

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 203 of 2002

[Advocate General Sindh v. Islamic Education Trust and others]

- Dates of hearing : 11.04.2018; 12.04.2018; 13.04.2018;
20.04.2018; 27.04.2018; 30.04.2018; and
11.05.2018.
- Date of Decision : 07.08.2018
- Plaintiff : Advocate General Sindh through
M/s. Ziauddin Junejo and Aley Maqbool
Rizvi, Additional Advocates General,
Sindh.
- Defendants 1 & 11 : Islamic Education Trust and Mst. Afroze
Shah through Syed Mureed Ali Shah,
Advocate.
- Defendants 2, 4-10: Sabir Qureshi and 07 others, through
M/s. Adnan Ahmed and Bilawal Channa,
Advocates.
- Defendant No. 12 : Official Assignee, Choudhary Muhammad
Waseem.
- Defendant No. 13 : Muhammad Hussain Qureshi, through
Mr. Zahid Marghoob, Advocate.

JUDGMENT

ADNAN IQBAL CHAUDHRY J. -

1. This is a suit under Section 92 CPC filed by the Advocate General Sindh with the following prayers:

- “(a) That the Hon’ble Court be pleased to remove the defendants from their respective office of Trust-ship of Islamic Education Trust, Karachi;*
- (b) That the Hon’ble court be pleased to appoint new Trustees of the said Trust;*
- (c) That the Hon’ble court be pleased to pass a decree vesting the property of the said Trust in the new Trustees to be appointed by the Hon’ble Court;*
- (d) That the Hon’ble court be pleased to direct the defendant No.1 to render full account of the income and expenditure of the Trust from 04-03-1958 up to the date of the decree;*

- (e) *That the Hon'ble court be pleased to settle a Scheme for the future management of the Trust;*
- (f) *Any such further or other relief may be granted as the nature of the case may require;*
- (g) *Costs of the suit be awarded."*

2. The Trust that is subject matter of this suit is the "Islamic Education Trust" (IET). The trust property subject matter of the suit is a plot of land measuring 22,349 square yards, bearing Survey No. J.M. 5, Plot No.490, Jamshed Quarters, M.A. Jinnah Road, Karachi, with construction thereon which consists of a mosque and the Islamia College Building Complex (hereinafter 'the College Building').

3. Per the plaint, the Islamia College was started by the 'Islamic Education Society', a society registered in the year 1948 under the Societies Registration Act, 1860; that as the College grew, the Society appealed to the general public for donations for purchasing land and for constructing the College Building; that donations for such purpose were made by the general public and the Government; that for the purposes of administering the money so collected, the Society created a trust called the 'Islamic Education Trust' (the IET), and the Society authorized its President, Mr. A.M. Qureshi, to constitute a board of trustees and to register the instrument of trust; that consequently, a trust deed of the IET was registered on 04-03-1958 and the first trustees comprised of Mr. A.M. Qureshi (a.k.a. Abdul Rehman Mohammad Qureshi), his two children, and allegedly his two employees (five in all); that on 17-05-1958 the Karachi Municipal Corporation (KMC) granted to the IET a plot of land measuring 22,349 square yards, bearing Survey No. J.M. 5 in Jamshed Quarters, Karachi, on a 99 year lease at a nominal rent of Rs. 2/- per square yard per annum; that with the aforesaid donations that then vested in them, the trustees of IET constructed on the said plot a mosque and a single storey building for Islamia College; that thereafter the balance of the said donations combined with funds donated by the

Islamic Education Society to IET from college fees, the trustees constructed three upper storeys to the building which came to be occupied by Islamia College (the College Building).

4. The prayer made in the suit (reproduced above) is on the basis of acts listed in para 17 of the plaint as follows):

- “(a) That the appointment of the Trustees themselves was a gross breach of Trust in as much as all the Trustees were mere stooges of defendant No.1 who was the Chairman of the Board of Trustees. One of the Trustees was a minor and unfit to be a Trustee.*
- (b) That the Trust has framed Regulations of the Trust whereby practically all the powers were given to Mr. Qureshi, the Chairman of the Trust who is now virtually a dictator vide annexure “A”.*
- (c) Although the Regulations of the Trust provide that a General Meeting of the Trust shall be held every third month during the last week of that month, but no meetings are held. In fact almost no meeting of the trust has been held for the last 10 years.*
- (d) The land for the College was allotted to the Trust by the KMC on the express condition that the trust shall comprise of seven Trustees of which two shall be the nominees of Karachi Municipal Corporation. But the defendants have not appointed the other two trustees although the KMC had nominated two persons for such appointment.*
- (e) That proper accounts of the Trust have not been maintained or audited. Even the accounts of the huge amount of about 25 lacs collected by donations and granted and the accounts of the construction of the mosque and the college building, have not been properly maintained, nor the same have been audited.*
- (f) That the funds of the Trust have not been deposited in any bank. They are kept and misappropriated by defendant No.1.*
- (g) That huge amounts out of the funds of the Trust have been misappropriated by defendant No.11, with the active connivance of concerned officials.*

- (h) *That every year, defendant No.1 takes about one lac rupees from the funds of the College and the School in the name of the Trust but all such sums have been misappropriated by him.*
- (i) *As stated above the donations from the public and the grant from the Government had been collected with the specific object of constructing a building for the Islamia College set up by the Islamic Education Society and the building was constructed with such funds. But now the Trustees are claiming from the said College Rs.58,000/- per month as rent of the said building. The Trust had filed in the High Court of Sindh and Balochistan at Karachi Civil Suit No. 166 of 1969 for recovery of Rs.31,27,232/- as rent from the College which suit is still pending. Contrary to the objects of the Trust, the Trustees are following a policy of profiteering at the cost of the College.*
- (j) *That defendant No.1, Chairman of the Trust, was also the Chairman of the Government Body of the College. He coerced the members of the Governing Body to agree to pay to the Trust, rent for the building of the College at the rate of four annas per sq. ft. per month besides paying all KMC taxes, water charges and the property tax etc. and also to bear the cost of repairs and white wash etc. This rent is too exorbitant and beyond the paying capacity of the college. By making such demand the Trustees are forcing the College to close down which will be a gross breach of the Trust.*
- (k) *That defendant No.1, coerced the Principal of the College to pay to him in his own name a sum of Rs.58,000/- in January 1971 as one month's rent of the College building. The amount has obviously been misappropriated by defendant No.1, with the connivance of the other defendants.*
- (l) *That at least three motor vehicles were purchased with the funds of the Trust but the Trust has no use for them. They are being used by Defendant No.1 personally.*
- (m) *That a telephone is installed in the office of the Trust and its bills are paid by the Trust, although the telephone is used by Defendant No.1 for his personal calls not connected with the affairs of the Trust.*
- (n) *That a person is employed as a paid Secretary of the Trust while there is hardly any work of the Trust. The employee*

does odd jobs for Defendant No.1 personally but his salary is paid by the Trust.

(o) That numerous other acts of breach of Trust have been committed by the Trustees for which the Plaintiffs are collecting data and the same shall be proved during evidence."

5. While the suit was listed for examination of parties and settlement of issues, the following interlocutory application are also pending:

- (i) By CMA No.1219/2002, the plaintiff prays to restrain the private defendants from acting as trustees of IET;
- (ii) By CMA No.1884/2002, the plaintiff prays for a direction to the private defendants to render accounts of IET and to handover its management to the Official Assignee alongwith the record and books of IET;
- (iii) By CMA No.7249/2002, the plaintiff prays for the appointment of a Receiver over IET;
- (iv) By CMA No.7250/2002, the plaintiff prays to restrain the defendant No.11 from acting as trustee and General Secretary of IET;
- (v) By CMA No.8813/2004, one Syed Kamran Hussain prays to be joined as defendant in this suit in his capacity as trustee and General Secretary of IET;
- (vi) By CMA No.5927/2016, the plaintiff has proposed names for appointment as new trustees of IET;
- (vii) By CMA No.4699/2017, the defendants 1 and 11 pray to be deleted as defendants;
- (viii) CMA No.6454/2018 was disposed off vide order dated 30-04-2018 and is wrongly listed.

6. Per the record, Resolution No.1255 dated 27-05-1958 whereby land was granted by the KMC to the IET for the College Building, conditioned the grant *inter alia* on the following:

- “1) *The land shall be used for constructing College and School Buildings and Boarding House for students.*
- 2) *The Trust shall comprise of seven Trustees for management of the properties of the Trust of which two trustees shall be the nominees of the Municipal Corporation.”*

7. Prior to its nationalization, Islamia College was managed by the Islamic Education Society which was separate from the IET, and the said Society as the management of Islamia College was in occupation of the College Building pursuant to a tenancy agreement with the IET dated 05-08-1961. The fact that at the time the tenancy was created, Mr. A.M. Qureshi was both the President of the Islamic Education Society and the managing trustee of the IET, had been emphasized by Mr. Ziauddin Junejo learned Additional Advocate General to argue that from day one the design of the trustees was to profit from the trust property. Be that as it may, the role of the Islamic Education Society came to an end when, pursuant to nationalization and under Martial Law Regulation [MLR] 118 dated 01-09-1972, the Islamia College was taken over along with the College Building by the Education Department of the Government of Sindh. The College then came to be governed by a Board of Governors appointed by the Education Department.

8. In the year 1971, certain private persons engaged in the profession of teaching, filed Suit No.153/1971 before this Court (titled *Anita Ghulam Ali v. Abdul Rehman*) praying for a decree under Section 92 CPC against the erstwhile trustees of IET. By order dated 15-03-1972 passed in the said suit, the Court appointed the Official Assignee as Receiver of the trust property of IET. However, by that time the College Building had been taken over by the Education Department of the Government of Sindh as mentioned above. The record shows that as Receiver of the College Building, the Official

Assignee had pursued the Education Department for rent but remained unsuccessful. However, subsequently, Suit No.153/1971 was dismissed as infructuous accepting the contention of the Additional Advocate General that the College Building along with Islamia College had become the property of the Government pursuant to nationalization.

9. After the death of Mr. A.M. Qureshi in 1989, a contest ensued between his legal heirs, i.e. his two wives and his children from them, for the control of the IET. Both sets of legal heirs made their own amendments to the original trust deed and competed to be declared lawful trustees of IET to the exclusion of each other. One such contest was Suit No.333/1992 before this Court which involved most of the private defendants of this Suit No.203/2002. While Suit No.333/1992 was pending, the defendant No.11 herein, claiming to be trustee and General Secretary of IET, filed C.P. No.D-96/2001 before this Court against the Government of Sindh for the issue of writs to them to pay arrears of rent for the occupation of the College Building and for delivering possession of the College Building to the trustees. The learned Division Bench seized of C.P. No.D-96/2001 held that MLR 118 (nationalization of Islamia College) did not have the effect of vesting the College Building in the Government and that the trustees of the College Building were entitled to claim possession of the College Building. However, since the question of management of IET was then *sub-judice* in Suit No.333/1992, the learned Division Bench disposed off the petition (vide judgment dated 07-09-2001) by directing as follows:

“In the circumstances we are of the view that the interest of justice would be secured if the Official Assignee is directed to assume the powers of the owner of the property and take such measures as he considered necessary or expedient to protect the owners’ interest in accordance with the Trust Deed. This would be subject to any order that may be passed in the pending suit. If any record is required, the parties will produce the same before the Official Assignee”.

10. That the aforesaid judgment passed in C.P. No.D-96/2001 was appealed by the Principal, Government Islamia Law College before the Honourable Supreme Court of Pakistan vide CPLA No. 869-K of 2001. By order dated 13-11-2001 the Supreme Court upheld the judgment passed in C.P. No.D-96/2001 by clarifying that the order of the High Court appointing the Official Assignee to manage the trust property was only an interim arrangement until decision in Suit No.333/1992.

11. The aforesaid Suit No.333/1992 was dismissed when its plaint was rejected vide order dated 31-12-2001 on the ground that the suit being essentially for relief under Section 92 CPC, the prior permission of the Advocate General to institute such suit had not been obtained. This order is reported as *Begum Hafuzunnisa Qureshi v. Sheikh Muhammad Hussain* – 2003 CLC 1156. An appeal being HCA No.37/2002 too was dismissed on 15-09-2005. In the meantime, this Suit No.203/2002 was filed by the Advocate General Sindh under Section 92 CPC, and by order dated 27-02-2002 this Court in effect appointed the Official Assignee as Receiver of the trust property for the purposes of this suit as well, restraining the defendants from acting in any manner prejudicial to the interest of the IET.

12. In the meantime, the litigation between persons (including the private defendants herein) who were fighting for the control of IET also multiplied. A list of such cases (not exhaustive) is as follows:

- (i). Suit No.666/1992 in the Court of IVth Senior Civil Judge Karachi South. By order dated 11-04-2002 the plaint of such suit was rejected;
- (ii). Suit No.697/1992 in the Court of IInd Senior Civil Judge Karachi East, which was dismissed for non-prosecution;
- (iii) Suit No.1200/2004 and Suit No.1211/2004 before the Vth Civil Judge Karachi South, both of which were withdrawn;
- (iv) Suit No.1316/2006 before the IXth Senior Civil Judge Karachi South, which was withdrawn;

- (v). Suit No.46/2006 before the Court of the IVth Civil Judge, Karachi West. The record shows that the plaint of such suit was rejected vide order dated 05-08-2006 and an appeal being Civil Appeal No.54/2006 was also dismissed on 23-04-2008;
- (vi) Suit No.808/2007 in the Court of the VIIIth Senior Civil Judge Karachi South, which was dismissed under Order X CPC on 03-03-2010;
- (vii) Suit No.01/2008 which was withdrawn with permission to file afresh. The withdrawal order was assailed before this Court in Civil Revision No.65/2009;
- (viii) Suit No.107/2008 before this Court, which was disposed off on 28-01-2009 by a consent arrangement between the parties pending other litigation between them;
- (ix). Suit No.04/2008 before this Court which is pending.

13. The record shows that as Receiver/custodian of the trust property of IET, the Official Assignee has been pursuing recovery of rent and eviction from the College Building of the Government of Sindh, the Local Government and other educational entities that had occupied and are occupying the College at the behest of the said Governments. These endeavors by the Official Assignee became subject matter of various orders subsequently passed in C.P. No.D-96/2001 and are presently subject matter of numerous legal proceedings between the Official Assignee (on behalf of IET) and the Government.

14. The record also shows References moved by Official Assignee both in this suit and in C.P. No.D-96/2001 complaining that different sets of persons (including some of the defendants herein) claiming to be trustees have been hindering him in the performance of his functions as Receiver/custodian of the trust property, compelling this Court both in this suit and in C.P. No.D-96/2001 to restrain such persons from interfering in the management of the trust property.

15. In her written statement, the defendant No.11 who claims to be a trustee and the General Secretary of IET, has raised certain legal objections to the maintainability of the suit which are dealt with *infra*. It is her case that the suit is *malafide* as it has been filed by the Advocate General Sindh as a means to provide the Government of Sindh an escape from the liability of the rent owed by it to the IET. It is also contended by her, and which contention was vociferously argued by her counsel Mr. Mureed Ali Shah, that since the trust property has not been in control of the trustees after 1972, the allegation of misappropriation of trust funds is absurd, and that in any case such allegation is made for the period prior to 1971 when none of the present trustees were trustees of IET.

The Defendants 2, 4 to 10 also claim to be trustees of IET and dispute the status of the defendant No.11 as trustee of IET. They allege that since 08-10-1990, when the defendant No.11 managed to register a fresh appointment of trustees, she (the defendant No.11) has been acting as the sole trustee of IET to the complete exclusion of the other trustees. They allege that the defendant No.11 has been misappropriating funds of IET for her personal gain. The Defendants 2, 4 to 10 support the removal of the defendant No.11 as trustee and the appointment of a Receiver of the trust property.

16. The facts narrated in paras 6 to 14 above are borne from the undisputed record of this suit. The said facts constituted respectively the background of the submissions of learned counsels. Therefore, the said are undisputed facts of the case.

17. Section 92 CPC reads as follows:

“92. **Public charities.** -(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in

that behalf by the Provincial Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate, to obtain a decree-

- (a) removing any trustee,
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust-property to be let sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, no suit claiming any of the reliefs specified in subsection (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that subsection.”

18. It is settled law that a suit under Section 92 CPC brought by the Advocate General or with his permission, has to fulfill the following conditions:

- (i) There must exist a trust for a public purpose of a charitable or religious nature;
- (ii) The plaint must either allege that there is a breach of trust or that the directions of the Court are necessary for the administration of the trust;
- (iii) The suit must be a representative one on behalf of the public and not for the assertion of personal rights of the plaintiff(s);
- (iv) The relief claimed must be one of the reliefs enumerated in Section 92 CPC.

[See the cases of *Fakir Shah v. Mehtab Shah Pir Bukhari Masjid Committee* (PLD 1989 SC 283); and *Begum Hafizunnisa Qureshi v. Shaikh Muhammad Hussain* (2003 CLC 1156)].

19. Testing this suit for the aforementioned conditions, the fact that the IET is a public trust created for public purposes of a charitable nature is not in dispute. The objects of the IET as spelt out

from the trust deed dated 04-05-1958 manifest that it is such a trust. Reference can also be made to the order dated 31-12-2001 passed in the earlier Suit No.333/1992 relating to the IET (*Begum Hafuzunnisa Qureshi v. Sheikh Muhammad Hussain* - discussed in para 11 above), whereby the plaint of that suit was rejected on the ground that the prior permission of the Advocate General to institute such suit had not been obtained. To reject the said plaint by reason of Section 92 CPC, the Court had to necessarily determine whether the IET was created for public purposes of a charitable or religious nature. It was held that it was. It is also not disputed that the property subject matter of this suit (described in para 2 above) is trust property of IET. Consequently, the first of the conditions listed in para 18 above stands fulfilled.

The second and third conditions listed in para 18 above too stand fulfilled as the suit is by the Advocate General himself on behalf of the public, and a perusal of the plaint shows that it alleges that there is a breach of trust and that directions of the Court are necessary for the administration of IET. The questions whether the allegation is substantiated or not and whether the case merits the giving of directions or not, are subsequent ones that are adverted to *infra*. The prayer clause of the suit (reproduced above) shows that it is for relief enumerated in Section 92 CPC, therefore the fourth condition listed in para 18 above also stands satisfied.

20. Adverting first to the legal objections taken by the defendant No.11 to the maintainability of the suit; in her written statement she has pleaded that the suit is time barred. But in view of Section 10 Limitation Act, 1908 that objection is misconceived and is rejected. The defendant No.11 has also pleaded that the dismissal of the previous Suit No.153/1971 instituted against the trustees of IET by private persons under Section 92 CPC bars the instant suit. That objection was adequately addressed and rejected with by this Court vide order dated 06-09-2002 and again vide order dated 01-11-2016 in dismissing successive applications moved by the defendant No.11 for rejection of the plaint of this suit.

21. In order to arrive at and serve the central question involved in this suit, it is necessary to state the scope of the suit so as to separate the wheat from the chaff.

Firstly, and as also argued by Mr. Ziauddin Junejo, if the Religious Endowments Act, 1863 is not attracted, as in this case, then neither the Trusts Act, 1882 nor the Charitable & Religious Trusts Act, 1920 inhibit powers under Section 92 CPC in relations to public trusts. The provisions of the Trusts Act, 1882 do not apply *proprio vigore* (by its own force) to public trusts, while Section 9 of the Charitable & Religious Trusts Act, 1920 ousts proceedings under the said Act when action is taken under Section 92 CPC. Therefore, for the purposes of this suit it can be said that Section 92 CPC is a code in itself.

Secondly, since the suit is in a representative capacity on behalf of the public beneficiaries of a public trust, the scope of the suit does not extend to deciding disputes between persons competing for status of trustee(s). Therefore, the litigation pending between persons claiming to be trustees, listed in para 12 above, is no impediment to a decision in this suit. For the same reason, I need not discuss the extensive competing arguments of Mr. Mureed Ali Shah and Mr. Adnan Ahmed Advocates to state that their respective clients should be accepted as *de jure* trustee of IET, especially when powers under Section 92 CPC can also be exercised against *de facto*/constructive trustees (also known as *trustees de son tort*). [See the cases *Fakir Shah v. Mehtab Shah Pir Bukhari Masjid Committee* and *Begum Hafizunnisa Qureshi v. Shaikh Muhammad Hussain supra*].

Thirdly, once the Court concludes that the trust is for public purposes of charitable or religious nature, then the findings required to deploy the measures listed in sub-section (1)(a) to (h) of Section 92 CPC are that either there is a breach of the trust, OR that the direction of the Court is necessary for the administration of the trust. In other words, even where there is no breach of trust, the Court can still exercise powers under Section 92 CPC where direction of the Court is necessary for the administration of the public trust. That is

so because a suit under Section 92 CPC is essentially administrative in character. Per Section 92 CPC, such suit may not even be contentious, and consequently it may not proceed as an ordinary suit. The prime purpose of these proceedings is to safeguard the trust property for the benefit of the public beneficiaries.

The following case law is also instructive of the scope of a suit under Section 92 CPC:

(i) In the case of *Mt. Lakshami Kunwar v. Murari Kunwar* (AIR 1918 Oudh 207) it was held that even where a Court does not find a trustee guilty of neglecting the trust or misappropriating the trust property, the Court nevertheless has full discretion to frame a scheme for the better management of the trust if under the circumstances such a course is deemed to be in the interest of the trust.

(ii) The case of *Sivagnana Desika Gnanasambanda Pandarasannady v. Advocate General of Madras* (AIR 1916 Madras 318) also held that the relief by way of settlement of a scheme for a public trust need not depend upon charges against the trustee-in-office.

(iii) In the case of *Advocate-General, Punjab, Lahore v. Sheikh Abdul Haque* (PLD 1957 (W. P.) Lahore 321) it was observed as follows:

“A question then arises as to whether, if I hold that there are no validly appointed trustees in existence, a suit under section 92 of the Code of Civil Procedure can succeed. According to that section, a suit lies either where there has been a breach of trust or where the direction of the Court is needed. In a case where there are no validly appointed trustees in existence, but either breach of trust is not proved or the Court does not go into the question of breach of trust, has the Court jurisdiction to appoint new trustees? This question has been considered in a number of cases and it has been held that under the second part of the section, that is, the one relating to a case where the direction of the Court is needed, the Court has power to appoint trustees where no validly appointed trustee exists. I may refer, in this connection, to *Radha Krishna v. Lachmi Narain* (AIR 1948 Oudh 203); *Abdul Rahim Khan v. Fakir Muhammad Shah* (AIR 1946 Nag. 401); *Neti Rama Jogiah and three others v. Venkatacharuiu and three others* (ILR 26 Mad. 450); and *M. E.*

Mitchla and another v. A. M. Mitchla and others (AIR 1938 Rang. 339). It is not necessary to enter into a detailed discussion of this point in view of the simple argument, that if the fact that there were no validly appointed trustees in existence could not be the basis of a suit under section 92 of the Code of Civil Procedure, the result would be that once a *trustee de son tort* or a *de facto* trustee enters into possession or management, he could not be removed at all unless and until breach of trust was brought home to him. By the express words of section 92, no suit for appointment of the new trustee lies apart from that section. It could not be the intention to put the *trustees de son tort* on the same footing as validly appointed trustees so that they can only be removed for breach of trust and not otherwise. The absence of a validly appointed trustee may by itself be harmful for the Trust because, although there is a good deal that a *de facto* trustee acting on behalf of the Trust may do, he has not all the powers of a validly appointed trustee."

(iv) In the case of *Ejaz Inayat v. Rt. Rev. Dr. A.J. Malik* (PLD 2009 Lah 57), it was observed as follows:

"There can be no cavil with the proposition that a suit under section 92, C.P.C. inherently is representative in nature but having its own feature and kind, it can neither be strictly termed as an ordinary civil *lis* between two adversary litigants nor can be equated to a representative suit generally filed under Order I Rule 8 C.P.C. From the letter, spirits, scope and concept of the said section, the object is to safeguard the trust and the rights of the public in the trust; furthermore, that the suits against the trustees of a public trust should be regulated by law and institution of indefinite number of vexatious, harassing and reckless suits in relation to the matters enumerated in the section must be prevented. It is for this reason that the Advocate-General, who is the principal law officer of the Province and the most responsible person has been empowered, authorized and conferred with the sole prerogative to invoke the legal mechanism for the protection of the trust etc; thus when he himself files a suit, it is a representative suit for all intents and purposes, with the same effects of the judgment/decision as rendered by the Court in ordinary representative suits, however, none of the persons having interest in the trust in this suit shall be entitled to be arrayed as a co-plaintiff along with the Advocate-General by taking resort to section 92, Order I, Rules 1, 8 or 10, C.P.C."

From the above discussion, the issue that arises in this suit is whether in the circumstances of the case, there has been a breach of trust, or whether the direction of the Court is otherwise necessary for the administration of the IET ?

22. No doubt that from the year 1972, when Islamia College was nationalized, and until the Official Assignee took control of the College Building pursuant to judgment dated 07-09-2001 passed in C.P. No.D-96/2001, the Islamia College and the College Building effectively remained under the control of the Government of Sindh. But nevertheless, the undisputable fact of this case is that the trustees of IET, whether they are *de jure* trustees or *de facto*/constructive trustees, have been in conflict with each other for decades over the control of IET. They do not recognize each other as lawful trustees and have not been able to work together as the board of trustees of IET. The litigation listed in para 12 above is testament to that fact. Thus, the IET has been without a recognized board of trustees for decades. That, in my view is sufficient to conclude that the said trustees are at odds with the interest of the IET and that is reason enough to hold that directions of the Court are necessary for the administration of IET. In these circumstances, it is not worthwhile to delve into the allegation whether any of the trustees actively committed breach of the trust deed, or whether any of the trustees misappropriated the rental income of IET. Consequently, in the circumstances of this suit, a decree in terms of Section 92 does not require the recording evidence.

23. In view of the foregoing, this is a clear case for passing a decree for measures enumerated under sub-section 1(a), (b), (c), (g) and (h) of Section 92 CPC. Given the fact that from the year 1972, when the Islamia College was nationalized, the College and the College Building remained under the control of the Government of Sindh, and thereafter to-date it was/is under the control of the Official Assignee, this is not a case that requires the taking of

accounts under sub-section 1(d) of Section 92 CPC from persons claiming to be trustees. Therefore, the following decree is passed :

(a) The private defendants and/or any other person claiming to be trustee of the Islamic Education Trust (IET) are hereby removed.

(b) In view of the facts recorded in para 6 of this judgment, the new board of trustees of IET shall comprise of seven (7) persons, two (2) of whom shall be nominees ex officio of the Karachi Municipal Corporation (KMC). For such purpose, the Advocate General shall communicate this judgment to the KMC. However, in the event the KMC does not opt to make said nomination, then the new board of trustees of IET shall comprise of five (5) persons.

(c) The Advocate General Sindh shall for the consideration of this Court submit a list proposing names and credentials of new trustees for IET after taking the consent of such persons. With this direction, CMA No.5927/2016 stands disposed off.

(d) On the appointment of the new trustees as aforesaid, all assets of IET shall vest in such trustees. Thereafter, the Official Assignee shall deliver the trust property and its record to the new trustees, including the record of all cases instituted by and against him as Receiver/custodian of the trust property.

(e) The first order of the new trustees shall be to consider amendments to the trust deed dated 04-03-1958 and to frame fresh Regulations for the day to day affairs of the IET. Such first amendment and first set of Regulations shall be made by the new trustees unanimously.

(f) Until the new trustees amend the original trust deed as aforesaid, the scheme of IET shall be as per the original trust deed dated 04-03-1958 save as is provided herein. All subsequent deeds of trust purporting to amend the original trust deed dated 04-03-1958 are hereby annulled, so also all Regulations framed by the previous trustees. Any person holding any instrument that purports to amend

the original trust deed 04-03-1958 shall be required by the Advocate General for deposit for cancellation. A copy of this direction be also sent by the Advocate General to the concerned Registrar of documents for information and record.

In view of the above decree, CMAs listed in paras 5(i) to (vii) have become infructuous.

JUDGE