

Mohamed Shariff Valibhoy and others v Arif Valibhoy
[2016] SGHC 11

Case Number : Originating Summons No 355 of 2015 (Summons No 2415 of 2015)
Decision Date : 29 January 2016
Tribunal/Court : High Court
Coram : Kannan Ramesh JC
Counsel Name(s) : Prabhakaran s/o Narayanan Nair and Tan Zhi Xin (Derrick Wong & Lim BC LLP) for the Plaintiffs; Leong Yi-Ming and Lee Bik Wei (Allen & Gledhill LLP) for the Defendant; Jordan Tan Zhengxian (Cavenagh Law LLP) as amicus curiae.
Parties : Mohamed Shariff Valibhoy — Imran Amin Valibhoy — Vali Mohamed Shariff Valibhoy — Arif Valibhoy

Muslim Law – Charitable Trusts

Muslim Law – Majlis Ugama Islam Singapura – Powers

29 January 2016

Kannan Ramesh JC:

Introduction

1 Does the High Court have jurisdiction under the Trustees Act (Cap 337, 2005 Rev Ed) (“the Trustees Act”) to remove and appoint trustees of a Muslim charitable trust known as a *wakaf* or does the jurisdiction to do so reside solely with the Majlis Ugama Islam Singapura (“the Majlis”) under the Administration of Muslim Law Act (Cap 3, 2009 Rev Ed) (“the AMLA”)? This was the central question in Summons No 2415 of 2015 (“Sum 2415”), an application by the Defendant to strike out Originating Summons No 355 of 2015 (“OS 355”).

2 The Plaintiffs applied *vide* OS 355 for the Defendant to be replaced with one Abdul Rashid bin Abdul Gani as a trustee of the Valibhoy Charitable Trust (“the VCT”). It was common ground that the VCT was a *wakaf* as defined in s 2 of the AMLA. The Plaintiffs and the Defendant were trustees of the VCT. The VCT was constituted by cl 4 of the last Will of Haji Vali Mohamed Bin Jooma otherwise known as Valibhoy Jumabhoy otherwise known as A.A. Valibhoy on 12 April 1948. The VCT was registered with the Majlis. The Plaintiffs’ application in OS 355 was made under ss 37 and 42 of the Trustees Act and O 92 r4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed).

3 According to the Plaintiffs, the relief they were seeking in OS 355 *viz*, the replacement of the Defendant with another trustee, was necessary because the Defendant was deliberately refusing to discharge his duty as trustee of the VCT. This had resulted in their management of the VCT being frustrated and delayed with needless costs being incurred at the VCT’s expense, including legal fees, and the loss of potential investment opportunities. The Plaintiffs asserted many alleged instances of misconduct on the part of the Defendant. I will not be elaborating on these examples, as I was not required to make findings on them in Sum 2415.

4 The Defendant then applied *vide* Sum 2415 for:

- (a) a declaration that the court had no jurisdiction over the Defendant in respect of the subject matter of the claim or the relief or remedy sought in OS 355; and/or
- (b) OS 355 to be struck out.

5 The essence of the Defendant's contention was that Parliament's intention in enacting the AMLA was to confer on the Majlis the exclusive jurisdiction and/or power to manage a *wakaf* including that in relation to the removal and appointment of trustees pursuant to s 58 of the AMLA. Therefore, the court did not have jurisdiction to determine OS 355, and the Plaintiffs did not have the requisite *locus standi* to make an application for the replacement of a trustee a *wakaf*.

6 The Defendant did not make full arguments relating to the allegations raised by the Plaintiffs against him in OS 355 because of the jurisdictional objection he raised in Sum 2415.

7 The Plaintiffs on the other hand took the position that the court had subject matter jurisdiction over the VCT and that their application in OS 355 ought not to be struck out on grounds put forth by the Defendant. Accordingly, the determination of the jurisdictional objection in the Defendant's favour would result in OS 355 failing *in limine*.

8 The Majlis' jurisdiction and powers over a *wakaf* are set out in s 58 of the AMLA which states as follows:

Wakaf or nazar am

58.—(1) Where, after 1st July 1968, any Muslim person dies in such circumstances that, under the provisions of the Muslim law, his property would vest in, or become payable to, the Baitulmal, the property of that person, in pursuance of such provisions, shall vest in and become payable to the Majlis and form part of the Fund.

(2) Notwithstanding any provision to the contrary in any written law or in any instrument or declaration creating, governing or affecting the same, the Majlis shall administer all wakaf, whether wakaf 'am or wakaf khas, all nazar am, and all trusts of every description creating any charitable trust for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with the Muslim law to the extent of any property affected thereby and situate in Singapore.

(3) Section 23 of the Civil Law Act (Cap. 43) shall not apply to Muslims who die intestate.

(4) The trustees of the wakaf or nazar am appointed under the instrument creating, governing or affecting the same shall, subject to the provisions of this Act, manage the wakaf or nazar am but the Majlis shall have power to appoint mutawallis, and for such purpose to remove any existing trustees, where it appears to the Majlis that —

- (a) any wakaf or nazar am has been mismanaged;
 - (b) there are no trustees appointed to the management of the wakaf or nazar am; or
 - (c) it would be otherwise to the advantage of the wakaf or nazar am to appoint a mutawalli.
- (5) The Majlis may at any time remove any mutawalli appointed by it and appoint another in his

place.

9 The court had to consider the following issues in Sum 2415:

(a) Whether, on a proper construction of s 58 of the AMLA, Parliament intended that the jurisdiction and/or power to manage a *wakaf* including that in relation to the removal and appointment of trustees of a *wakaf*, lay exclusively within the purview of the Majlis;

(b) Whether the Trustees Act conferred on the court the concurrent jurisdiction and/or power to intervene in a *wakaf* including that in relation to the removal and appointment of trustees; and

(c) Whether the court had, in any event, the jurisdiction and/or power to remove the Defendant in the present circumstances.

(collectively, "the Issues").

10 The Issues raised novel questions of law and for that reason a young *amicus curiae*, Mr Jordan Tan ("Mr Tan"), was appointed to assist the court. Mr Tan's submissions supported the position taken by the Plaintiffs *viz*, the court has jurisdiction over the Defendant in respect of the subject matter of the claim or the relief or remedy sought in OS 355 pursuant to the Trustees Act; consequently, OS 355 ought not to be struck out. I should at the outset record my gratitude to Mr Tan for his submissions. They were comprehensive, complete, and of immense assistance to the court.

11 It came as a surprise that given the Majlis' statutory role as administrator of the VCT and the importance of the issues at hand to the Majlis' jurisdiction and power as regards a *wakaf*, none of the parties saw fit to add the Majlis as a party to the proceedings. Nor did the Majlis apply to be added as a party. At the first hearing of Sum 2415 on 20 August 2015, I requested the parties to consider this issue, or at the very least invite the Majlis to apply to be added as a party to these proceedings. Also, I invited the Majlis through the parties to provide its view on the issues arising in Sum 2415 in the event it declined to participate in the proceedings as a party. As things turned out, neither the parties nor the Majlis made the relevant application. However, the Majlis did provide a written response to the court on 19 October 2015. The Majlis took the unequivocal position that the Trustees Act did not confer jurisdiction on the court to remove and appoint trustees of a *wakaf*. The Majlis relied heavily on the decision of the Court of Appeal in *LS Investment Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369 ("*LS Investment*") and the decision of the High Court in *Syed Abbas bin Mohamed Alsagoff and another v Islamic Religious Council of Singapore (Majlis Ugama Islam Singapura)* [2010] 2 SLR 136 ("*Syed Abbas*") to support its submission.

12 Having heard the submissions of the parties and Mr Tan and having considered the Majlis' position, I decided on the Issues – for the purposes of Sum 2415 – in the following manner:

(a) On a proper construction of s 58 of the AMLA, Parliament intended that the jurisdiction and power to manage a *wakaf* including that in relation to the removal and appointment of trustees of a *wakaf*, lay exclusively within the purview of the Majlis.

(b) The Trustees Act did not apply to a *wakaf*. A *wakaf* was neither a trust within the Trustees Act nor a trustee of a *wakaf* a trustee for the purpose of the Trustees Act. The Plaintiffs therefore did not have *locus standi* to apply for the relief sought in OS 355 as they were not trustees within the Trustees Act, and the court had no jurisdiction and power under the Trustees Act to substitute the Defendant as trustee of the *wakaf* with another individual.

(c) The residual inherent jurisdiction and attendant powers of the court over a *wakaf* (if any) would not be exercised on the facts.

13 As a result of my decision on the Issues, the Defendant succeeded in Sum 2415 and OS 355 was struck out. The Plaintiffs appealed against my decision to strike out OS 355 in Civil Appeal No 204 of 2015 on 17 November 2015. I now set out the reasons for my decision.

The position prior to the enactment of the AMLA

14 It is important to begin with an analysis of the position on the administration of *wakafs* prior to the enactment of the AMLA as, in my view, the AMLA changed the landscape of the administration of *wakafs* significantly. Before the AMLA came into force, *wakafs* were administered by the trustees of the *wakaf* within the framework of the Muslim and Hindu Endowments Ordinance (Cap 271, 1955 Ed) (the "Endowments Ordinance"). The AMLA replaced the Endowments Ordinance and in the process replaced the trustee of the *wakaf* with the Majlis as administrator of the *wakaf*. This was a critical change.

15 Mr Tan and the Plaintiffs sought to show that the legislative history leading up and prior to the enactment of the AMLA revealed that the Trustees Ordinance (Cap 34, 1955 Ed) ("the Trustees Ordinance") operated alongside the Endowments Ordinance to allow a trustee of a *wakaf* to apply to court to remove another trustee.

16 On this basis, they argued that the Trustees Act (which replaced and is substantially similar to the Trustees Ordinance) should – by extension – operate alongside the AMLA to allow the Plaintiffs to apply to court to remove the Defendant. The argument of course presupposed that the regimes, insofar as they relate to the Issues, under the Endowments Ordinance and the AMLA were the same or at the very least not materially different. It, however, elided the foundational change in the landscape of the regulation and administration of Muslim affairs including that of *wakafs* that the AMLA brought. This change made the Trustees Act, in my view, inapplicable to *wakafs*. The question of whether the Trustees Act should be invoked to remove the trustee of a *wakaf* turns therefore on whether the Trustees Act could operate concurrently alongside the AMLA. I will explain by first examining the genesis of the AMLA. It is to this that I now turn.

The intention of Parliament in enacting the AMLA

17 The broad legislative history of the AMLA was accurately summarised by Mr Tan. I reproduce his summary in Table 1 below.

Table 1: Legislative History of the AMLA

S/No	Date	Event
1	29 November 1960	Administration of Muslim Law Bill (intended to lead to the passing of legislation to replace laws relating to Muslims, including the Endowments Ordinance) is first presented in Parliament.
2	29 December 1960	Parliament decides to present the Bill to a Select Committee.

3	3 May 1961	Select Committee Report is published (the "First Select Committee Report").
4	13 December 1965	Administration of Muslim Law Bill 1965 ("1965 Bill") is first presented in Parliament.
5	30 December 1965	Parliament decides to present the 1965 Bill to a Select Committee.
6	31 May 1966	Select Committee Report is published ("the AMLA Second Select Committee Report").
7	17 August 1966	1965 Bill is passed and AMLA is enacted.
8	19 August 1975	AMLA is amended (without affecting s 58).
9	24 August 1984	AMLA is amended (without affecting s 58).
10	11 June 1990	AMLA is amended (without affecting s 58).
11	15 April 1999	AMLA is amended (without affecting s 58) ("the 1999 Amendments").

18 The Parliamentary debates are instructive in shedding light on why the jurisdiction to deal with Muslim matters including a *wakaf* must be regarded as being vested principally in the Majlis following the enactment of the AMLA. The broad theme that emerged from my review of the Hansard was that the AMLA was enacted for the purposes of protecting and safeguarding the Islamic religion by the constitution of a Muslim body *viz*, the Majlis, to deal with the administration of Muslim law and the regulation of Muslim religious affairs in Singapore. There is resonance in this regard between the purpose of the AMLA and Art 152(2) of the Constitution of the Republic of Singapore (1999 Rev Ed) which provides as follows:

The Government shall *exercise its functions in such manner as to recognise* the special position of the Malays ... and accordingly it shall be the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, *religious*, economic, social and cultural *interests* and the Malay language.

[emphasis added].

19 In this respect, I first refer to the debates relating to the second reading of the AMLA. Mr K.M Byrne ("Mr Byrne"), the Minister for Labour and Law noted as follows (Singapore Parliamentary Debates, Official Report (29 December 1960) col 912):

The Bill provides for the *establishment of a Majlis Ugama Islam ... and this will enable the Majlis to deal with wakaf, nazr and other trusts which are intended for Muslim religious and charitable purposes. The endowments at present administered by the Muslim and Hindu Endowments Board will be transferred to this Majlis. The Majlis Ugama Islam is made the trustee of all Muslim religious trusts ...* and it is also given the power, with the approval of the Yang di-Pertuan Negara, to collect zakat and fitrah to be used for Muslim charitable purposes.

[emphasis added].

20 In the same sitting, Mr Inche Yaacob bin Mohamed, then Parliamentary Secretary to the Minister for National Development stated as follows (Singapore Parliamentary Debates, Official Report (29 December 1960) col 918):

Mr Deputy Speaker, the Administration of Muslim Law Bill, which has been tabled by the Minister for Labour and Law today, is a Bill which could, be described as creating a new chapter in the history of Singapore *consonant with the Constitution of Singapore, which enunciates the protection and safeguard of the Islamic religion of the Malays and Islamic people of Singapore.*

[emphasis added].

21 I also refer to the debates relating to the third reading of the AMLA. Mr Inche Othman Bin Wok, then Minister for Culture and Social Affairs, stated as follows (Singapore Parliamentary Debates, Official Report (17 August 1966) cols 239 – 240):

The Bill, it must be emphasised, does not seek to deal with the Muslim law itself *but only with its administration.* ...

The Bill seeks to constitute a *Council of Muslim Religion which will be responsible for the regulation of Muslim religious affairs in Singapore.* ... *This will be the first time that the Muslims of Singapore will have a body to regulate their religious affairs.* The Council of Muslim Religion will have considerable executive powers and will not be merely an advisory body like the Muslim Advisory Board.

[emphasis added].

22 It is self-evident from the above extracts that Parliament intended by the enactment of the AMLA for the Majlis to be the body charged with the responsibility of the administration of Muslim law and the regulation of Muslim religious affairs. This was for the purposes of protecting and safeguarding the Islamic religion in Singapore, consonant with the *imprimatur* in Art 152(2) of the Constitution. Indeed, the preamble to the AMLA states exactly that:

An Act relating to Muslims and to make provision for regulating Muslim religious affairs and to constitute a council to advise on matters relating to the Muslim religion in Singapore and a Syariah Court.

23 In furtherance of this objective, the Majlis was made the trustee of all Muslim religious trusts including *wakafs*, and was charged with the responsibility of dealing with their affairs. It cannot therefore be gainsaid that the administration of *wakafs* including the appointment, management and removal of trustees falls squarely within that remit, and s 58 of the AMLA speaks clearly to that. I will elaborate on the significance of making the Majlis a true “trustee” at [61] below.

The purported relationship between the Endowments Ordinance and the Trustees Act

24 Section 58 of the AMLA has its origins in various legislative sources. I summarise the legislative history as set out in the Comparative Table in the 1965 Bill in Table 2 below.

Table 2: Legislative sources of s 58(4) of the AMLA

Relevant provision in the AMLA	Source from which the provision is derived from
Section 58(1) (reflected as s 59(1) in the 1965 Bill)	Section 88 of the Pahang Administration of the Law of the Religion of Islam Enactment 1956 (No 5 of 1956) ("the Pahang Enactment"); and s 89(1) of the Penang Administration of Muslim Law Enactment 1959 (No 3 of 1959) ("the Penang Enactment").
Section 58(2) (reflected as s 59(2) in the 1965 Bill)	Section 95 of the Selangor Administration of Muslim Law Enactment 1952 (No 3 of 1952) ("the Selangor Enactment"); s 89 of the Pahang Enactment; s 89(2) of the Penang Enactment.
Section 58(3) (reflected as s 59(3) in the 1965 Bill)	-
Section 58(4) (reflected as s 59(4) in the 1965 Bill)	-

25 Mr Tan pointed out that the summary in the Comparative Table of the 1965 Bill (reproduced in Table 2 above) is inaccurate as s 58(4) of the AMLA was in fact derived from s 4 of the Endowments Ordinance. Section 4 of the Endowments Ordinance states as follows:

Whenever it appears to the Governor in Council on the report of the Board that –

- (a) any endowment has been mismanaged;
- (b) there are no trustees appointed for the management of any endowment; or
- (c) it would be otherwise to the advantage of any endowment that the same should be administered by the Board,

the Governor may order that such endowment shall be administered by the Board.

26 Mr Tan is correct; I note from the minutes of meeting in relation to the AMLA Second Select Committee Report ("the Second Select Committee Minutes") reproduced at [30] below that s 58(4) of the AMLA was derived from s 4 of the Endowments Ordinance. As noted in Table 1 above, before the AMLA was enacted, the Endowments Ordinance represented the existing state of legislation. The similarity between s 58(4) of the AMLA and s 4 of the Endowments Ordinance coupled with the fact that the Endowments Ordinance represented the state of affairs before the AMLA, were the key planks in Mr Tan's submission that the regimes under the two statutes were the same. Mr Tan and indeed the Plaintiff were eager to make this point as there was some evidence, they contended, from the Second Select Committee Minutes that the Trustees Ordinance operated alongside the Endowments Ordinance to give the court power to replace trustees.

27 Mr Tan and the Plaintiff pointed out that Trustees Act and the Trustees Ordinance were substantially similar. The further argument that they therefore made was that since the court had the power pursuant to the Trustees Ordinance to replace trustees notwithstanding the existence of s 4 of the Endowments Ordinance, it must follow that the court had the power to replace trustees under the

Trustees Act notwithstanding s 58(4) of the AMLA. However, this argument assumes that the statutory regimes are the same or similar. But they in fact are not. There are significant differences. I have pointed these differences out at [35] below.

28 Before I highlight why I did not agree with Mr Tan's and the Plaintiffs' argument, I propose to reproduce the relevant parts of the Second Select Committee Minutes that were referred to by them as evidence in support of the position set out at [27] above. This extract concerns an exchange between the Chairman of the Second Select Committee, Mr A P Rajah, the Attorney-General, Inche Ahmad bin Mohamed Ibrahim, and Mr M J Namazie ("Mr Namazie") representing the Muslim Trust Fund Association ("MTFA"). To give context and flavour, this part of the Second Select Committee Minutes related to an objection by the MTFA to the inclusion of cl 59(4)(c) of the 1965 Bill *ie*, s 58(4)(c) of the AMLA which I reproduce below for convenience:

(4) The trustees of the wakaf or nazar am appointed under the instrument creating, governing or affecting the same shall, subject to the provisions of this Act, manage the wakaf or nazar am but the Majlis shall have power to appoint mutawallis, and for such purpose to remove any existing trustees, where it appears to the Majlis that —

...

(c) it would be otherwise to the advantage of the wakaf or nazar am to appoint a mutawalli.

29 The MTFA's objection was stated in the following manner:

7. Clause 59(4)(c)

The above subclause should in our opinion be deleted. Whilst we agree that if the Trust or Wakaf is mismanaged or if there are no trustees of the Wakaf or Trust, the Majlis should have power to appoint Mutawallis, we are strongly of the view that it would be wrong to provide the Majlis with the additional power of removing the Trustees and appointing others on the dubious ground that it is to the advantage of the Wakaf or Nazr'am. The phrase "to the advantage of" is wide and ambiguous. The Trustees may be arbitrarily removed and others appointed by the Majlis not for any substantial reason but merely because in the opinion of the majority of the members of the Majlis it is "of advantage" to do so, when it may well not be so.

30 The discourse between Mr Namazie and the Attorney-General ("the Namazie-AG Exchange") was the main arrow in Mr Tan and the Plaintiffs' quivers. Mr Tan and the Plaintiffs sought to show that there was evidence from the Namazie-AG Exchange that the Trustees Ordinance operated alongside the Endowments Ordinance to allow a trustee of a *wakaf* to apply to court to remove another trustee. They thus argued that the Trustees Act should – by extension – operate alongside the AMLA to allow the Plaintiffs to apply to court to remove the Defendant. I reproduce the relevant portions of the Namazie-AG Exchange:

Chairman

183. Now, clause 59(4)(c). This is an existing clause in the Muslim and Hindu Endowments Ordinance, I am told?" – That is so.

...

187. Yes, do, Mr. Attorney-General? In the case of the Coronation Road Mosque, there were two

pieces of land, both endowed for the Mosque. But there were two separate trustees, and these two trustees could not agree. ... And the Muslim and Hindu Endowments Board were able to step in, remove the trustees and appoint a new committee of management and the Mosque has been enlarged. (Mr. Namazie) *One other way of meeting the problem is that one party could have gone to the court to decide.* The danger is that if the Majlis thinks it is to its advantage - we are giving considerable powers to the Majlis. ...

188. So your Association's objection to clause 59 (4) (c) is that it gives too much power to the Majlis without any restriction on that power, and the objective aimed for under clause 59 (4) (c) could *quite easily be obtained under the existing machinery of the law?* ...

189. So that your objection to clause 59 (4) (c) is that this puts the trustees of mosques completely at the mercy of the Majlis? - It deals with wakaf.

...

191. Your view is that, in the event of something in the nature of what the learned Attorney-General has said happening, then the normal law of the land would be able to assist the parties to the dispute? - *I do not know exactly what the position would be because the property would be vested in the Majlis.*

...

195. That is the point you are trying to make, Mr. Namazie, to the advantage - ? - Yes, whether the Muslim and Hindu Endowments Board exists or not. *They would apply to court under the Trustees Ordinance.*

...

197. The point is that the learned Attorney-General has said that where there are two pieces of land adjoining each other and there is one mosque on those two pieces of land, then unless we have clause 59 (4) (c) it will not be possible to do anything for the furtherance of that mosque. Mr. Namazie said no, he did not agree. *In that event, you can go to the court and ask one set of the trustees to be removed.* And because of that, Mr. Namazie said clause 59 (4) (c) is not necessary.

198. Very often it is not a question of mismanagement. It is a question of disagreement. Sometimes it may not be mismanagement? - It was not mismanagement?

...

[emphasis added].

31 I note that there were other parts of the Second Select Committee Minutes where the United Malays National Organisation and Pertubohan Muslimin's representatives asked for cl 59(4)(c) to be deleted on similar grounds as argued by Mr Namazie in the Namazie-AG Exchange. I do not intend to reproduce those sections. The following specific arguments were made by Mr Tan and the Plaintiffs in reliance on the Second Select Committee Minutes:

(a) Section 58(4) of AMLA (reflected as cl 59(4) of the 1965 Bill) was included to give the Majlis a similar power to the Endowments Board (as conferred by s 4 of the Endowments

Ordinance) to deal with situations where two or more sets of trustees could not agree but also could not be said to have been guilty of mismanagement.

(b) Mr Namazie was of the view that even if cll 59(4)(a) – (b) were enacted to give the Majlis powers to remove trustees for mismanagement or to appoint trustees in the absence of any trustee, that did not oust the jurisdiction of the courts under the Trustees Ordinance. While one could say that Mr Namazie’s views were solely that of the MTFA and not representative of the drafter’s intent, at no point did the Attorney-General (as drafter) suggest that cl 59(4) of the 1965 Bill circumscribed the court’s jurisdiction to remove/appoint trustees under the Trustees Ordinance.

32 The Defendant on the other hand made the following arguments:

(a) The Second Select Committee Minutes did not support the argument that the court’s jurisdiction under the Trustees Ordinance was not excluded by the Endowments Ordinance, as there was no supporting case law for the proposition that the Trustees Ordinance applied or conferred jurisdiction upon the court to concurrently determine the removal and appointment of trustees of a *wakaf*.

(b) The Endowments Ordinance was radically different from the AMLA such that the comparison of how the two statutes operated *vis-à-vis* other statutory legislation would not be meaningful. The argument that the Trustees Ordinance was not excluded by the Endowments Ordinance (on the assumption that the Trustees Ordinance was applicable for the removal of trustees of a *wakaf*) should thus be considered in light of the fact that the Endowments Ordinance was a very different enactment to the AMLA. This position was supported by local case law as well.

33 Did the Attorney-General’s silence in the face of Mr Namazie’s suggestion that the court had jurisdiction and powers under the Trustees Ordinance to replace trustees of a *wakaf* during the operation of the Endowments Ordinance constitute clear evidence of the state of the law as asserted by Mr Namazie? I do not think it does so. It does seem to be grasping at straws to argue that the Attorney-General’s silence is *sub silentio* support for the proposition that was being advanced. To my mind, the Attorney-General’s silence in relation to Mr Namazie’s suggestions is at best equivocal. In fact, even that conclusion is diluted; Mr Namazie himself noted that the state of the law after the enactment of the AMLA was uncertain. Ultimately, what we have is the opinion of one man asserted in the course of the cut and thrust of Parliamentary interlocution. That hardly constituted adequate support for the conclusion that Mr Tan and the Plaintiff wished to draw. I am therefore unable to accept the submission on the basis of that “evidence” alone.

34 However, even if I were to give the benefit of doubt to the interpretation that was advanced by the Plaintiffs and Mr Tan in relation to the Second Select Committee Minutes, more importantly, the radical differences between the AMLA and the Endowments Ordinance made the arrow from Mr Tan’s and the Plaintiff’s quivers miss their target. The differences made the Trustees Act inoperable alongside the AMLA as regards *wakafs*. It is to this that I now turn.

The differences between the AMLA and the Endowments Ordinance

35 I first considered the broad differences between the Endowments Ordinance and the AMLA. It would be useful to set out these differences.

The Board, unlike the Majlis, had no default administrative powers

36 I start by noting s 3(1) of the Endowments Ordinance which states that “[t]he Governor may appoint a Board ... for the superintendence of endowments ...”. The term “endowment” which was in turn defined in s 2 of the Endowments Ordinance as including, *inter alia*, “any endowment in land or money given or to be given for the support of any Muslim Mosque ... or other Muslim ... Shrine or School or other Muslim ... pious, religious, charitable or beneficial purpose”. It is uncontroversial that a *wakaf* would and did fall within the ambit of s 2 of the Endowments Ordinance.

37 Section 4 of the Endowments Ordinance conferred administrative powers over *wakafs* on the Board *only under the three circumscribed situations* provided for therein; there were legal prerequisites that had to be satisfied in order for the Board to administer a *wakaf*. I once again reproduce s 4 of the Endowments Ordinance:

Whenever it appears to the Governor in Council on the report of the Board that –

- (a) any endowment has been mismanaged;
- (b) there are no trustees appointed for the management of any endowment; or
- (c) it would be otherwise to the advantage of any endowment that the same should be administered by the Board,

the Governor may order that such endowment shall be administered by the Board.

[emphasis added].

38 It is clear that the Board was not by statutory default the sole custodian of the administration of a *wakaf*. The party responsible for the administration for the *wakaf* were the trustees appointed under or pursuant to the instrument creating the *wakaf*. The Board stepped in only if at least one of the three prescribed conditions in the Endowments Ordinance was met. However, the position under the AMLA is vastly different. Section 58(2) of the AMLA provides that “[n]otwithstanding any provision to the contrary in any written law or in any instrument or declaration creating, governing or affecting the same, the Majlis shall administer all *wakaf*”.

39 Under the Endowments Ordinance, the trustee of the *wakaf* would administer the *wakaf* unless there were grounds within s 4 of the Endowments Ordinance for the Board to administer the *wakaf*. However, under the AMLA, the trustees of a *wakaf* would not have any powers to administer the *wakaf* to begin with, as such power vested automatically in the Majlis pursuant to s 58(2) of the AMLA. And there is a good reason why this is so; I have addressed this at [40] below. The trustees of a *wakaf* would only have the power to manage (as opposed to administer) a *wakaf* under the supervision of the Majlis. Admittedly, the jurisdiction of the Majlis to administer *wakafs* is much broader than that of the Board under the Endowments Ordinance.

The Board did not by default have legal title to the wakaf property

40 I had alluded to this in the preceding paragraph. This point is neatly encapsulated in the view expressed by the then Minister for Labour and Law, Mr Byrne, in the second reading of the AMLA (see [19] above). The reason why the AMLA vested exclusive domain in the Majlis over the administration of a *wakaf* is because the AMLA, by s 59 of the same, vested all the property that is the subject of the *wakaf* (“the *wakaf* property”) in the Majlis.

41 Section 59 of the AMLA states, *inter alia*, that *wakaf* property shall vest automatically in the

Majlis:

Vesting of wakaf and nazar am in Majlis

59. All property subject to section 58 shall if situate in Singapore vest in the Majlis, without any conveyance, assignment or transfer whatever, for the purpose of the Baitulmal, wakaf or nazar am affecting the same.

42 It is axiomatic that legal title to the assets of the trust is vested in a "English law trustee". Consequently, such a trustee is charged with the responsibility of administering its trust property. That is simply not the case with trustees of a *wakaf* who neither have title to the property of the *wakaf* – that resides with the Majlis pursuant to s 59 of the AMLA – nor powers of administration which also reside with the Majlis pursuant to s 58(2) of the AMLA.

43 The position under the s 59 of the AMLA ought to be contrasted with that under s 5 of the Endowments Ordinance – *wakaf* property would only vest in the Board from the date the Board administers the *wakaf* pursuant to an order made under s 4 of the Endowments Ordinance. That meant that the Board only held title to the *wakaf* property once it had assumed the administration of the *wakaf* pursuant to s 4 of the Endowments Ordinance. Until that happened, the trustees of the *wakaf* held title to the *wakaf* property and were therefore responsible for its administration. Administration of the assets of the *wakaf* was a necessary incident and ingredient to the vesting of title to the assets. This is a significant difference as for all intents and purposes the trustees of a *wakaf* under the Endowments Ordinance were more akin to an "English law trustee". Being more akin meant that the provisions of the Trustees Ordinance and Trustees Act could arguably apply, as the trustee thereunder was modelled on the "English law trustee".

The Endowments Ordinance contemplated recourse to the court

44 Under the Endowments Ordinance, the power to remove any officer of a *wakaf* rested with the Board pursuant to s 7(a) of the Endowments Ordinance. This power, on its face, operated without any statutory limitation. However, any officer removed by the Board could pursuant to s 8 of the Endowments Ordinance "petition to the High Court appealing against such removal". This right of appeal has been removed from the AMLA, and I would suggest for a deliberate reason (see [46] – [48] below). However, at the same time, I noted that Parliament has balanced the absence of a right of appeal against the decision of the Majlis by statutorily circumscribing the situations in s 58(4) of the AMLA where the Majlis could appoint mutawallis and for that purpose remove trustees.

45 Most importantly, a trustee of a *wakaf* had the option pursuant to s 12(1) of the Endowments Ordinance to make an application to the Board in relation to "any question or dispute relating to the [management and administration]" of a *wakaf*. The section also provided that the Board's advice was subject to "any judicial order or direction which may be subsequently made or given by the High Court." Therefore, it is clear that s 12(1) of the Endowments Ordinance contemplated that the trustees of a *wakaf* might make an application to the court. It is perhaps for this reason that it subordinated the opinion of the Board to that of the High Court, so as to deal with any potential conflict between the decisions of both fora. Significantly, such a provision to deal with any conflict in opinion between the Majlis and the court is absent in the AMLA.

46 Under the AMLA, the relationship contemplated between the court and the Majlis is in fact very different. In this regard, I refer to s 63 of the AMLA which states as follows:

Construction of instrument

63.—(1) Where any question arises as to the validity of a Muslim charitable trust or as to the meaning or effect of any instrument or declaration creating or affecting any Muslim charitable trust, *such question shall be determined in accordance with the provisions of the Muslim law.*

(2) *If in the opinion of the Majlis the meaning or effect of any instrument or declaration creating or affecting any wakaf or nazar is obscure or uncertain, the Majlis may refer the same to the court for construction of the instrument or declaration, and shall act in accordance with the construction so given by the court.*

(3) The court in construing the instrument or declaration shall do so in accordance with the provisions of the Muslim law and shall be at liberty to accept as proof of the Muslim law any definite statement on the Muslim law made in any of the books referred to in section 114.

[emphasis added].

47 I make two points in relation to s 63 of the AMLA. First, s 63 confers on the court the power only when the Majlis regards it as appropriate to invoke the assistance of the court. Second, the court's role had been carefully circumscribed – the sole issue that the court may consider is the meaning and effect of the instrument or declaration creating the *wakaf* and even then only if the Majlis is of the view that there is obscurity or uncertainty on the issue. Importantly, matters concerning the administration of the *wakaf* have been carefully removed from the equation.

48 The four take-aways therefore are: (1) only the Majlis has the *locus standi* to bring such an application; (2) the Majlis is the sole determinant of whether the application ought to be brought; (3) the court's jurisdiction is limited to the construction of an instrument or declaration creating or affecting a *wakaf* or *nazar* when referred to it by the Majlis as encapsulated in s 63(2) of the AMLA; and, (4) by inference, the court does not have jurisdiction over matters falling outside that situation which would include the administration of *wakafs*.

49 I make an observation here. Even if the court granted the Plaintiffs the relief they sought in OS 355, the Majlis still had the power pursuant to s 58(4) of the AMLA to take an opposing view from the court as and when it is directed to it by the Defendant simply because it is statutorily empowered to do so under s 58(4) of the AMLA. The Majlis might also act on its own motion decide to remove the Plaintiffs and/or the Defendant as trustees of the *wakaf* and appoint mutawallis instead on the same basis. I considered the implications arising from this dichotomy and, for present purposes, I expand on the implications of this conundrum at [51] to [59] below.

Summary of analysis of post-AMLA situation

50 Many important points emerge from the preceding analysis. In this section I summarise the conclusions I have drawn. In the main, I concluded that Parliament could not have intended for the trustees of the *wakaf* to have recourse to the court upon the enactment of the AMLA because (1) such concurrent jurisdiction might lead to inconsistent decisions and different standards applied by the Majlis and the court; (2) it vested title and administrative control as a result solely in the Majlis; and, (3) it had already clearly delineated the scope of the court's jurisdiction which could only be invoked by the Majlis.

Risk of inconsistent decisions: different standards and different laws

51 It might have well been the case that the trustee of a *wakaf* could have made an application to the High Court under the Trustees Ordinance when there was a dispute as between trustees. Such a

possibility can be said to have been contemplated in s 12(1) of the Endowments Ordinance. Additionally, a dispute between trustees would not in the ordinary course be dealt with by the Board, as the Board did not automatically administer *wakafs*. Therefore, in that context, it would have made sense for the trustees of a *wakaf* to apply to the court to settle their disputes; the court might in turn decide to apply the Trustees Ordinance; although, this approach might in itself be incorrect if one took the view that a *wakaf* was a Muslim law juridical creature and not a trust within the meaning of the Trustees Ordinance. Nevertheless, the court in such a situation would have likely granted the relief sought by the trustees of a *wakaf* under the Trustees Ordinance on the basis that they could be likened to “English law trustees” *ie*, both held legal title for the benefit of another and were consequently charged with the responsibility of administering the *wakaf*.

52 Under s 12(1) of the Trustees Ordinance, the trustees of a *wakaf* could also have also applied to the Board to resolve their disputes. Even if the trustees adopted both courses of action and applied to the Board and the High Court, there is no danger of inconsistent orders as any opinion of the Board is subordinated to any judicial order or direction pursuant to s 12(1) of the Endowments Ordinance.

53 These features are absent in the AMLA. Therefore, as rightly pointed out by the Majlis in their submissions to the court, there was a risk of inconsistent decisions being issued by the Majlis and the court on the same issue if trustees of a *wakaf* had recourse to both fora in petitioning for the removal of another trustee of the *wakaf*. There is no mechanism *a la* s 12(1) of the Endowments Ordinance that elevates a judicial order over the decision of the Majlis. There is also no permissive provision that suggests that the trustee of a *wakaf* had recourse to both fora. These are clear tell-tale signs of what was intended.

54 It should be observed that s 58(4) gives the Majlis the power to appoint mutawallis and for that purpose an incidental power to remove trustees of a *wakaf* for that purpose. There is no unbridled power to remove a trustee. Therefore, should the Majlis decide to remove a trustee, it would at the same time have to appoint a mutawalli as a necessary pre-condition for the exercise of its statutory power. On the other hand, no such limitation exists under the Trustees Act. Indeed, the court is not circumscribed by the clear statutory limitation that is imposed on the Majlis under s 58(4)(a) – (c) of the AMLA when exercising its powers under the Trustees Act. At the same time, unlike the Majlis, the court has no jurisdiction to appoint mutawallis (as opposed to trustees) under the Trustees Act, a point which the Plaintiff conceded in the course of submissions.

55 All of these are the recipe for an ideal cocktail for inconsistent decisions. Several less than satisfactory results could thus ensue if concurrent jurisdiction is recognised. First, the specific process recognised under s 58(4) of the AMLA for the exercise of the Majlis’ *incidental* power to remove trustees could effectively be bypassed making in the process a mockery of what Parliament clearly by enacting the provision. Second, it would also make a mockery of s 63(2) of the AMLA which carves out clearly the circumstances under which the court’s assistance may be sought; there are no other provisions in the AMLA that allow the court to decide on matters relating to a *wakaf*. I dealt with this in further detail at [46] – [48] above. Third, it carries the risk of different outcomes resulting depending on which jurisdiction – the AMLA or the Trustees Act – is invoked simply because the powers, and the tests and law applied in exercising them are different. Fourth, it allows a backdoor challenge on the merits, effectively an appeal, to be heard by the court if a trustee of a *wakaf* is dissatisfied with the Majlis’ determination under s 58(4) of the AMLA. It is noteworthy that the AMLA does not provide a right of appeal to the court against the Majlis’ decision. Fifth, conversely, it could create a backdoor challenge to the decisions of both the High Court and the Court of Appeal under the Trustees Act by taking effectively the same issues to the Majlis under s 58(4) of the AMLA.

56 These situations would lead to a very uncomfortable paradigm where the Majlis and the court could render two conflicting decisions on the same issue applying different statutory standards and indeed, different laws – the court applying the common law in relation to the Trustees Act, and the Majlis applying Muslim law under the AMLA. It is amply clear to me that Parliament could not have intended such a paradigm. To my mind, the inexorable conclusion must be that Parliament through the enactment of the AMLA intended that the Majlis was to be the only forum where trustees of a *wakaf* could direct their disputes..

The administrative powers are vested in the Majlis

57 The enactment of the AMLA led to the Majlis *automatically* assuming administrative powers over a *wakaf* and being vested with title to the *wakaf* property. This in my view was a deliberate step by Parliament consonant with its intention to centralise the administration and regulation of Muslim religious affairs in a single body *viz*, the Majlis, with the enactment of the AMLA. Therefore at the very outset, the trustees of the *wakaf* are not trustees as contemplated by the Trustees Act as they do not hold title to the *wakaf* property, and are not responsible for the administration of the *wakaf*. This would suggest the trustees of the *wakaf* would have no *locus standi* to petition for any relief in relation to the *wakaf* (see also the discussion of *Syed Abbas* and *locus standi* at [68] – [69] below).

58 Additionally, s 58(2) of the AMLA makes it clear that the administration of a *wakaf* is the province solely of the Majlis by the inclusion of the words “[n]otwithstanding any provision to the contrary in any written law”. The appointment of mutawallis and the removal of trustee for that purpose under s 58(4) of the AMLA is one aspect of the administration of a *wakaf*. Therefore, even if it is assumed *arguendo* that it was conceptually possible to apply the provisions relating to the court’s power in the Trustees Act (which applies to trustees in the English law sense as received in Singapore law) to the trustees of a *wakaf*, it is impossible in my view to cross the statutory hurdle imposed by s 58(2) of the AMLA – the power to remove trustees would rest solely with the Majlis notwithstanding other powers in any written law.

The limited jurisdiction of the court could only be invoked by the Majlis

59 A declaration that a trustee of a *wakaf* could apply under the Trustees Act also undermines s 63 of the AMLA that carefully limits the jurisdiction of the court to issues that are directed to it by the Majlis. In this regard, s 63(2) of the AMLA narrowly allows the court’s involvement in issues concerning construction in relation to a *wakaf* and even then, only if the Majlis sees fit and makes the application. I should add that the removal of the right of a trustee of a *wakaf* to appeal the decision of the Majlis to the court is but another step in the same direction, *viz*, limiting of the court’s jurisdiction. Unlike the Endowments Ordinance where trustees could appeal the decision of the Board to the court, the court’s participation under the AMLA is at the behest of the Majlis and only with regard to very clearly circumscribed situations, pursuant to s 63 of the AMLA. The ineluctable conclusion is therefore that any application to remove trustees should be directed to the Majlis and not the court.

The Trustees Act does not apply to trustees of a *wakaf*: the case law

60 The cases decided subsequent to the enactment of the AMLA support my reading of s 58(4) of the AMLA and conclusion that the Trustees Act did not confer on the court subject matter jurisdiction over *wakafs* in light of the enactment of the AMLA. I will discuss two significant decisions.

61 As noted at [42] above, the hallmarks of an English law trust are that the trustee (1) holds legal title over the trust property and (2) is responsible for administration of trust. The AMLA has

statutorily taken away from the trustee of a *wakaf* both these elements pursuant to ss 58(2) and 59 of the AMLA. It is perhaps in light of this that Parliament noted that the Majlis had become the “trustee” of all *wakafs* (see [19] above). The case law echoes the same conclusion.

62 The first is the decision of the Court of Appeal in *LS Investment*. In that case, a testator made a will and passed away. The Majlis *ie*, the respondent, made requests to the trustees of the properties of the testator for a copy of the will to ascertain whether the testator had created a *wakaf*. The trustees refused to accede to the request. One of the trustees executed an agreement to sell the one of the properties (“the Property”) to the appellant. The trustees then obtained an *ex parte* order under s 59(1) of the Trustees Act empowering them to sell the Property and purchase another property with the proceeds thereof. After the completion of the sale of the Property, the Majlis lodged a caveat on the Property on the basis that it was the lawful owner of the Property under s 59 of the AMLA. The appellant applied to expunge the caveat. The High Court ruled that the sale of the Property to the appellant was void as title to the Property, which was the subject of a *wakaf*, vested in the Majlis pursuant to s 59 of the AMLA. On appeal, the Court of Appeal upheld the decision of the High Court on this point but allowed the appeal to the limited extent that the appellant was to be reimbursed the expenditures incurred in the redevelopment works in relation to the Property. The Court of Appeal then stated clearly that the legal landscape that existed prior to the enactment of the AMLA had been changed by its enactment in the following manner:

33 A related argument of the appellant is that even assuming that the legal title to the property vests in the Majlis, the trustees of the property still had a power of sale. *Counsel submitted that as s 58(4) of AMLA allows the trustees to manage the wakaf, this should include the power to apply to court to approve the sale of a wakaf property and the purchase of another property in substitution thereof.* The appellant said that under general Muslim law a trustee may apply to court for substitution and cited AA Fyzee on *Outlines of Muhammadan Law* (4th Ed) in support thereof, where the learned author stated (at p 289):

As a wakaf is a permanent endowment, perpetuity is ensured by the doctrine that wakf property belongs to God and cannot be alienated by human beings for their own purposes. Hence the rule of law that wakf property is not alienable.

Although wakf property cannot be sold, transferred or encumbered, in a fit case the *mutawalli* (the trustee) may apply to the court, and for the protection or the better management of the wakf, he may sell or grant leases with the court’s express permission. The prohibition to sell must not be confused with a mere variation of investment, and the courts have often consented readily to allow an alteration in the form of investment.

34 The appellant contended that the right of the trustees to apply to court for approval is not altered by s 59 of AMLA. Since under s 58(4) the trustees are given the power to manage the *wakaf*, this power to manage must include the power to apply to court.

35 It seems to us that the position as set out by Fyzee above is the position under general Muslim law. *That would have been the position in Singapore prior to the coming into operation of AMLA. The authority given under s 58(4) to the trustees of a wakaf to manage the wakaf is expressly subject to the provisions of AMLA. It will be recalled that under s 58(2), the Majlis is to administer all wakafs. AMLA clearly draws a distinction between “administer” and “manage”. In our opinion what is encompassed in the function “to administer” must be viewed in the light of the following provisions in that Act:*

59 All property subject to section 58 shall if situate in Singapore vest in the Majlis, without

any conveyance, assignment or transfer whatever, for the purpose of the Baitulmal, wakaf or nazar am affecting the same.

...

[emphasis added].

63 As seen thus far, the court in *LS Investment* noted that while the trustees of a *wakaf* could have applied to court prior to enactment of the AMLA, that was no longer the case after the enactment of the AMLA. This point has been supplemented by my analysis (at [57] – [58] above) on how the AMLA conferred sole administrative powers over a *wakaf* to the Majlis.

64 The court in *LS Investment* also noted that the trustees of a *wakaf* were no longer trustees in the English law sense in the following manner:

36 The net effect of these provisions is that legal title to *wakaf* properties vests in the Majlis; that the Majlis shall hold the documents of title relating to *wakaf* properties; that it is for the Majlis to prepare any *cy près* scheme; and that it is for the Majlis to refer to court for an opinion if the meaning or effect of any instrument creating a *wakaf* is obscure or uncertain. In our opinion, in the light of the scheme of things laid down in AMLA, *we do not think that it falls within the province of the trustees, as managers, to apply to court to approve the sale under s 59 of the Trustees Act. The trustees did not hold the title to the wakaf property. They were no longer trustees in the English law sense, viz, someone who holds the legal title for the benefit of another or for certain specified objects. As managers, the trustees' (in Muslim law they are called "mutawallis") functions are only to manage the wakaf property and to apply the income as directed in the trust instrument. Under AMLA, control of all wakafs vests with the Majlis. It must be borne in mind that under s 58(4) the Majlis is empowered to remove the trustees of a wakaf when it appears to the Majlis that the wakaf has been mismanaged or it would be to the advantage of the wakaf to appoint a mutawalli.*

37 While it is true that in this case the trustees, pursuant to s 59(1) of the Trustees Act, did apply and obtain an order of court empowering them to sell the property, that was an *ex parte* order and the court's attention was not drawn to s 59 of AMLA. Such a court order empowering sale cannot confer title upon the party where that party does not possess title to the property in the first place. Section 59(1) of Trustees Act only applies "where in the management or administration of any property vested in trustees ...". Here the property did not vest in the trustees but in the Majlis.

[emphasis added].

65 In sum, a number of points can be gleaned from the decision of the Court of Appeal in *LS Investment*. First, the trustees of a *wakaf* could have applied to court to sell, lease or grant the property, *only "prior to the coming into operation of AMLA"*. Second, it was not within the province of the trustees of a *wakaf* to apply to court to sell the *wakaf* property as they did not hold legal title. Third, control of all *wakafs* vests with the Majlis and that the removal of trustees and the appointment of mutawallis was a facet of control which the Majlis possessed (at [36]). The collective effect is that the trustees of a *wakaf* may not apply to court to remove another trustee just as they may not apply to the court for the power of sale. This is because "[u]nder AMLA, control of all *wakafs* vests with [the Majlis]".

66 The Court of Appeal also noted that the trustees of a *wakaf* could not apply under the Trustees

Act as “they were no longer trustees in the English law sense, viz, someone who holds the legal title for the benefit of another or for certain specified objects”. The Court of Appeal most logically here points out that the Trustees Act could only be invoked by a trustee in the English law sense. I note that on this point alone, the Plaintiffs’ application to remove a trustee of the *wakaf* under the Trustees Act must fail, as the Plaintiffs and the Defendant were not trustees in the English law sense; consequently, the Trustees Act does not apply to them.

67 I highlight for completeness that the Court of Appeal similarly upheld the decision of the High Court that the Trustees Act did not apply to a *wakaf* in *Abdul Rahman bin Mohamed Yunoos and another (trustees of the estate of M Haji Meera Hussain, deceased) v Majlis Ugama Islam Singapura* [1995] 2 SLR(R) 394.

68 I refer also to the decision of the High Court in *Syed Abbas*. The Majlis appointed a mutawalli in relation to the Raja Siti Trust. The applicants in that case (“the Applicants”) were the executors of the will of the son of the testator of the Raja Siti Trust. They applied to the High Court seeking to be either declared or appointed trustees of the Raja Siti Trust in place of the Majlis. Later in the proceedings, the Applicants changed their position and asserted that they were not asking for the removal of the Majlis, but were merely seeking appointment as mutawallis. The High Court had to consider whether it could and should exercise its power under s 42 of the Trustees Act to appoint the Applicants as mutawallis. The High Court ruled that the Applicants had no *locus standi* and observed that even if the Applicants had *locus standi* it would not have granted the Applicants’ application. The court observed as follows:

39 In *LS Investment Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369, the Court of Appeal considered how *wakaf* were to be administered in light of the AMLA provisions in force. It observed at [36] that the effect of s 58(2) of AMLA was *that the true trustee of all wakaf is the Respondent in whom (by virtue of s 59 of AMLA) all wakaf property vests*. A trustee named in an instrument setting up a *wakaf* is not a trustee in the English sense of the word, but a mutawalli, ie, an administrator or a manager. By s 58(2) of AMLA, Parliament clearly signalled its intention that the Respondent should oversee the administration of all *wakaf*. Section 58(2) provides:

...

In other words, the Respondent is empowered by AMLA to administer all *wakaf* notwithstanding any provision to the contrary in the Trustees Act. *To invoke the Trustees Act to seek the removal of the Respondent from a position that it has been statutorily appointed to would be inconsistent with parliamentary intention.*

40 At a late stage in the proceedings before me, the Applicants changed tack and said that they were not seeking the removal of the Respondent as trustee, but merely seeking to be appointed as mutawallis pursuant to s 42 of the Trustees Act. In essence, their submission was that the statutory provision made the court competent to appoint *mutawallis* to a Muslim *wakaf*. I did not agree.

41 First, the “trust” in the Trustees Act undoubtedly refers to that under English law as received in Singapore and does not extend to encompass the Muslim *wakaf*. For example, Part III of the Trustees Act gives the trustee power to sell trust assets, which *mutawallis*, in whom trust property does not vest, cannot do without the approval of the Respondent. Similarly, s 35 of the Trustees Act allows the court to make an order vesting interests in land held in trust in such persons as it may direct. However, under AMLA, it is in the Respondent alone that title to trust property will vest. The concepts of “trust” under the Trustees Act and “*wakaf*” in AMLA are

clearly distinct. *It is untenable that certain provisions in the Trustees Act are to be selectively applied to facilitate the appointment of mutawallis, while others are ignored. It would be anomalous to make an appointment of a mutawalli under the Trustees Act and yet say that none of the powers conferred by that legislation could be enjoyed by the appointee.*

42 Second, there is no need to adopt a strained reading of the Trustees Act to appoint a *mutawalli* to a *wakaf* when ss 58(4) and 58(5) of AMLA already confer power on the Respondent to appoint and remove *mutawallis* and to remove existing trustees from a *wakaf*.

[emphasis added].

69 As noted in *Syed Abbas*, a *wakaf* differs from an English law trust as received in Singapore law. What follows, is that the Trustees Act cannot apply to trustees of a *wakaf*, as the Trustees Act deals with an English law trusts as received in Singapore law. In any case, as noted in *Syed Abbas* at [39], the true “trustee” of a *wakaf* is the Majlis; consequently, a trustee of a *wakaf* would not even have the *locus standi* to bring an application under the Trustees Act.

70 I subscribe to the views on dissonance between a trust under the Trustees Act and a *wakaf* under the AMLA expressed in *Syed Abbas*. Given this dissonance and the removing of title and administration from the trustees by Parliament, the fair conclusion must be that Parliament intended the Trustees Act not to apply concurrently to a *wakaf*.

71 These decisions are consonant with my analysis of the AMLA and the conclusions I have drawn from the same. I refer back to my discussion on the differences between the Endowments Ordinance and the AMLA at [35] – [49] above. Under the Endowments Ordinance, the trustees of a *wakaf* would have had legal title to the *wakaf* property. Therefore, they arguably had the *locus standi* to make an application in relation to the *wakaf* under the Trustees Ordinance as they were akin “English law trustees” *viz*, they held legal title to property for a beneficiary. In this regard, the court in *Syed Abbas* rightly makes the point that in the context of the AMLA, the true “trustee” (if one were to reason based on English law trust principles) was the Majlis as it was the one who held legal title; consequently, it would seem that the Majlis would in theory have the *locus standi* to bring an application to remove a trustee of a *wakaf* pursuant to the Trustees Act. However, this latter position is equally untenable because the Trustees Act would only apply to an English law trust. As noted by the Court of Appeal in *LS Investment*, the *wakaf* is a Muslim law juridical creature and is not be approximated to an English law trust. Therefore, it appears that the Majlis would not be able to direct a question to the court pursuant to the Trustees Act. However, Parliament appears to have understood these difficulties, and it is for this reason that it enacted s 63 of the AMLA to give the Majlis an avenue to direct questions to the court when it deemed necessary.

72 I note that Mr Tan also submitted that a distinction should be drawn between a *wakaf* contemplated in the AMLA and an “aspirational” *wakaf*. He argued that a *wakaf* under AMLA was based on the equitable doctrine of English law charitable purpose trust but with additional statutory attributes. In his view, the *wakaf* under the AMLA was a chimera which is predicated on a statutory modification of the English law charitable trust. In other words, an English law charitable purpose trust dressed up with features of a *wakaf*.

73 Given the Court of Appeal’s view in *LS Investment* that the *wakaf* was a Muslim law juridical concept, I do not think that there is a sound basis for this submission.

The term “trustees” in s 58(4) of the AMLA is used contextually

74 I now turn to the distinct use of the terms “trustees” and “mutawallis” in s 58(4) of the AMLA. The Plaintiffs argued – albeit tangentially – that because s 58(4) of the AMLA distinguishes between “trustees” and “mutawallis”, it must mean that the Trustees Act applies to those who fall within the definition of “trustees”. This argument is unmeritorious.

75 The definition of a mutawalli *simpliciter* in s 2 of the AMLA might seem unhelpful at first blush in ascertaining the Parliamentary intention behind the distinct use of “trustees” and “mutawallis” in s 58(4) of the AMLA; it states that the term “mutawalli” includes a trustee. Therefore we would have to distinguish between a mutawalli within the meaning of s 58(4) of the AMLA (“s 58(4) mutawalli”) and a mutawalli *simpliciter* as defined in s 2 of the AMLA, which must include “trustees” as referred to in s 58(4) of the AMLA.

76 On closer inspection of s 58(4) of the AMLA, it was clear to me that the terms “trustees” and “mutawalli” are used to identify the distinct ways by which an individual might be appointed to manage a *wakaf*. The trustee referred to in s 58(4) of the AMLA is essentially a mutawalli *appointed under the instrument/declaration* creating the *wakaf*. This is in contrast to a s 58(4) mutawalli who would be an individual *appointed by the Majlis* to manage the trust.

77 In light of the above analysis, the use of the term “trustees” in s 58(4) of the AMLA did not *ipso facto* suggest that the Trustees Act applies to these individuals. This is because the term “trustees” in s 58(4) of the AMLA is *used contextually* to refer to a class of mutawallis who are appointed pursuant to the trust instrument/declaration.

Application of principles to the present case

78 Having analysed both the Majlis’ powers as administrator of the *wakaf* and under s 58(4) of the AMLA, and the legislative position in Singapore after the enactment of the AMLA, I decided that I did not have subject matter jurisdiction over the VCT under the Trustees Act.

79 First, it was clear that Parliament’s intention in enacting the AMLA was to safeguard and protect the Muslim religion by giving the Majlis the power to regulate Muslim religious affairs. While Parliament gave the Majlis the power to refer questions to the court under s 63 of the AMLA, it must be remembered it was within the Majlis’ purview to decide if it should refer such a question to the court. Parliament therefore circumscribed the role of the court from that which existed before the enactment of the AMLA.

80 Parliament also made the Majlis the true “trustee” of a *wakaf* by automatically vesting property in it pursuant to s 59 of the AMLA and giving it sole dominion over the administration of *wakafs* pursuant to s 58(2) of the AMLA “[n]otwithstanding any provision to the contrary in any written law”. This coupled with the confirmation by the Court of Appeal in *LS Investment* (at [36]) that a *wakaf* was different from a trust within the Trustees Act and that trustees of a *wakaf* were not trustees within the Trustees Act meant that trustees of a *wakaf* did not have the requisite *locus standi* to bring an application pursuant to the Trustees Act. It is equally clear that there was *no written law* that conferred on this court subject matter jurisdiction over a *wakaf*. In the premises, the Plaintiffs’ application in OS 355 to ask this court to remove a trustee of a *wakaf* was legally unsustainable as the court had no subject matter jurisdiction over the VCT pursuant to the Trustees Act and the Plaintiffs had no *locus standi* to bring OS 355.

Observations on the operation of the SCJA

81 Both parties directed me to the provisions of the Supreme Court of Judicature Act (Cap 322,

2007 Rev Ed) (“the SCJA”). The arguments focusing on the SCJA related to whether the SCJA excluded the court’s subject matter jurisdiction over a *wakaf*. I set out the relevant provisions:

Civil jurisdiction – general

16.—(1) The High Court shall have jurisdiction to hear and try any action in personam where —

- (a) the defendant is served with a writ of summons or any other originating process —
 - (i) in Singapore in the manner prescribed by Rules of Court or Family Justice Rules; or
 - (ii) outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules; or
- (b) the defendant submits to the jurisdiction of the High Court.

(2) Without prejudice to the generality of subsection (1), *the High Court shall have such jurisdiction as is vested in it by any other written law.*

Civil jurisdiction – specific

17. Without prejudice to the generality of section 16, the civil jurisdiction of the High Court shall include —

- (a) jurisdiction under any written law relating to divorce and matrimonial causes;
- (b) jurisdiction under any written law relating to matters of admiralty;
- (c) jurisdiction under any written law relating to bankruptcy or to companies;
- (d) jurisdiction to appoint and control guardians of infants and generally over the persons and property of infants;
- (e) jurisdiction to appoint and control guardians and keepers of the persons and estates of idiots, mentally disordered persons and persons of unsound mind; and
- (f) jurisdiction to grant probates of wills and testaments, letters of administration of the estates of deceased persons and to alter or revoke such grants.

[emphasis added].

82 I also note that pursuant to s 17A of the SCJA, Parliament provided for situations where there would be concurrent jurisdiction on certain issues relating to matrimonial proceedings between the Syariah Court (constituted under the AMLA) and the High Court. Section 17A provides as follows:

Civil jurisdiction – concurrent jurisdiction with Syariah Court in certain matters

17A.—(1) Notwithstanding sections 16 and 17, the High Court shall have no jurisdiction to hear and try any civil proceedings involving matters which come within the jurisdiction of the Syariah Court under section 35(2)(a), (b) or (c) of the Administration of Muslim Law Act (Cap. 3) in which all the parties are Muslims or where the parties were married under the provisions of the Muslim law.

(2) Notwithstanding that such matters come within the jurisdiction of the Syariah Court under section 35(2)(d) or (e), 51 or 52(3)(c) or (d) of the Administration of Muslim Law Act, the High Court shall have jurisdiction as is vested in it by any written law to hear and try any civil proceedings involving matters relating to —

- (a) maintenance for any wife or child;
- (b) custody of any child; and
- (c) disposition or division of property on divorce.

...

83 The Defendant briefly alluded to the point that since the s 17A of the SCJA nowhere declares the jurisdiction of the court over *wakafs* within its fold, the court by implication had no jurisdiction over a *wakaf* pursuant to the SCJA. This point is not relevant to the present dispute. Pursuant to s 16(2) of the SCJA, the court would only have subject matter jurisdiction over a *wakaf* if it was conferred jurisdiction pursuant to *any written law*. This is why the Plaintiffs argued albeit unsuccessfully that the court had jurisdiction over a *wakaf* pursuant to the Trustees Act. Nevertheless, since the issue of s 17A of the SCJA was raised, I propose to make a few brief observations on its legislative history and operation.

84 Prior to the 1999 Amendments of the AMLA and the consequential amendments to the SCJA, s 16(2) of the version of the SCJA then in force ("Pre-1999 SCJA") was expressed as follows:

Notwithstanding subsection (1), the High Court shall have no jurisdiction to hear and try any civil proceeding which comes within the jurisdiction of the Syariah Court constituted under the Administration of Muslim Law Act.

85 Notwithstanding the above, it was the case that many members of the Muslim community still applied to the courts to have their matrimonial matters determined. It is not difficult to see why this was possible as the provisions conferring jurisdiction of the court over parties in s 16(1) of the SCJA are wide and Muslim parties might be able to bring themselves within the *in personam* jurisdiction of the courts under s 16(1) of the SCJA. Whether this approach was correct given the wording of s 16(2) of the Pre-1999 SCJA is not relevant to the point I am going to make. It is sufficient to note that Muslim community had become comfortable with the arrangement where Muslim parties had recourse to both the courts and the Syariah Courts in certain matrimonial matters.

86 During the 1999 Amendments, Mr Abdullah Tarmugi, then Minister for Community Development expressed the view that the then existing norm where both the courts and the Syariah Courts assumed jurisdiction over matrimonial matters had become questionable. He noted as follows (Singapore Parliamentary Debates, Official Report (30 June 1966) cols 440 – 442):

Both the Syariah Court and the Civil Courts have co-existed for many years. They have complemented each ...

...

This situation changed in 1995 when, in the case of [Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo [1996] 2 SLR(R) 80] the Court of Appeal ruled that Muslims cannot seek a Declaration from the High Court. Even though the Court of Appeal ultimately granted a Mandatory

Injunction to give effect to the Syariah Court's order, there was concern that this meant that in future, Muslims could no longer turn to the Civil Courts as they did before.

This concern was exacerbated when in November 1996, in [Lathibaby Bevi v Abdul Mustapha [1996] 3 SLR(R) 698], the High Court ruled that it had no jurisdiction to hear custody and maintenance cases involving Muslim children ...

87 The SCJA was amended subsequent to the 1999 Amendments to the AMLA and the court was granted jurisdiction over matrimonial affairs under, *inter alia*, circumstances listed in s 17A(2) of the SCJA. In this regard, I note that notwithstanding this carve-out, Mr Tarmugi highlighted the baseline position in the following manner (Singapore Parliamentary Debates, Official Report (30 June 1966) cols 443):

... What the Bill proposes is that, as a base, the Syariah Court would have jurisdiction over all matters presently within its jurisdiction where the parties are Muslims or were married according to Muslim law. ...

88 It became apparent from the analysis of the Hansard and the legislative position that s 17A of the SCJA was enacted to extend the court's jurisdiction to specific matters pertaining to Muslim parties and allow the court to assume jurisdiction over matters that might fall within the remit of the Syariah Court. The fact that the jurisdiction did not extend to include the powers of the Majlis does indicate that it was not intended that the court is to have concurrent jurisdiction over matters that the Majlis was to administer.

89 Having said that, the changes in relation to s 17A of the SCJA pertained to matrimonial issues relating to Muslim parties. It did not lend any direct assistance to the issue at hand. I focused parties instead on the key question in this case: did any written laws confer on the court subject matter jurisdiction over a *wakaf*? The Plaintiffs were not successful in identifying any such laws.

The inherent powers of the court

90 OS 355 was brought by the Plaintiffs urging the court to exercise its inherent powers in accordance with the Trustees Act. As noted above, the Trustees Act does not give this court subject matter jurisdiction on the *wakaf*. On this basis alone, the Plaintiffs application in OS 355 was legally unsustainable.

91 The parties raised the point – albeit tangentially – that this court might have some kind of residual inherent jurisdiction over a *wakaf* and incidental powers to remove trustees of a *wakaf*. As OS 355 could be adequately disposed of on the basis that the Trustees Act does not give this court subject matter jurisdiction over the *wakaf*, I saw no need to decide on this court's residual jurisdiction over a *wakaf*. In any case, I make some observations on this issue.

92 The Court of Appeal has provided guidance on when this residual inherent jurisdiction and powers of the court should be exercised in the decision of *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 2 SLR(R) 821. The Court of Appeal noted (at [27]) that “need” was the central touchstone for its invocation. The court also observed (at [30]) that “reasonably strong or compelling reasons showing why that jurisdiction should be invoked.” The Court of Appeal also cited (at [27]) Sir Jack Jacob's view in “The Inherent Jurisdiction of the Court”, published in *Current Legal Problems* 1970, that the inherent jurisdiction may be invoked only “when it is just and equitable to do so and in particular to ensure the observance of the due process of law”. *A fortiori*, the inherent jurisdiction of the court cannot be invoked when the statutory avenues have not been observed and exhausted.

93 I must point out that I would have not exercised my inherent residual jurisdiction and powers over a *wakaf* (if any) in the present case because the Plaintiffs had clearly not exhausted the statutory avenue available to them. The entire application also seems to have been brought for reasons less than proper and the Plaintiffs had refused to refer their dispute with the Defendant to the Majlis. I now turn to this.

The Plaintiffs refused to exhaust the statutory avenue available to them

94 The facts are salient. On 29 December 2014, the Defendant proposed that he and the Plaintiffs met the Majlis in order to sort out the various disagreements that he had with the Plaintiffs and regularise the management of the VCT. [\[note: 1\]](#)

95 The Majlis agreed to a meeting with the Plaintiffs and the Defendant on 24 February 2015. The parties then sought to fix an appropriate time. Two of the three Plaintiffs confirmed their availability on 1 April 2015. They stated that they were only available to meet the Majlis between 18 and 22 May 2015. Before this meeting could even take place, the Plaintiffs filed OS 355 on 21 April 2015. The Plaintiffs seemed to be bent on avoiding the Majlis and undermining its authority as the administrator of the VCT. In the premises, I would not have exercised my inherent residual jurisdiction and powers over a *wakaf* (if any) in the present case.

96 Even if the Plaintiffs had concerns over the Majlis' administration of the VCT (see [103] below), they nevertheless had to allow the Majlis to decide on the present dispute between the Plaintiffs and the Defendant in relation to the removal of the Defendant as trustee as Parliament intended that responsibility to vest with the Majlis. The only remedy the Plaintiffs might then have had would be to judicially review the decision of the Majlis based on principles of administrative law. Even then, the Plaintiffs could only seek to impugn the decision of the Majlis if they can show that the Majlis acted illegally, irrationally or in a procedurally improper manner. The court will not review the substantive merits of the Majlis' decision in a judicial review. I should hasten to point out that these are only my provisional observations, and they are not to be construed as impliedly suggesting that the Plaintiffs would have satisfied all other threshold requirements that the law might require an applicant to satisfy in bringing a judicial review.

Conclusion

97 In summary, the court does not have subject matter jurisdiction over the *wakaf* under the Trustees Act. The *wakaf* was a Muslim law juridical creature and not a trust within the meaning of the Trustees Act. The trustees of a *wakaf* are similarly not trustees within the meaning of the Trustees Act as they do not hold title to the property nor have administration of the trust, key attributes of an English law trustee. The trustees of the *wakaf* would therefore not have the *locus standi* to bring an application under the Trustees Act.

98 Parliament intended that the *wakaf* was to be administered by the Majlis. Indeed, the Majlis had the power to remove trustees under s 58(4) of the AMLA. The Plaintiffs have avoided going to the Majlis, possibly with the view that they might obtain a more favourable outcome from the court.

99 As an aside, I must highlight that the court's processes are not to be used to deliberately undermine the statutory authority afforded by Parliament to the Majlis. That would be an abuse of process and naturally, ought to be rebuffed emphatically.

100 In light of the above, the Defendant succeeded in Sum 2415 and OS 355 was struck out.

Postscript: events after I struck out OS 355

101 I aim to set out the events that transpired after my decision in Sum 2415 to give context on why the costs of Sum 2415 have not been dealt with.

102 I had invited the parties to submit on costs at the conclusion of the hearing of Sum 2415. As the parties were not ready to make submissions on costs, I allowed them to return on an adjourned date for this purpose. At the adjourned hearing on costs on 30 December 2015, I acceded to the Majlis' request for an adjournment that was conveyed through counsel for the Defendant. The Majlis sought the adjournment to seek legal advice in relation to the submissions made by the Plaintiffs as regards its administration of the VCT.

103 In their written submissions on costs in Sum 2415 filed on 24 December 2015, the Plaintiffs submitted that the Majlis' administration of the VCT was less than satisfactory. They also seemed to suggest that the Majlis acquiesced in the commencement and prosecution of OS 355 by staying silent and not registering its position. [\[note: 2\]](#) I note that none of this surfaced in the affidavits filed in support of OS 355. The submissions troubled the Majlis sufficiently to request an adjournment of the costs hearing on 30 December 2015 to consider how it ought to proceed in light of the same. The Majlis subsequently notified the court that it will be responding. It has since responded on 27 January 2016. The parties are scheduled to appear in the beginning of February 2016 to address me on costs.

104 I should make one further observation. The Plaintiffs also suggested that they were only appealing my decision in Sum 2415 because they were under the impression, in view of the Majlis' silence and alleged acquiescence, that they could be indemnified fully of their legal costs from the VCT. This was not a point that was raised in the course of the arguments before me in Sum 2415. I must confess that I found this a puzzling submission. Save for pointing out that the Majlis has been strident in its response against this submission, I shall say no more pending full arguments.

[\[note: 1\]](#) Defendant's affidavit dated 20 May 2015, para 22.

[\[note: 2\]](#) Plaintiffs submissions dated 24 December 2015, para 10.