-society was its owner in possession and, in addition, was managing the school. Other allegations were that some persons unlawfully took possession of the property which belonged to the plaintiff-society and turned them out. That being the case, the plaintiff-society was obviously deprived of the possession and ownership of the property as well as of the management of the

school. The consequential relief of a mere declaration and injunction to prevent the defendant-committee from interfering with their management was not an effective relief for them. In view of this the learned counsel put in an application for permission to file an amended plaint, and accordingly an amended plaint was also put in. It is, therefore, not necessary to go into the lengthy arguments which were addressed as to whether a suit for declaration and mandatory injunction would not cover the proviso to section 34 of the New Act and, therefore, would not be a suit for a mere declaration. The only point for consideration now is whether the plaint as now amended is in order and if the plaintiff-society is granted the relief now claimed, would that be an effective, relief, in the circumstances of the case.

(7) In the amended plaint the plaintiff-society no longer makes a claim to the owership of the school or the land upon which its building stands. All that is stated is that in the year 1915 the plaintiff-society founded the D. A. V. Middle School, Bassi Kalan, which was later on named as Sarvdanand Anglo Sanskrit Middle School which was later raised to the Higher Secondary standard; that the land as described in the various paras of the plaint, belonging to different persons on various dates, was either donated to the school or was purchased for the school and the relevant mutations were sanctioned in favour of the school, that on this land building was constructed by the plaintiff-society; and that "this building of the school is owned by and is in possession of the institution known as Sarvdanand Anglo Sanskrit Higher Secondary School, Bassi Kalan, and the plaintiff had always been in possession of the management of the school." As regards the actual happening of 4th of July, 1963, the allegations as given in paragraphs 9 and 10 are as follows:—

> "9. That on 4th July, 1963, certain persons formed a mob and assaulted the Principal of the school. Shri Balbir Singh, the President of the plaintiff-committee, was dragged and beaten when he went to the scene.
>
> "10. That on 9th July, 1963, the plaintiff received a letter from Shri Jagan Nath in which a mention of a resolution, dated 20th June, 1963, was made. The subject-matter of the resolution was stated to be that some persons had decided to take the management in their own hands, and get it

registered under the Registration of Societies Act under the name of Sarvdanand Anglo Sanskrit Higher Secondary School, Managing Committee, Bassi Kalan. This self constituted society is defendant in this suit."

It is then stated that the defendant-committee had no connection with the school and had no right "to take possession of the management of the school". Then follows paragraph 15 the prayer clause, which is to the following effect:—

> "That the plaintiff prays that a decree for declaration to the effect that the plaintiff D.A.V. College, Hoshiarpur Society, Hoshiarpur is entitled to the management and possession of the Sarvdanand Anglo Sanskrit Higher Secondary School, Bassi Kalan, District Hoshiarpur, and the defendant has nothing to do with the said school, and the defendant be directed to hand over the management of the said school to the plaintiff with a consequential relief in the shape of permanent injunction restraining the defendant from interfering with the plaintiff's possession of the management of the school be passed in his favour against the defendant with costs.....".

Thus no ownership of the property is claimed by the plaintiff-society. The ownership of the property is claimed to be in the institution known as Sarvdanand Anglo Sanskrit Higher Secondary School. So far as the plaintiff-society is concerned, it claims to be in possession of its management. The declaration claimed is that "the plaintiff is entitled to the management and possession of the school". The further reliefs claimed are two in number, (1) that the defendant-committee be directed to hand over the management of the school to the plaintiff-society, and (2) that the defendant-committee be restrained from interfering with the plaintiff-society's possession of the management of the school.

(8) The argument of the learned counsel for the plaintiff-society is that here the ownership is claimed to be in a third person, namely, the institution, and that if this allegation of the plaintiff-society is established, then all that it is entitled to ask for is the right to the management of the school and an injunction against the defendant-committee not to interfere in their management

and a direction that the management be handed over to the plaintiff-society. In support of his contention that in such a case it is not necessary for the plaintiff-society to seek the possession of the property and that the relief already claimed is an effective relief, the learned counsel relied upon a judgment of the Bombay High Court reported as *Kunj Bihari* v. *Keshavlal-Hiralal* (1) of which the head-note reads as follows:—

> "Section 42 of the Specific Relief Act (1877) enacts that no Court shall make a declaration in a suit in which the plaintiff being able to seek further relief omits to do so. The section does not empower the Court to dismiss such a suit.
>
> An injunction is a 'further relief' within the meaning of section 42 of the Specific Relief Act."

In that case one Pudshottam Prasadji, who was the last owner or *gadipati* of a temple, before his death made a will adopting defendant No. 14 as his son, and appointing defendants Nos. 1 to 13 as the trustees to manage the property on his behalf during his minority. On his death defendant No. 14 was installed on the *gadi* as the adopted son of the last *gadipati*, and defendants 1 to 13 began to manage the property and continued in possession thereof. The plaintiff made a claim to the *gadi* and to the property belonging to the last *gadipati*. He filed a suit claiming the following reliefs:—

> "(1) A declaration that the will of the last Acharya is null and void.
>
> (2) A declaration that, being the nearest relative of the deceased Acharya, he is according to the Dharma Shastras and principles of Hindu Law entitled to be the Acharya in his stead, and that he has been placed on his seat by the eldest wife of the late Acharya and Sadhus of the Swaminarayan sect, and that he is therefore the sole '*gadipati*' or owner and holder of the position of such Acharya.
>
> (3) To obtain a perpetual injunction restraining the defendants from offering any obstruction to his occupying the *gadi*.

(1) I.L.R. (1904) 28 Bom. 567.

(4) To obtain a perpetual injunction restraining the defendants from placing anybody else on the *gadi.*"

The plaintiff in his evidence stated as follows :—

".....I want all the rights which an Acharya enjoys. I want the rights which the deceased Purshottam Prasad enjoyed in the property. The deity is the owner of the property. The Acharya is the owner of the property for deity."

The Courts below dismissed the suit being barred by section 42 of the Old Act. Chief Justice Jenkins, while delivering the judgment of the Bench, observed as follows at page 571 of the report:—

"The plaintiff's view is that the temple's inams and other property said to be involved in this suit are the endowed property of the deity to whom they have been dedicated, and that to this deity the endowed property belongs, though the affairs of the endowment have to be administered by human agency, and this, the plaintiff claims, is vested in him as the Acharya. The suit, therefore, in the plaintiff's view is not one for the possession of land, but to determine who is to occupy the *gadi*, and thus as *gadinashin* become the human agent of the deity.

If that be so, then an injunction restraining all interference with the occupancy by the plaintiff of the *gadi* secures in the most complete manner to him the rights he claims. We do not say that the plaintiff might not in terms have asked for possession of the office he says is his; we will assume he could, but how would practical effect be given to an award of possession of an office otherwise than by preventing interference with the rights of which it is made up ?"

In the light of these observations it was urged on behalf of the plaintiff-society that according to the amended plaint, and in fact according to the findings of the Courts below, the property does not belong either to the plaintiff-society or to the defendant-committee, but it belongs to a third person, namely, the school or the institution, and that the only claim of the plaintiff-society is a right to the possession

of its management. Just as in *Kunj Bihari's case* (1) (supra) the plaintiff there could have asked for possession of the office, and the only practical way in which the possession of the office could have been awarded was by preventing interference with the rights of which it was made up. So, in the present case, the only way in which the possession of the management can be given to the plaintiff-society, if found entitled to it, would be by preventing interference with its right to manage the affairs of the school. It was, therefore, urged that an effective relief would be available to the plaintiff-society in the changed circumstances of the case, first, by being given a declaration that it is legally entitled to the management of the school, and, secondly, by giving possession of the management, by preventing the defendant-committee from interfering in their right to direct the affairs of the school. There does appear to be force in this argument. The further argument of the learned counsel for the defendant-committee that this was a mere device to escape the payment of court-fee is also met by the learned counsel for the plaintiff-society by referring to another portion of the judgment in *Kunj Bihari's case* (1) (at page 572 of the report), where it is stated as follows :—

> "It has been suggested that this is an attempt to evade the Court Fees Act, but if a plaintiff can evade that Act, he may; the remedy for that lies not in withholding a relief to which he is entitled as of right, but in procuring an amendment of the Act. . . . . This suggestion of attempted evasion, however, proceeds on a misconception of the position. Though the property is of great value, it will not, on the theory propounded by the plaintiff, become his, and we will not presume that by malversation he would make it his."

The learned counsel, therefore, urged that in the context of the present case the observations of Chief Justice Jenkins apply with full force. The plaintiff-society, according to the allegations in the plaint, was managing the school for a number of years: the property, namely, the land and the building thereon, belong to the institution; and the plaintiff-society, according to them, has been ousted from the management by persons who have got absolutely nothing to do with the management of the school. According to the averments in the amended plaint, if the plaintiff-society succeeds, the property in question will not become its property, but it is and will continue to be the property of the institution to which it was either donated or sold by its original owners.

(9) The learned counsel for the defendant-committee, however, urged that the view taken in *Kunj Bihari's case* (1) (supra) was not a correct view of the law and that a Full Bench of the Madras High Court in *Kandaswami* v. *Vagheesam,* (2) considered that case and dissented from the same, observing, at page 824 of the report, as follows :—

> "Here the appellant is endeavouring to separate the office from its endowments. This he clearly cannot do and as he is asking for a declaration of his title to the office and is not in possession of its properties he must by reason of section 42, Specific Relief Act, ask for possession. His failure to do so vitiates his suit. It may be regrettable that a person who has been ousted wrongly from an office and the control of the properties attached to it should be required to pay a court-fee based on the value of the properties before he can file a suit to remedy the wrong, but the Court cannot take such hardship into consideration when deciding the effect of section 42, Specific Relief Act."

On behalf of the plaintiff-society, on the other hand, reference was made to *Mohd. Yunus* v. *Syed Unnisa* (3) in which *Kunj Bihari's case* (1) (*supra*) was relied upon for the following proposition—

> "Whether the further relief claimed in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. A suit for declaration with a consequential relief for injunction is not a suit for declaration simpliciter: it is a suit for declaration with further relief."

In that case the plaintiffs claiming as heirs of one F sued to obtain a declaration of their rights in a certain institution which was in the management of trustees with an injunction restraining the defendants, namely, the other claimants, from interfering with their rights. The trustees never denied their rights. So the facts of the case before the Supreme Court were slightly different, and the question that has arisen in the present case was not before their Lordships. There the management and consequently the possession of the property was

(2) A.I.R. 1941 Mad. 822.

(3) A.I.R. 1961 S.C. 808.

with the trustees; and, obviously, a suit for declaration with a consequential relief for injunction would be in order. However, one thing is clear that *Kunj Bihari's case* (1) (*supra*) did come for consideration and their Lordships placed reliance on the same. It is clear that if the view of the Madras Court is followed then in every case where a person who is legitimately entitled to the management of an institution, may be a *math*, a temple, a Gurdwara, or an educational institution, shall have to bring a suit for possession whenever he is ousted by an impostor or somebody who has no right to the management of the same. Take the case of a society, which has been rightly elected, being ousted by another combination of members who were elected at a meeting which was not properly called but was able to oust the association of members who were properly elected for the management of an educational institution. The persons properly elected would have to pay the court-fee on the entire value of the property which may run into lacs before they can get back the management. This astounding result would not be there if the view accepted by Chief Justice Jenkins is taken to be correct. Where the property belongs to a third party and the dispute is only with regard to the management, *prima facie* we see no reason why it should be necessary to mix up the ownership with the right of management. We are, therefore, inclined to accept the view taken by Chief Justice Jenkins in *Kunj Bihari's case* (1) that where the property is owned by the deity or the *math* or some other juristic person capable of holding property and the dispute is only with regard to the human agency which has to administer the affairs of such an institution, the person claiming management need not bring a suit for actual possession of the property as distinguished from the possession of the management which, as observed by Chief Justice Jenkins, can be enforced only by preventing the other party from interference.

(10) This, however, brings us to another question of considerable importance, as to whether a school can own property. It is now well established that a *math*, which is similar to an educational institution, as there is no deity in such a case, is a juristic person capable of holding property and bringing and defending suits. It could be argued that there is no reason why a school, college, orphanage or any other similar institution should not be able to own property. In the present case not only there are allegations in the amended plaint to that effect, but there is evidence on the record that some part of the land, on which the institution now stands, was actually donated and some other part was sold to the school and that mutations were also made

and the property now stands in the revenue records in the name of the school. However, as the point is of importance and was also not argued before us, we feel that it would be proper if this point is decided by a larger Bench and, therefore, formulate the following question for being decided by larger Bench :—

> "Whether an educational institution, like a school, as in the present case, is capable of holding property and is a juristic person ?"

(11) P. C. Jain, J.—I agree.

ORDER OF THE FULL BENCH

J. N. Kaushal, Senior Advocate with Ashok Bhan, Advocate, for the appellant.

H. L. Sibal, Senior Advocate with S. C. Sibal, Advocate, for the respondent.

(12) HARBANS SINGH, C.J.—The following question of law has been referred for decision to this Full Bench:—

> "Whether an educational institution, like a school, as in the present case, is capable of holding property and is a juristic person ?"

(13) The facts leading to the two Letters Patent appeals (L.P. As. 122 and 235 of 1966) in which this point has been referred have been given in some detail in the order of reference by the Bench and need not be recapitulated here. The allegations made in the plaint, as amended, are that land belonging to different persons, on various dates, was donated to or purchased by D. A. V. Middle School (later came to be known as Sarvdanand Anglo Sanskrit Middle School) at Bassi Kalan; that the relevant mutations were sanctioned in favour of the said school in respect of these gifts or purchases; that on the aforesaid land a building was constructed by the D. A. V. College Hoshiarpur Society (hereinafter referred to as the plaintiff-society), that the building of the school and the land attached thereto is owned by and is in possession of the institution known as Sarvdanand Anglo Sanskrit Higher Secondary School (hereinafter referred to as the school) and that the plaintiff-society was in possession of its management.

(14) The point arose before the Bench as to whether under these circumstances this educational institution, namely, the aforesaid school, was in law, capable of holding property and was a juristic person. The point being of importance and there being no direct authority on the point, the matter was referred to the Full Bench. That is how the matter is before us.

It was not disputed that only a person, natural or legal is capable of holding property. A legal or a juristic person is an extension of the conception of personality which is normally attributable to a human being. Salmond on Jurisprudence (1966 Edition) in section 66 at page 305 deals with the heading 'Legal persons' and *inter alia* observes as follows:—

> "A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination.
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> The law, in creating legal persons, always does so by personifying some real thing. There is indeed, no theoretical necessity for this, since the law might, if it so pleased, attribute the quality of personality to a purely imaginary being, and yet attain the ends for which this fictitious extension of personality is devised. Personification, however, conduces so greatly to simplicity of thought and speech, that its aid is invariably accepted. The thing personified may be termed the corpus of the legal person so created, it is the body into which the law infuses the animus of a fictitious personality.
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> Legal persons, being the arbitrary creation of the law, may be of as many kinds as the law pleases. Those which are actually recognised by our own system, however, are of comparatively few types. Corporations are undoubtedly legal persons, and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations. A corporation is a group or series of persons which by a legal fiction is regarded and treated as itself a person. A trade union is an association of workmen or employers for the purpose,

among other things, of collective bargaining. A friendly society is a voluntary association formed for the purpose of raising, by the subscription of the members, funds out of which advances may be made for the mutual relief and the maintenance of the members and their families in sickness, infancy, old age, or infirmity. There are special statutory provisions by which registered trade unions and friendly societies can sue or be sued in the registered name, and their effect seems to be to make these groups legal entities distinct from their members. No other legal persons are at present recognised by English law. If, however, we take account of other systems than our own, we find that the conception of legal personality is not so limited in its application, and that there are several distinct varieties of which three may be selected for special mention."

(15) Out of the three classes of legal persons, the first consists of corporations, as defined above. As regards the second class, it is mentioned as under at page 307 of 'Salmond on Jurisprudence' :—

"The second class is that in which the corpus, or object selected for personification is not a group or series of persons, but an institution. The law may, if it pleases, regard a church or a hospital, or a university, or a library, as a person. That is to say, it may attribute personality, not to any group of persons connected with the institution, but to the institution itself. Our own law does not, indeed, so deal with the matter.

* * *

(16) In the present case, one thing is clear that the donors, who donated the land to the school, were Hindus. When we examine the Hindu Law relating to religious and charitable endowments, we find that a number of institutions of religious and charitable nature have been treated to have a legal personality falling in the second category mentioned by Salmond. Under Hindu Law both religious and charitable purposes are considered to be pious. In English law, if some property is to be left for a particular purpose be it charitable or religious, the property has to be transferred to natural persons or a corporation who may be called the trustees and such trustees will be bound in equity to administer the estate or the funds so given for

the purpose for which the creater of the trust intended them to be used.

(17) In paragraph 407 of Mulla's Hindu Law, the requirements for creating an endowment under the Hindu Law for a religious or charitable purpose are given as follows:—

(i) No writing is necessary to create an endowment unless the same is created by a will.

(ii) A Hindu who wishes to establish a religious or charitable institution may, according to his law, express his purpose and endow it. A trust is not required for that purpose. All that is necessary is that the religious or charitable purposes should be clearly specified, and that the property intended for the endowment should be set apart for or dedicated to those purposes.

(18) Thus under Hindu Law an endowment for the creation of an institution or an endowment to an institution, without the instrumentality of a trust, is considered valid provided, of course the object for which the endowment is made is considered as religious or charitable under the accepted notions of Hindu Law.

(19) In paragraph 404 of Mulla's Hindu Law, with regard to the objects that can be treated as religious or charitable, the following observations are made:—

"A Hindu who is of sound mind, and not a minor, may dispose of his property by gift or by will for religious and charitable purposes such as the establishment and worship of an idol, feeding Brahmans and the poor, performance of religious ceremonies like *shraddha, durga pujah* and *lukshmi pujah,* and the endowments of a university or an hospital. No list of what conduces to religious merit in Hindu law can be exhaustive. But when any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit, it must be shown to have a Shastraic basis."

(20) In *Saraswathi Ammal and another* v. *Rajagopal Ammal* (4), while considering the question whether a gift for maintenance of a tomb and performance of ceremonies at that tomb, including an

(4) A.I.R. 1953 S.C. 491.

annual feast, was or was not a religious purpose recognised by Hindu Law, their Lordships of the Supreme Court after having considered the various instances given in Prananath Saraswathi on the Hindu Law of Endowments, observed as under:—

> "These lists are no doubt not exhaustive, but they indicate that what conduces to religious merit in Hindu law is primarily a matter of Shastraic injunction. To the extent, therefore, that any purpose is claimed to be a valid one for perpetual dedication on the ground of religious merit though lacking in public benefit, it must be shown to have a Shastraic basis so far as Hindus are concerned. No doubt since then other religious practices and beliefs may have grown up and obtained recognition from certain classes as constituting purposes conducive to religious merit. If such beliefs are to be accepted by Court as being sufficient for valid perpetual dedication of property therefor without the element of actual or presumed public benefit it must at least be shown that they have obtained wide recognition and constitute the religious practice of a substantial and large class of persons. That is a question which does not arise for direct decision in this case. But it cannot be maintained that the belief in this behalf of one or more individuals is sufficient to enable them to make a valid settlement permanently tying up property. The heads of religious purposes determined by belief in acquisition of religious merit cannot be allowed to be widely enlarged consistently with public policy and needs of modern society."

Following certain Madras decisions, it was held by the Supreme Court that perpetual dedication of property for such ceremonies at a tomb is not valid amongst Hindus.

(21) The most important and most numerous religious institutions in India are the temples or Devasthanams, and next to the temples the most important religious foundations in the country are *maths* or monasteries. These latter institutions are for the promotion of religious knowledge and the imparting of spiritual instruction to the disciples. Both these institutions have all along been treated to be juristic persons capable of holding property. In the case of a temple or a Devasthanam, the property no doubt vests in the idol installed

therein. The possession and the management is of course with the manager or *Shebait*. See in this respect *Pramatha Nath Mullick* v. *Pradhyumna Kumar Mullick and another* (5), where with regard to the Hindu idol it was observed as follows:—

> "Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of Law, a "juristic entity". It has a judicial status with the power of suing and being sued. Its interests are attended to by the person who has the Deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir."

(22) In the case of a Math, as was observed in *Babajirao* v. *Laxmandas* (6), it (Math), "like an idol is in Hindu Law a judicial person capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency. When the property is vested in the Math, then litigation in respect of it has ordinarily to be conducted by, and in the name, of the manager (Mohunt)". In case of a Math, unlike that of Devasthanam, the property does not vest in any tangible thing installed therein like an idol in the case of a temple. The property vests in the institution as such.

(23) It follows from the above, that apart from the natural persons and the corporations, which are recognised by English Law, under Hindu Law if an endowment is made for a religious or charitable institution, without the instrumentality of a trust, and the object of the endowment is one which is recognised as pious either being religious or charitable under the accepted notions of Hindu Law, the institution will be treated as a juristic person capable of holding property. Reference in this respect may be made to *Vidya Varuthi Thirtha Swamigal* v. *Baluswami Ayyar and others* (7), where Mr. Ameer Ali, while delivering the judgment of the Privy Council, at page 126 of the report observed as follows:—

> "It is also to be remembered that a 'trust' in the sense in which the expression is used in Engish law, is unknown in the

(5) A.I.R. 1925 P.C. 139.
(6) I.L.R. (1904) 28 Bom. 215.
(7) A.I.R. 1922 P.C. 123.

Hindu system, pure and simple. (J. C. Ghose, "Hindu Law," 276). Hindu piety found expression in gifts to idols and images consecrated and installed in temples, to religious institution of every kind, and for all purposes considered meritorious in the Hindu social and religious system.

* * * *

Under the Hindu Law, the image of a deity of the Hindu pantheon is, as has been aptly called a "juristic entity," vested with the capacity of receiving gifts and holding property. Religious institutions, known under different names, are regarded as possessing the same "juristic" capacity, and gifts are made to them *eo nomine*".

(24) In B. K. Mukherjea on the Hindu Law of Religious and Charitable Trusts, Third Edition, the learned author sums up the position at page 304 as follows:—

"... ... in Hindu Law charity and religion overlap each other and in fact charity is included in the wider conception of religion. Purely charitable trusts unconnected with religion are also to be found in various forms in Hindu law. Thus, trusts for establishing Dharamsalas, choultries, rest-houses, schools, dispensaries, Alms Houses or for giving food and shelter to those who suffer from bodily infirmities are normal benefactions created by generous-minded Hindus. ... ...

Dharamsalas, choultries and other similar institutions ... ... may be created under Hindu Law without any written instrument provided the essentials of a valid dedication are complied with ... ...

As I have told you before, the property dedicated for these purposes must be deemed to vest in law in the institutions themselves and the administrators or those, who are in charge of the charities would occupy the position of trustees in the general sense.

(25) In *V. Marivappa and others* v. *B. K. Puttaranmayya and others* (8), a Bench of the Mysore High Court, recognised the correctness of the above by observing as follows:—

> "The maintenance of Sadavartas tanks, seats of learning and homes for the disabled or the destitute and similar institutions is recognised by and well known to Hindu Law, and when maintained as public institutions, they must be taken to have a legal personality as a Matha or the deity in a temple has, and the persons in charge of the Management would occupy a position of trust."

(26) From the above, it is clear that, legal personality is attributable only to such institutions as are recognised as charitable or religious under Hindu Law. The question, whether under Mohomedan Law a *madrasah*, i.e., a school would be capable of holding property or not was answered in the affirmative in *Mosque known as Masjid Shahid Ganj and others* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar, and another* (9). At page 122 of the report Sir George Rankin, while delivering the judgment of their Lordships of the Privy Council, observed as follows:—

> "A gift may be made to a mosque or other institution (Tyabji's Principles of Mahomedan Law, End. 2, 1919, page 401, of Abdul Rahim's Muhammadan Jurisprudence, page 218). A gift can be made to a *madrasah* in like manner as to a *masjid.*"

But the question, whether juristic personality may be extended for any purpose to Muslim institutions generally or to a mosque was left open. However, in view of what has been stated above, so far as Hindu Law is concerned, there is hardly any doubt that an endowment can be made to an institution created for religious or charitable purposes and such institutions known by different names are regarded as possessing juristic capacity and gifts of property can be made to them *eo nomine.*

(27) Thus the only question that needs consideration, therefore, is whether an educational institution, like the one in the present case, would fall within the category of a charitable institution as recognised

(8) A.I.R. 1958 Mysore 93.
(9) A.I.R. 1940 P.C. 116.

by Hindu Law. A school has been specifically mentioned as one of the charitable objects by the various learned authors, as quoted above.

(28) Mr. Sibal, learned counsel appearing for the respondent, as a matter of fact, fairly conceded that a school, like the one in the present case, which is *prima facie* meant for imparting general education to the public at large would be a charitable institution within the purview of Hindu Law, though he made it clear that there may be some cases in which a school, which is founded say for encouraging matters like preparing people for the cinema profession or for dancing alone, may or may not be a charitable institution.

(29) In the present case, we are concerned with an educational institution. Admittedly the institution is meant to impart and is imparting general education in a village, to which village, it appears, some of the donors belonged. Mr. Sibal, in fact, frankly conceded that if an endowment is made for the purpose of establishment of an educational institution, like a school, the object of which is such that it would be considered a charitable or religious under the Hindu Law, then such an educational institution or the school would be capable of holding property and, therefore, would be a juristic person. He, however, made it clear that he is not conceding that in the present case any property was endowed to this school. In fact, this matter and the further question, whether the purpose for which this school was established is or is not charitable or religious are matters not before this Bench and shall have to be dealt with by the Division Bench.

(30) In view of the above, the answer to the question referred shall have to be given as follows:—

> "If the object of the educational institution or the school is such as is recognised as charitable or religious under the Hindu Law, such an educational institution or school will be regarded as possessing a juristic personality and will be capable of holding property."

With the above answer, these two appeals will go back to the Division Bench.

GURDEV SINGH, J.—I agree. I would, however, like to make it clear that as the case out of which this reference has arisen relates to a Hindu institution our opinion covers only such institutions and not others.

P. C. JAIN, J.—I agree.

K. S. K.

FULL BENCH

Before D. K. Mahajan, P. C. Pandit and R. S. Narula, JJ.

IQBAL SINGH,—*Petitioner.*

versus

GURDAS SINGH BADAL AND OTHERS,—*Respondents.*

Civil Miscellaneous No. 25-E of 1971
Civil Miscellaneous No. 26-E of 1971
in
Election Petition No. 1 of 1971.

November 3, 1971.

Representation of the People Act (XLII of 1951)—Sections 81, 82, 86, 87 and 99— Person not a candidate in an election but allegations of corrupt practices made against him in an election petition—Whether can be made a party in such petition—Allegations of illegality or mala-fide in the conduct of election made against Returning Officer—Such Returning Officer—Whether a necessary or proper party in an election petition—Section 99—Notice under—Likely to be issued to a person—Such Person—Whether becomes party to the election petition—Section—Whether gives a right to the party to the election petition to have somebody named as guilty of corrupt practices—Settled preparations of law relating to election disputes—Stated.

Held, (per majority, Mahajan and Narula, JJ., Pandit, J. Contra.) that the scheme of the Representation of the People Act, 1951, is that only those persons can be made parties in an election petition, who are expressly mentioned in the Act. Sections 81 and 82 of the Act read together specify the parties to an election petition and wherever the legislature thought fit to make a departure it specifically provided for it in clear terms. In fact the entire field is an occupied field so far as election petition is concerned and it is not open to the Court to resort to section 87(1) and under its cover hold that anyone besides those mentioned in the Act can be impleaded as parties to the election petition. The notion of 'necessary and proper parties' is not germane to the election dispute. The dispute is between the petitioner on