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IN THE HIGH COURT OF JUSTICE

No. 3982 of 1990

IN THE MATTER OF AN APPLICATION BY JAMAAT AL MUSLIMEEN
(A LEGAL PERSON ALLEGING THAT THE PROVISIONS OF CHAPTER 1
OF THE CONSTITUTION HAVE BEEN CONTRAVENED, ARE BEING
CONTRAVENED AND ARE LIKELY TO BE CONTRAVENED IN RELATION
TO IT) FOR REDRESS IN ACCORDANCE WITH SECTION 14 OF THE
SAID CONSTITUTION.

BETWEEN

JAMAAT AL MUSLIMEEN

Applicant

AND

- (1) JULES BERNARD - COMMISSIONER OF POLICE
- (2) COLONEL RALPH BROWN - ACTING CHIEF OF DEFENCE STAFF
- (3) THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

Legal Appearances

Before Brooks J.

For Applicant - Mr. Ramesh Lawrence Maharaj,
instructed by Mr. El Farouk Hosein,
assisted by Mr. Sunil Hosein;

For Respondents - Mr. Ewart Thorne, Q.C., and
Miss Amelia Carrington,
Solicitor General. With them -
Mr. Neal Bisnath and Mrs. Denise Hackett,
instructed by Mr. Christopher Grant

JUDGMENT

By a Notice of Originating Motion (as amended) filed on the
6th December 1990, the applicant seeks the following reliefs under
Section 14 of the Constitution of the Republic of Trinidad and
Tobago -

- (1) a declaration that the entry and occupation by
the State between the periods 21st day of April
1990 to the 27th day of July 1990, from the
10th day of December 1990 to the 2nd day of April
1991, and from the 9th day of April 1991 and
continuing, of part of a parcel consisting of
approximately 8 acres, 2 roods and 5 perches,
and known as No. 1 Mucurapo Road in the City of
Port of Spain and which said part is bounded on
the East by a Road Reserve, on the West partly by
Bournes Road Ravine and partly by the
Audrey Jeffers Highway, on the North by Sewerage
Trunk Main Reserve 23.38 metres wide and on the
South by other lands of the State and partly by
the Greek Orthodox Church and partly by a Road

HC 3982/90: Jamaat al Muslimeen v. Bernard & Ors.

Reserve 137 metres wide and which measures 1.9324 hectares as described in Plan B exhibited to the affidavit of Andrew Bowles which is exhibited to the affidavit of Sadiq Al Razi sworn to on the 8th day of January 1991 and filed in these proceedings was and is unconstitutional and illegal in that its action contravened and is contravening the rights of the applicant as guaranteed in Sections 4(a), 4(b), 4(h) of the Constitution of Trinidad and Tobago;

- (2) a declaration that the entry and occupation by the State of the parcel of land (measuring 1.5203 hectares and 1.9324 hectares and described in the said Plan referred to in (1) above and which parcel of land is bounded on the East by a Road Reserve on the West partly by Bournes Road Reserve and Audrey Jeffers Highway on the North by Mucurapo Road and on the South by other lands of the State and the Greek Orthodox Church) from the 10th day of December 1990, to the 6th day of February 1991 was unconstitutional and illegal in that it contravened the applicant's right as guaranteed in Sections 4(a),(b) and (h) of the Constitution of Trinidad and Tobago;
- (3) a declaration that the demolition and destruction on or about the 18th day of September 1990 or at anytime during the State of Emergency between the 28th day of July 1990 to the 9th September 1990 by the State, its servants and/or agents of the State of buildings owned by the applicant and/or used by the applicant on the lands described in the said Plan referred to in (1) and (2) above as lands of Port of Spain City Council occupied by Jamaat 1.5203 hectares, is unconstitutional and illegal in that the said action by the State contravened the applicant's rights guaranteed in Sections 4(a),(b) and (h) of the Constitution;
- (4) a declaration that the action of the servants and/or agents of the State between 28th day of July 1990 and the 6th day of February 1991 in damaging the Mosque which stands on the said lands as described in relief (3) above contravened the applicant's rights as guaranteed in Sections 4(a),(b) and (h) of the Constitution of Trinidad and Tobago;
- (5) a declaration that the action and/or conduct of the officers of the State in preventing and/or hindering

and/or obstructing the applicant and its members in conducting religious worship at the said Mosque from the 10th day of December 1990 to the 6th day of February 1991 was unconstitutional and illegal in that such action contravened the applicant's rights as guaranteed in Sections 4(a), (b) and (h) of the Constitution of Trinidad and Tobago;

- (6) a declaration that the applicant and/or its servants and/or agents and/or licensees and/or visitors are entitled to enter upon and remain upon the said lands as described in relief (2) above;
- (7) such further and/or other orders, writs, directions as may be appropriate for the purpose of enforcing or securing the enforcement of the aforementioned rights of the applicant as the Court may seem just;
- (8) damages;
- (9) costs.

The grounds on which this Motion is based are as follows -

- (1) The applicant is a duly registered Company incorporated under the Companies Ordinance, Ch. 31 No. 1 of the Laws of Trinidad and Tobago on the 28th day of November 1989. The President by virtue of the provisions of the said Ordinance permitted the registration of the said Company as a Limited Liability Company without the addition of the word "Limited";
- (2) Prior to its incorporation as mentioned above, it functioned and operated as an unincorporated organisation concerned formally with the promotion of Islam and its teachings;
- (3) The applicant at all material times occupied a parcel of land known as Lot No. 1 Mucurapo Road in the City of Port of Spain comprising approximately 8 acres, 2 roods and 5 perches;
- (4) As an incorporated organisation functioning under the said name, the Jamaat Al Muslimeen since about 1972 occupied the said lands continuously until the Applicant Company was incorporated when with the concurrence and/or acquiescence of the Government it continued occupying the said lands;

- (5) Prior to the Jamaat Al Muslimeen occupying the said lands in or about 1972, the Islamic Missionary Guild since about 1969 occupied the said lands pursuant to a licence given to it by the Government for it to build an Islamic Cultural Centre. The lands at the time was substantially mangrove and the Guild started filling the lands and then built a temporary mosque on it;
- (6) With the concurrence and/or acquiescence of the Government of Trinidad and Tobago the Jamaat Al Muslimeen as an unincorporated organisation took over the lands from the Guild and continued operations for the construction of the Islamic Cultural Centre;
- (7) Between 1972 to the time the Jamaat Al Muslimeen was incorporated, it spent considerable sums of monies in filling the mangrove lands and erecting buildings. It extended the Cultural Centre to include an Islamic Store, a primary school, a secondary school and a permanent Mosque. It also constructed living quarters on the premises. Several members of the Jamaat with their wives and families lived on the premises;
- (8) After its incorporation it was in the process of constructing another building to house a secondary school when its lands were unlawfully invaded by members of the Police Service and Army on the 21st day of April 1990. There was no lawful authority for the invasion by the State of the said land which the applicant occupied;
- (9) By letter dated 24th day of April 1990 the applicant's Attorney on behalf of the applicant in a letter to the Respondents pointed out to the Respondents that they were acting illegally by having their servants and/or agents upon the said land. There has been no response to the said letter;
- (10) One hundred and fourteen members of the Jamaat Al Muslimeen were charged with acts of insurrection in respect of their alleged involvement in the said acts from the 27th day of July 1990 to the 1st day of August 1990. They are being prosecuted for offences including treason and murder which it is alleged arose from the said acts of insurrection. They have been in custody since August 1990 as a result of the said said-charges of treason and murder;

- (11) A general amnesty was granted by the Acting President of Trinidad and Tobago pursuant to Section 87(1) of the Constitution of Trinidad and Tobago to the said members of the Jamaat who were allegedly involved in the said acts of insurrection, but despite the grant of the said amnesty were prosecuted by the State in respect of offences allegedly arising from the said acts of insurrection;
- (12) The members of the Jamaat who were so charged commenced Constitutional proceedings under Section 14 to have the prosecution declared unconstitutional and illegal but the High Court again ruled in favour of the State on a preliminary objection and declined to adjudicate upon the merits of the matter. The High Court ruled that they cannot avail themselves of the benefit of the amnesty until they are all indicted at a trial and they plead same as a special plea in bar. An appeal against the decision of the Judge to the Court of Appeal is pending;
- (13) Some of the applicants applied to the High Court for leave of the High Court to issue a Writ of Habeas Corpus but the High Court did not again deal with the merits of the application as it ruled again in favour of the State in respect of a preliminary objection. Court ruled that no prima facie case for the Writ can be made out as the applicant for the Writ cannot get the benefit of the Amnesty until they are all indicted and the Amnesty is pleaded as a special plea in bar to the indictment at the trial at Assizes;
- (14) The State notwithstanding acquiescence to the occupation and possession of the said land by the Applicant both as an unincorporated organisation and an incorporated one has not taken any lawful measure to obtain possession. On the contrary, it has forcibly invaded and occupied the said land and is using force to remain in occupation of same. The officers of the State have broken the law in taking such a course of action but they have not been prosecuted for same. They have been treated by the State as being above the law. The officers of the State are using the form of military right against the Applicant to keep its servant and/or agents out of occupation of the said land;
- (15) The Applicant's rights as mentioned in Sections

4(a),(b),(d) & (h) have been contravened and are likely to be contravened having regard to the aforementioned matter.

The following affidavits were used in support of the Applicant's case -

- (a) that of Sadiq Al Razi sworn on the 11th December 1990 and the exhibits thereto appended;
- (b) that of Safiyyah Atiba sworn to on the 12th December 1990 and filed on the 13th December 1990;
- (c) the affidavit of Safiyyah Atiba sworn to on the 18th December 1990 and filed on the 18th December 1990;
- (d) the affidavit of Vincent Harding sworn to on the 10th March 1991 and filed on the 11th March 1991;
- (e) that of Muhammad Ahamad Tariq sworn to on the 24th April 1990 and filed on the 24th December 1990;
- (f) the affidavit of Abdul Barr sworn to on the 10th April 1991 and filed on the 11th April 1990;
- (g) further affidavit of Sadiq Al Razi sworn to on the 8th day of January 1991 and filed on the 9th January 1991;
- (h) the affidavit of Massahoud Ali Aziz sworn to on the 29th day of May 1990 and filed on the 9th January 1991;
- (i) the affidavit of Anisa Abu Bakr sworn to on the 18th day of May 1991 and filed on the 21st May 1991;
- (j) the joint affidavit of Messrs Yasin Abu Bakr, Bilaal Abdullah, Ahmad Ali, Kwesi Attiba, Kibwe Attiba, Abdullah Omowale and Olive Enyahooma-El sworn to on the 11th June 1991 and filed on the 12th June 1991;
- (k) that of Jamila Alimayu sworn to on the 11th June 1991 and filed on the 12th June 1991;
- (l) the affidavit of Jamilah Askari sworn to on the 11th June 1991 and filed on the 12th June 1991;

- (m) the affidavits of Zainab Abdal Karim and Ameena Abdul Wahib respectfully sworn to on the 11th June 1991 and filed on the 12th June 1991;
- (n) that of Abdul Hafeez Ali sworn to on the 24th April 1990 and filed on the 24th April 1990;
- (o) affidavit of Sadiq Al Razi sworn on 18th December 1990 and filed on same date.

On the Respondents' behalf the following affidavits were sworn to and filed - and referred to:

- (1) the affidavit of Noor Kenny Mohammed sworn on the 17th December 1990;
- (2) that of Christopher Grant sworn on December 24, 1990;
- (3) the affidavit of Victoria Mendez sworn on the 25 June 1990;
- (4) those of Jules Bernard sworn on 24 May 1990; and 22nd June 1990;
- (5) affidavit of Andrew Boules sworn on 22nd June 1990; and the exhibits appended thereto;
- (6) affidavit of Christopher Grant sworn on 10th May 1991;
- (7) affidavit of Oscar Blenman sworn on 29th December 1984;
- (8) affidavit of Brinsley Samaroo sworn on the 24th May 1990;
- (9) affidavit of Carson Charles sworn to on the 25th May, 1990;
- (10) the affidavit of Hilda Goodial sworn on the 25th June 1990;
- (11) the affidavit of Joseph Theodore sworn on the 5th day of July 1990;
- (12) affidavit of Christopher Grant sworn on the 23rd January 1991;
- (13) the affidavit of George Robinson sworn on 29 May 1991;

(14) affidavit of Ralph Brown sworn on the 29th
May 1991.

In order to appreciate the issues involved herein, and to understand fully the facts and circumstances of this case, it is necessary, I think, to set out the material parts of the various affidavits of some importance filed in this matter, or, at least, the relevant portions thereof. At the same time, it is more realistic to reproduce the exhibits attached to some of these affidavits as appendages at the end of this Judgment.

The affidavit of Sadiq Al Razi sworn to on the 11th day of December 1990 reads as follows:-

2. "I am a member of the Jamaat Al Muslimeen since about 1972. At that time the said Jamaat was an unincorporated organisation. It has been occupying a parcel of land comprising 8 acres, 2 roods and 5 perches known as No. 1 Mucarapo Road, (hereinafter referred to as the said land or premises). At the time when the Jamaat started occupying the said land it was substantially mangrove land. It had a temporary mosque on it. After the Jamaat got possession of the said land it spent considerable sums of monies in clearing and filling the said lands. It built several buildings on the said land. It pays the necessary rates and taxes for the said land to the City Council and it pays rates to the Water and Sewerage Authority and the Trinidad and Tobago Electricity Commission.
3. A permanent Mosque which was built by the Jamaat on the premises in 1984 cost it approximately \$500,000.00, a medical clinic which was also built by the Jamaat on the premises, cost it about \$50,000.00, an unfinished dormitory which was also built by the Jamaat on the premises cost it about \$85,000.00 a two-storey building which was also built by the Jamaat and which house a grocery, boutique and garment factory cost it about \$750,000.00 and four housing quarters which were also built by the Jamaat on the premises were built at a total cost of about \$200,000.00. A primary school at the cost of approximately \$85,000.00 was also built by the Jamaat Al Muslimeen on the premises. The Jamaat also operated a Secondary School on the premises which accommodated about 60 students.
4. The Jamaat spent approximately one million dollars in clearing and filling the swamp and mangrove on the said land to prepare same for building.
5. The Jamaat Al Muslimeen became a registered organisation on the 28th day of November, 1989 when it became incorporated. (A true copy of the Certificate of Incorporation is hereto attached and marked "S.R.1"). The President dispensed with the use of the word 'limited' after the name of the organisation.
6. During the year 1988 representatives of the Jamaat held meetings with Minister Brinsley Samaroo. I was one of the representatives at the said meeting. It was made clear during these meetings that Government was committed to giving us a deed for the premises but it was conditional upon us registering the organisation as a legal entity. It was pursuant to this request by Government that the organisation which functioned as an unincorporated organisation since its inception became registered on the 28th day of November, 1989.
7. The Jamaat Al Muslimeen both as a non registered and registered organisation concerned itself primarily with the promotion of Islam and the construction of an Islamic Cultural Centre for the promotion and propagation of Islam. It took over possession of the said land from the Islamic Missionary Guild which was given the right to occupy the said lands by Government for the purpose of it erecting such a Centre. With the knowledge and/or concurrence and/or acquiescence of the

Government of Trinidad and Tobago the Jamaat Al Muslimeen took over the said land from the Islamic Missionary Guild and the Guild with the knowledge and approval of the Government of Trinidad and Tobago relinquished its rights and privileges in favour to the Jamaat Al Muslimeen in respect of the said premises. The Jamaat has been in possession of the said premises continuously since then until the State of Emergency in 1990. The possession by the Jamaat of the said premises was with the full knowledge of, concurrence with and acquiescence by the Government of Trinidad and Tobago. (There is now produced to me and marked as "S.R.2" a true copy of the letter from the Government giving permission to the Guild to occupy the said lands and as "S.R.3" a true copy of the aims and objects of the Applicant Company registered as part of its Memorandum and Articles of Association).

8. On the 21st day of April, 1990 at about 5.10 a.m whilst most of our members were praying at the Mosque about 20 vehicles consisting of Army and Police personnel numbering about 100 entered the said premises. They were armed with machine guns and occupied the unfinished residence on the premises and they have remained in continuous occupation of part of the said lands until about 27th day of July, 1990. They produced no warrant or authority from the Court to enter and/or remain upon the lands and from that date until the 27th day of July, 1990 when I was last on the land they maintained an armed military and police presence upon the said land.
9. By letter dated 22nd day of April, 1990 addressed to the Chief of Defence Staff and Commissioner of Police our Attorneys requested the said officers of the State to leave the said land or supply them with reasons for the entry and occupation of the said lands. There was no reply to the said letters. There is now produced and marked "S.R.5a and "S.R.5b" respectively the said letters mentioned above.
10. At the time of the invasion of the said premises by the Army and Police as mentioned above there were about sixty members of the Jamaat living on the premises. I was last on the premises on the 27th day of July, and up to that time the same amount of members lived on the premises. This amount included children who attended schools at the premises. The Mosque has an attendance of approximately one thousand worshippers. The primary school started in 1972 and participated in State examinations and projects. The Secondary School started in 1977 and also participated in State examinations and projects.
15. On or about the 1st August, 1990, members of the Jamaat including myself were taken into the custody of the military and we are still in custody. We have been charged for offences including murder and treason which the State alleges were acts of insurrection committed between 27th July, 1990 to 1st August, 1990 at the Red House and Television House. We were in respect of the alleged acts of insurrection granted a Presidential Amnesty by virtue of the powers of the President under Section 87(1) of the Constitution of Trinidad and Tobago. Notwithstanding the grant of the said amnesty, we have been prosecuted for offences covered by the said amnesty and which the State alleges were committed during the alleged acts of insurrection. We have been kept in custody pursuant to the said prosecutions.
20. In the premises the rights of the applicant to the enjoyment of property, to equality before the law, to the protection of the law, to equality of treatment and to freedom of religious belief and observance as described in Sections 4(a),(b),(d) and (h) and as further particularized in Section 5 of the Constitution of Trinidad and Tobago have been contravened, are being contravened and are likely to be contravened in relation to it."

The affidavit of Safiyyah Atiba sworn to on the 12th December, 1990 and filed on the 13th day of December, 1990 is in the following terms:

"I, SAFIYYAH ATIBA of Gonzales, Belmont in the City of Port of Spain, Housewife, make oath and say as follows:-

1. The facts deposed to herein are true and correct and are based upon my personal knowledge.
2. I am a member of the Jamaat Al Muslimeen since about the year 1981. I started living on the premises of the Jamaat Al Muslimeen at No. 1 Mucurapo Road from that time and continued living there until on or about July 27th, 1990.
3. I lived on the said premises with my husband Kibwe Atiba, two nieces aged 10 years and 9 years, and our daughter aged three years. The children attended school on the said premises. They worshipped at the Mosque at the said premises and they attended the medical clinic at the said premises.
4. The Government of Trinidad and Tobago declared a State of Emergency on or about the 28th July, 1990 which Emergency lasted until on or about the 9th December, 1990. During the period of Emergency the said premises were occupied by the armed forces and I was unable to enter the said premises. As a result of not being able to enter the said premises I was denied the right to worship at the said Mosque on the said premises and my entitlement as a member of the Jamaat to reside at the said premises. I was not able to send the children to the school at the said premises as a result of the occupation of the said premises by the armed forces.
5. Despite the occupation of the said premises by the armed forces several wives of members of the Jamaat Al Muslimeen including myself through our Attorney Mr. Odai Ramischand notified the Commissioner of Police that the wives and their children intended to occupy the said premises.
6. Shortly after school re-opened in early September, 1990 the wives including myself and our children went towards the said premises and we were prevented by the said armed forces from entering the said premises. Our Attorney Mr. Ramischand pleaded with members of the armed forces to permit us to so enter the premises but his plea was refused.
7. Shortly after we were so prevented from entering the said premises and whilst the armed forces were still in occupation of the said premises buildings which housed the clinic, dormitories, residences, offices, the primary, secondary, kindergarten and nursery schools were demolished and destroyed. This destruction took place whilst the armed forces were in complete control of the premises.
8. I have noticed that the Mosque on the said premises has physical damage in that there are holes on the walls of the building. These holes and the damages to the Mosque occurred whilst the armed forces were in complete control of the building from on or about the 28th July, 1990."

The affidavit of Safiyyah Atiba sworn to on the 18th day of December, 1990, and filed on the same day runs as follows -

"I, SAFIYYAH ATIBA of Gonzales, Belmont, in the city of Port of Spain, Housewife, make oath and say as follows:-

1. The facts deposed therein are true and correct and are based upon my personal knowledge. I am authorised by the Jamaat Al Muslimeen to swear to this affidavit on its behalf.
2. On Sunday 16th day of December, 1990, at around 10:00 a.m I together with other members of the Jamaat Al Muslimeen, attempted to enter the premises at No. 1 Mucurapo Road, in Port of Spain, but we were prevented from entering the premises by armed soldiers and policemen. We were told by the said Officers of the State that they had new orders and that no one was prevented to enter upon the said premises. On Friday 14th day of December, 1990, we were not prevented from entering the said premises. We entered the premises on that date and worshipped at the Mosque.

3. After we were prevented from entering the said premises on Sunday 16th day of December, 1990, I waited with the other members of the Jamaat Al Muslimeen until other members of the Jamaat Al Muslimeen came. We again tried to enter the premises but were prevented from doing so by the said Officers of the State. We tried to talk to the Officers, but they refused to talk to us."

That of Vincent Harding sworn to on the 10th day of March, 1991, but filed on the 11th March, 1991, states:

2. "I live at the above mentioned address which is in very close proximity to the compound of the Jamaat Al Muslimeen which is situate at No. 1 Mucurapo Road. I have been living at this address for approximately five years. Prior to my going there to live my sister, Angella Harding Sylvester, lived at the said address for about thirteen years. I visited my sister regularly at the said address. During the period of time my sister lived there and during the period of time I have been living there I noticed that approximately eight to ten acres of land at No. 1 Mucurapo Road have been continuously occupied by the Jamaat Al Muslimeen. I have also noticed during this period of time that the Jamaat Al Muslimeen filled the land it occupied and constructed several buildings on the said land. Before it filled the said land the land used to be flooded and water-logged whenever the tide was high.

3. In or about the month of April, 1990 armed members of the Police Service and Defence Force of the Government of Trinidad and Tobago came upon the back portion of the lands which the Jamaat occupied. They have continued to occupy this portion of the lands which the Jamaat occupied. After the creation of the State of Emergency in July, 1990 armed members of the Defence Force occupied the remaining portion of lands which the Jamaat occupied thereby occupying the entire portion of the lands which the Jamaat Al Muslimeen occupied.

4. During the State of Emergency which was created in late July, 1990 I noticed that armed members of the Defence Force of the Government of Trinidad and Tobago continuously occupied the premises of the Jamaat Al Muslimeen and they appeared to be in total control of the said premises. Members of the public were not permitted to enter the premises without the permission of the said Defence Force. Members of the public were not even permitted to have access to Mucurapo Road between Ethel Street and the street which formed the east boundary of the said premises.

5. About one week after the State of Emergency was created I noticed one morning a building on the north western corner of the said premises which housed a boutique, grocery, garment factory and living quarters of Anisa Abu Bakr and Atiyah Abu Bakr was on fire. Shortly before the building was on fire I saw uniform members of the Defence Force upstairs of the said building. As soon as they came from upstairs of the said building I saw the building on fire. I telephoned the Fire Services Department and they responded to the call but I noticed that army personnel blocked them for about twenty to thirty minutes before they were permitted to have access to the building. The Fire Services were successful in putting the fire out but by that time the top portion of the building was destroyed.

6. During the night of the 17th day of September, 1990, the 18th day of September, 1990 and the early hours of the morning of the 19th day of September, 1990 I saw and heard demolition works being done at the said premises of the Jamaat Al Muslimeen. During the time these demolition works were being carried out armed members of the said Defence Force were in control of the said premises and armed members of the Police Service of Trinidad and Tobago were guarding outside the premises in the vicinity of Ethel Street and Mucurapo Road. The demolition works were being carried out on the buildings which stood on the premises of the Jamaat Al Muslimeen and by the morning of the 19th day of September, 1990 all the building on the said premises were demolished with the exception of the Mosque and the adjoining shed.

7. The armed members of the Defence Force continued to occupy the said premises after the buildings were demolished until the conservatory

order of the High Court was made herein when they confined their occupation to the back portion of the said lands, the portion which they occupied from April, 1990. They have maintained an armed presence on the said back portion of the said lands to date."

By the affidavit of Muhammad Ahmad Tariq sworn on the 24th April, 1990 and filed on the 24th December, 1990 -

2. "I am duly authorised by the Jamaat Al Muslimeen to swear this affidavit on its behalf.
3. I am a member of the Jamaat Al Muslimeen since its inception in about 1972 and I know the Jamaat has been occupying premises referred to in this matter since 1972. I was also a member of the Islamic Missionaries Guild since 1965.
4. The JAMAAT AL MUSLIMEEN is occupying 8 acres, 2 roods and 5 perches of lands situate at No. 1 Mucurapo Road in the City of Port of Spain. The lands are bounded on the North by the Mucurapo Road, on the West by Bournes Road Ravine 17 feet wide on the East by a road reserve and the Mucurapo Junior Secondary School and on the South by State lands. This parcel of land is hereinafter referred to as "the premises". (A true copy of the Memorandum of Articles of Association with its Certificate of Incorporation are now produced to me in a bundle and marked "MAT1").
5. The Government of Trinidad and Tobago gave permission to the Islamic Missionaries Guild for it to enter the premises and carry out works necessary for the construction of an Islamic Cultural Centre. The Guild had made representations to the Government that the Centre would include among other things a Mosque, a clinic, schools, living quarters and administrative offices. A true copy of the letter dated 23rd January, 1969 together with the relevant plan of the premises are now produced in a bundle and marked "MAT2".
6. At the time when the said Guild was granted the licence by the Government to occupy and develop the lands the lands consisted of mangrove and swamps. Pursuant to the grant of the said licence as mentioned above the Government of Trinidad and Tobago through a Minister of Government at the time Mr. A.A. Thompson laid a foundation stone at the premises in a ceremony held by the said Guild to mark the start of work for the construction of the said Islamic Cultural Centre.
7. In several meetings which the Jamaat Al Muslimeen had with Ministers in the Government of Trinidad and Tobago between 1972 and 1983 the Government promised to regularise the tenancy of the premises in question in favour of the Jamaat Al Muslimeen by having a Deed of Lease prepared in its favour. These meetings were held with Ministers Cuthbert Joseph and Muriel MacDavidson who both gave assurances to the Jamaat Al Muslimeen that the Government would have the necessary Deed of Lease prepared and signed granting the lease of the premises described in the Statement dated 24th day of April, 1990 which accompanies this affidavit to the Jamaat Al Muslimeen.
8. A temporary Mosque was constructed on the north eastern section of the premises by the Guild in 1969 and between 1972 and 1984 the Jamaat Al Muslimeen from time to time extended it to include an Islamic Book Store, a Primary School and a temporary Secondary School. The Jamaat Al Muslimeen spent approximately \$200,000.00 in the construction of these extensions. All these buildings were of concrete foundation with wooden super structure. The cost of construction of the temporary Mosque was in the vicinity of \$50,000.00.
9. In 1984 after the constructions mentioned above the Jamaat Al Muslimeen started to construct a permanent Mosque. After the construction of the permanent Mosque the temporary Mosque was converted as an extension to the Secondary School.
10. In December, 1984 the Jamaat Al Muslimeen started construction of the present permanent Mosque. Following the commencement of the construction of same the Port of Spain City Council took High Court proceedings against Imam Abu Bakr and the Jamaat Al Muslimeen in High Court Action

No. 5927 of 1984 and in an ex parte application obtained an injunction restraining the Jamaat Al Muslimeen and me from trespassing on what the City Council alleged to be their lands and restraining us from erecting or continuing to erect any buildings on the said lands. A copy of the order is hereto attached and marked "MAT 3". The Jamaat Al Muslimeen and/or Imam Abu Bakr did not appear in the matter as the stance was taken that neither the Imam nor the Jamaat Al Muslimeen were trespassers. We did not seek legal advice. The building of the Mosque continued to its completion and Imam Abu Bakr was arrested for contempt of Court for disobeying the Court Order. He served 21 days simple imprisonment for same.

11. The Mosque was constructed at a cost of approximately \$500,000.00. The Jamaat Al Muslimeen built the Mosque without any approval plans from the Town and Country Planning because it refused to consider an application for permission to construct the Islamic Centre Complex on the ground that the Jamaat Al Muslimeen had no deed showing our estate or interest in the premises.

12. In June of 1984 the Port of Spain City Council communicated with the Jamaat Al Muslimeen stating that it was regularising the tenancy of lands under its control at Mucurapo and offered us a lease of a suitable lot on the conditions mentioned in the said letter. (A copy of the said letter is now produced to me and marked "MAT 4"). We adopted the attitude that the State had given us a licence to occupy the full parcel of land referred to as the premises above and it promised to give us a deed for an estate or interest in the said premises.

13. After the Mosque was constructed the Jamaat Al Muslimeen built four housing quarters to the south of the old Mosque two of which are still incomplete. A Primary School was also built just south of the new Mosque. A Medical Clinic was constructed in 1989 south of the old Mosque. The dormitory which is unfinished was also built south of the old Mosque. In 1989 the Jamaat Al Muslimeen also constructed a building which consisted of a grocery, boutique and garment factory all concerned with the promotion of the use of the Islamic food and clothes."

The affidavit of Massahoud Ali Aziz sworn to on the 29th day of May 1990 and filed on the 9th January 1991 reads as follows -

"I, MASSAHOUD ALI AZIZ of Junon Street West, California, in the Ward of Couva in the Republic of Trinidad and Tobago, Secretary of the Islamic Missionaries Guild of the Caribbean and South America (hereinafter called "the Guild") make oath and say as follows:

1. I am the Secretary of the Guild and I am duly authorised by the Guild to make this affidavit on its behalf. The facts deposed to herein are within my own personal knowledge or gleaned from the Guild's books, papers and records except where otherwise stated. I further state that the facts deposed to herein are true and correct.

2. I have read what purports to be a true copy of the affidavit of Brinsley Samaroo sworn to on May 24th, 1990 and filed on May 28th, 1990 herein. The facts herein stated are in answer thereto.

3. As to paragraph 4 of the Affidavit of Brinsley Samaroo I attended along with other Executive members of the Guild several meetings with Minister Samaroo who was informed that the Jamaat Al Muslimeen was an offshoot of the Guild and that they have continued using the said lands to promote the aims and objectives of the Guild. It is untrue to say that the members of the Guild indicated to the Minister that they did not want to be closely associated with the Jamaat Al Muslimeen. The delegation reiterated the Guild's position that the entire Eight Acres, Two Roods and Five Perches (8A,2R,5P) be granted by deed of Lease to the Jamaat Al Muslimeen.

4. The Guild has made it quite clear in their various representations to the past and present government that it has no claim to the said lands and/or the buildings thereon since the Jamaat Al Muslimeen which was previously unincorporated but is now incorporated began its work at No. 1 Mucurapo Road, Woodbrook. Further the Guild has relinquished in favour of the Jamaat Al Muslimeen all its interest in the lands and buildings at No. 1 Mucurapo Road, Woodbrook."

The affidavits filed on behalf of the Respondents read as follows -

Per Noor Kenny Mohammed sworn on the 17th December 1990:

"I, NOOR KENNY MOHAMMED, Deputy Commissioner of Police of St. James Barracks hereby make oath and say as follows:

1. As a result of reports made to me by members of the Police Service, I began, on or about April 9, 1990, to maintain observation of the land described in the Writ of Summons with a view to ascertaining precisely what were the activities being conducted on the said land by, or on the instructions of, the defendants. I had, at the time, been aware that there was an injunction against the defendants in force in relation to a parcel of land abutting on the said land on its north boundary belonging to the Port of Spain City Corporation and that that injunction had, among other things, required the defendants to pull down buildings erected by it on the Corporation's said land and not to trespass on it. My concern, therefore, was to ensure that the defendants did not seek to extend its occupation of the Corporation's land to the said land. It not being readily apparent on the ground what the line of demarcation between the two parcels of land was.

2. My observations revealed that the defendants had begun to lay the foundations of a building on the said land.

3. In order to prevent the continuation of construction work on the said lands or any further attempt by the defendants to occupy them a party of policemen under the command of Assistant Commissioner Dennis Taylor entered on the said lands on April 21, 1990. The party of policemen were accompanied by several members of the Trinidad and Tobago Regiment and the policemen and soldiers established a camp on the said land for the purpose of ensuring that no further work would be done on the proposed building and that no further trespass took place.

4. When I inspected the said lands (and immediately before the occupation by the police and army) there were on the said lands the following:

- (a) a concrete and steel foundation in the course of construction;
- (b) several steel beams lying on the ground and evidently intended to be used in the construction; and
- (c) a wooden shed in the course of construction, which I took to be a site hut being built for the purpose related to the construction of what was evidently proposed to be the erection of a substantial building on the said lands.

5. The defendants have done nothing further towards the construction of the said proposed substantial building but the reason for this is clearly the fact that they have been prevented from doing so by the continued presence on the said lands of members of the Trinidad and Tobago Regiment. They have, however, done nothing towards removing either of the structures placed by them on the said lands and it is evident that they have no intention of doing so, thereby maintaining the trespass constituted by the presence of the said structures on the said land."

Per **ANDREW BOWLES** sworn to on the 22nd June, 1990:

"I, **ANDREW BOWLES** of 27B Benjamin Street, Diego Martin, licensed land surveyor, hereby make oath and say as follows:

1. On May 23 and 24, 1990, I visited a parcel of land situated at No. 1 Mucurapo Road in order to survey and redefine the common boundary between lands owned by the Port of Spain City Corporation and lands owned by the Government at Mucurapo. Previous surveys of the area lodged at the Lands and Surveys Department as shown in Book #1143 Folio 117 show that the said land as delineated on the plan annexed to the affidavit of Mohammad Al Tariq as "MAT 2" sworn on April 24, 1990 and filed herein is owned partly by the Government of Trinidad and Tobago and partly by the Port of Spain City Corporation. The purpose of my survey, as I have said, was to define the precise boundaries of the lands and clarify the definition between the lands of the Port of Spain City Corporation and the lands of the State which, of course, share at least one common boundary line.
2. On my visit to the site I saw there members of the Trinidad and Tobago Police Service and members of the Trinidad and Tobago Defence Force are encamped on lands at the site. My survey of the common boundary line revealed, beyond any possibility of doubt, that the lands on which the police and the members of the defence force are encamped are lands owned by the Government of Trinidad and Tobago and not by the Port of Spain City Corporation - specifically that on no part of the lands revealed by the survey to be lands of the Port of Spain City Corporation was there any encampment or sign of occupation by any members of the police or the defence force. A true copy of the said survey plan is hereto annexed and marked "A".
3. Further, on the basis of the findings of my said survey as delineated in the said plan "A", I prepared a further plan showing the redefined boundary line between the lands of the State and the lands of the Port of Spain City Corporation. A true copy of the said plan is hereto annexed and marked "B". I have, on the said plan "B", also shown an incomplete concrete structure on the lands described thereon as being occupied by the applicant and the camps of the police and the Defence Force.
4. In carrying out the surveys and preparing the plans thereof I have followed the standard and accepted practice of consulting all known previous surveys of the area. The plans are, of course, duly signed by me.
5. A Mosque and six other fully completed buildings, all in close proximity to one another, lie on the plot owned by the Port of Spain City Corporation."

Per **CARSON CHARLES** sworn to on the 25th May, 1990:

3. "As to paragraph 8 of the said affidavit it is untrue to say as alleged that I ever told representatives of the applicant that the Government had decided to lease lands at Mucurapo to the applicant or anything to that effect. On September 11, 1989, I did have a meeting with representatives of both the applicant and the Islamic Missionaries Guild, which was a follow-up to previous meetings held with Minister Brinsley Samaroo while he held the portfolio of Minister of Decentralisation. The applicant and the Islamic Missionaries Guild had been invited by my Ministry to attend this meeting. It was held for the following reasons:
 - (a) To ascertain whether or not the applicant had been incorporated.
 - (b) To have the applicant's representative state their position on whether they were prepared to be dealt with as a member of the Islamic Missionaries Guild or as a separate body.
 - (c) To provide an opportunity to meet with the parties with whom the Ministry was expected or being asked to treat.
 - (d) To communicate the Government's concern about reports of encroachment by the applicant on additional State lands and its concern about reports of further unauthorised construction activity.
4. At the meeting I indicated that Government would not as a matter of policy be prepared to treat with any group of individuals concerning the leasing of State lands. The policy of the Government was that it would, in an appropriate case, consider applications for a lease of State lands where an applicant for such a lease was registered as an incorporated body. I was informed by representatives of the

applicant that the Jamaat Al Muslimeen had been incorporated. I subsequently discovered that they were, in fact, in the process of being incorporated at that time. I indicated that any proposal for a lease to the applicant would have to be submitted to Cabinet for its consideration. At the meeting I expressed my concern about reports of further unauthorised construction activity by the applicant's members at the premises at Mucurapo. A spokesman for the applicant said that the City Council was engaged in filling adjacent lands. I was assured by the applicant's representatives that they were not engaged in any further unauthorised construction activity. I am unable to recall who these representatives were, except that a Mr. Yasin Abu Bakr was one of them.

5. Furthermore, a decision on the leasing or any alienation of State lands cannot be made by any one Minister of Government but must be considered and agreed upon by Cabinet. In view of the assurances of the representatives of the applicant that they were not engaged in further unauthorised construction activity, I proceeded, in good faith, to instruct the officers of my Ministry to obtain all relevant information, and to consult my Cabinet colleagues with a view towards making appropriate recommendations to Cabinet in respect of the situation created by the illegal occupation by the applicant of Government lands and all questions, including the request of the applicant for the regularisation of its occupation, relating to that situation. I was however subsequently informed sometime in April 1990, that members of the applicant have in fact been involved in further unauthorised construction on lands at Mucurapo.

6. With respect to the possible regularisation of the applicant's illegal occupation, several matters needed to be examined e.g. the determination of ownership of lands at Mucurapo, and the respective roles to be played by the Port of Spain City Corporation and Central Government, the owners of the said lands. There has been no Cabinet decision with respect to any lease of the premises at Mucurapo lands to the applicant. I had made absolutely clear to the representatives of the applicant at the meeting referred to, that no land could be promised to it and that the question of the grant of a lease was a matter for Cabinet. They could not have left the meeting in any doubt about that.

7. The approach of the Government to the matter of squatting on State lands is one of sensitivity and caution and this is reflected in its policy, and I have been guided by this policy in my treatment of this matter. Moreover, the conduct of the applicant in relation to the question of squatting has been such as to make it undesirable for the Government to depart from this policy."

Per **BRINSLEY SAMAROO** sworn to on the 24th May 1990:

1. "I am, and have since 1st March 1989, been the Minister of Food Production and Marine Exploitation of Trinidad and Tobago. From December 19th to February 28th 1989, I was Minister of Decentralisation.

4. With respect to paragraph 7 of the affidavit of Sadiq-al-Razi, I say that I met with the Jamaat Al Muslimeen on November 21st 1987, October 7th 1988 and in November 1988. The background to these meetings was as follows: It had been proposed to make available to the Islamic Missionaries Guild (which is an incorporated body) certain lands at No. 1 Mucurapo Road (the lands in question in these proceedings) for religious and other purposes intended to promote the objects of the Guild. I had several meetings with representatives of the Guild, one of which took place in August 1987. The purpose of that meeting was to ascertain whether the Jamaat Al Muslimeen, the applicant herein, was a genuine branch or offshoot of the Guild and whether the Guild would be in agreement with the Government's treating with the applicant with a view to considering a lease to it of part of the said lands - whether, in effect, this would be consistent with the aims of the Guild and what the Guild's attitude to it would be. The applicant had been seeking to have such facilities from the Government. At the end of these discussions it was clear to me that the Guild did not want to be closely associated with the Jamaat Al Muslimeen. The three meetings referred to, therefore, were held with the applicant only and at the time of these meetings the applicant was already in unlawful occupation of the lands. The purpose of the meetings was to discuss whether that unlawful occupation could, and ought to be, regularised.

5. At the first meeting, representatives of the applicant who included Imam Yasin Abu Bakr enquired about obtaining a lease from the Government of the lands illegally occupied by the applicant at Mucurapo. I told them that the policy of Government with respect to the leasing of State Lands was, that as a prerequisite of any negotiations it would treat with the Jamaat Al Muslimeen only if it were a registered and incorporated body: the Government would not consider allocating lands

to any one individual.

6. At no time either at any of these meetings or otherwise, did I inform any of the representatives of the applicant that the matter had been submitted to the Solicitor General for preparation of the necessary deed. No such instruction was given to the Solicitor General.

7. Before any such instruction can be given to the Solicitor General, proposals must first be put to Cabinet for consideration and approval. Up to the time of my departure from the Ministry of Decentralisation no such proposals had been submitted to Cabinet. My meetings with the representatives of the applicant were entirely fact finding.

8. At those meetings I expressed my concern about reports of continued construction of unauthorised buildings at the premises at Mucurapo and I stated that continued unauthorised construction would seriously prejudice future discussions between my Ministry and representatives of the applicant."

Per HILDA GOODIAL sworn to on the 25th June 1990:

3. "On September 11, 1989, I attended a meeting at the office of Mr. Carson Charles, the Minister of Works, Infrastructure and Decentralisation (to whom I shall refer as "Minister Charles") at which, apart from Minister Charles and myself were five representatives of the Applicant and 3 or 4- I cannot quite recall which - of the Islamic Missionaries Guild, the latter of which is an incorporated body of the Islamic Missionaries Guild of the Caribben and South America, to give it its full title. Mr. Rene Wilkie, Permanent Secretary to the said Ministry, was also present. The purpose of the meeting was to listen to and clarify the respective requests by the two organisations, the Applicant and the Guild, for lands at Mucurapo and elsewhere to build establishments for the promotion of their aims. The Guild - and throughout this affidavit I shall refer to the representatives of the Guild and of the Applicant as "the Guild" and "the Applicant" respectively, except where it is necessary, and I am able, to identify a particular representative - said that they had, in 1969, been promised lands at Mucurapo, and later at Caroni, for the building of an Islamic Cultural Centre and that they were meeting with the Government by way of pursuing this promise. They said that they would prefer lands at some site other than Mucurapo but that they would accept a parcel of land at Mucurapo if no other was available. They suggested a parcel of land off the Solomon Hochoy Highway in the vicinity of Chaguanas.

4. I recall that Minister Charles enquired about reports of further unauthorised construction by the Applicant at Mucurapo and the Applicant said that what was in fact happening was that the Port of Spain City Corporation was engaged in land-filling on adjacent lands. Minister Charles said that, if it were the case that the Applicant had been carrying on further unlawful construction at the site, he would not be prepared to have any exchanges with them at all. Minister Charles then asked about the legal status of the Applicant and the reply was (from the Applicant) that it was incorporated. I then asked to see a copy of the Applicant's certificate of incorporation and memorandum and articles of association and someone said that Mr. Sadiq al Razi would provide me with a copy. The Guild confirmed that they, too, were incorporated and in due course sent me copies of their certificate of incorporation.

5. The following day, however, Mr. Sadiq al Razi telephoned me to say that the Applicant was not in fact incorporated, but that it has applied for registration and that a copy of the application would be sent to me by Mr. Hafeez Ali, Attorney-at-Law, who would be in touch with me. Mr. Hafeez Ali did telephone me to say that, when the incorporation of the Applicant was complete, he would send me a copy of the certificate and of the memorandum and articles of association.

6. With respect to the matter of incorporation, neither Minister Charles nor Mr. Wilkie nor I requested that the Applicant be incorporated. I merely inquired whether the Applicant was incorporated and Minister Charles explained what the policy of the Government was with regard to requests to enter into arrangements with unincorporated bodies. The allegation in Mr. Hafeez Ali's affidavit that a copy of the Applicant's certificate of incorporation was "delivered" to me "pursuant to" my "request to have the organisation incorporated in order that the Deed of Lease in respect of the lands which the Jamaat Al Muslimeen occupy could have been vested in an incorporated body" is totally false. I never made any such request for any such purpose. During the course of my telephone conversation with Mr. Hafeez Ali, he told me that he had received a communication from the Registrar General since July 1988, directing that he publish on behalf of the Applicant the necessary notice under the 14th Schedule of the Companies Ordinance, but that he had not yet done so, but that he would proceed to do so and send me a copy of the letter referred to; and that he would send me a copy of the draft memorandum and articles of association which he did under cover of a letter dated November 10, 1989, in which he requested a copy of the "draft lease". A true copy of my reply to this letter dated November 30, 1989 which simply acknowledged its receipt and said that its contents were receiving attention, is hereto exhibited and marked "H.G.1".

7. With regard to paragraph 4 of the said affidavit of Hafeez Ali, sworn April 24, 1990 and filed herein, the statements attributed to me and to Mr. Wilkie are totally untrue. What I told Mr. Ali was that the parcel of land of which the Applicant was in occupation was not vested in the State but was in fact owned by the Port of Spain City Corporation and that my view, therefore, was that there needed to be some agreement between the Government and the City Corporation before any arrangement with any third party could be arrived at.

8. It has been necessary for me, in the course of my duties, to make inquiries and to investigate the records relating to the matters which have given rise to complaint in these proceedings. The records are the records of the Ministry of Works, Infrastructure and Decentralisation. My researches have revealed that the Islamic Missionaries Guild was never granted a lease of any lands at Mucurapo because of objections by local Islamic organisations. The objections raised by local Islamic organisations - in particular, by the Anjuman Sunnatal Jamaat Association (ASJA) were that the Guild was not an indigenous body, that it was not representative of all the Muslim organisations in Trinidad and Tobago and that, in fact, it was a completely foreign body.

9. My researches also revealed that as a consequence of the above mentioned objections, the Guild was offered an alternative three-acre parcel of land at Caroni which it accepted.

10. The records also reveal that at no time did the Government agree to the lease or other disposition of the said lands at Mucurapo to the Applicant."

Per VICTORIA MENDEZ CHARLES sworn to on the 25th June 1990:

"I, VICTORIA MENDEZ-CHARLES, Public Servant of Lot No. 4, the Park, Glencoe, make oath and say as follows:

1. I am the Director, Town and Country Planning, Ministry of Planning and Mobilisation. I have charge and control of the Town and Country Planning Division. All applications for planning permission for development of lands in Trinidad and Tobago are submitted to the Town and Country Planning Division.

2. The facts stated herein are true and correct and unless otherwise stated within my own knowledge.

3. On May 22, 1990 in response to a request from the Permanent Secretary, Ministry of Justice and National Security, I wrote a memorandum addressed to the said Permanent Secretary stating that no planning permission had been granted to the Jamaat Al Muslimeen to carry out development of lands described in the said memorandum. A true copy of the said memorandum is now produced and shown to me and marked "V.M.C.1".

I have seen the plan dated June 7, 1990 compiled by Andrew Bowles, Land Surveyor. The lands described in the said memorandum are the same lands delineated on the said plan."

The deponents were not cross-examined by either side on their affidavits. But, opposing Attorneys commented from time to time on the various affidavits filed for and against/ ^{the applicant} herein - firstly, as to what inferences they felt the Court may or may not draw from certain averments contained therein; and secondly, as to what weight (if any) they thought should be attached to certain allegations embodied therein.

Allegations of fact on either side are set out in the various affidavits filed, and /^{this} Court will make specific findings of fact from time to time during the course of this judgment. Generally speaking, this Court will endeavour to resolve conflicts in the affidavit evidence as best it can, and will carefully examine the evidence as a whole, and will accept the evidence which appears to it to be more reasonable and probable.

It was common ground that -

- (a) the applicant became a duly registered company incorporated under the Companies Ordinance, Ch.31 No. 1 of the Laws of Trinidad and Tobago on the 28th day of November 1989, and that the President of the Republic of Trinidad and Tobago permitted this Company to be registered as a Limited Liability Company, without the addition of the word "Limited". See the Certificate of Incorporation hereto appended as Appendage D. Prior thereto, the Applicant functioned and operated as a group of individuals known as 'the Jamaat Al Muslimeen';
- (b) some one hundred and fourteen members of the Jamaat Al Muslimeen (which included the members of its Board of Management) have been charged with acts of insurrection in connexion with their alleged involvement in the said insurrection which took place in Trinidad and Tobago from the 27th day of July, 1990 to the 1st day of August, 1990. Criminal charges have been laid against them for offences involving treason and murder arising out of the said insurrection and they have been in custody since August 1990 on the said charges;

- (c) No. 1 Mucurapo Road, St. James, in the City of Port of Spain (the subject matter of this litigation) is comprised of two separate parcels of land, under different ownership. One parcel of land consists of 1.5203 hectares, the property of the Port of Spain City Council ("the Corporation") which up to the 27th July 1990 was occupied first of all by members of the Jamaat Al Muslimeen (whom I shall call "the unincorporated Jamaat") and then by the Applicant Company respectively. The other, totalling 1.9324 hectares, belongs to the State - with boundaries as demarcated on the Plan drawn by Mr. Andrew Bowles, Licenced Land Surveyor, as reflected in Appendage "A" attached. The two parcels, it would seem, make up altogether 8 acres, 2 roods, 5 perches - around which this dispute centres.

It was not in dispute that -

- (i) the Government of the Republic of Trinidad and Tobago, on the 23 January 1969, gave to a body called the Islamic Missionary Guild ("the Guild") a licence to enter upon a parcel of land to carry out any works necessary for the construction of an Islamic Cultural Centre. It did so by means of a letter dated 23rd January, 1969 from the then Permanent Secretary, Ministry of Planning and Development (one Eugenio Moore), to the General Secretary, Islamic Missionary Guild (Mr. M. K. Hosein), and the said letter made reference to a site and a plan, which, as we all now know, has turned out to be No. 1 Mucurapo Road, Port of Spain - the entire 8 acre parcel, or, to be more precise, 8 acres, 2 roods, 5 perches. See Exhibits A and B attached to the affidavit of Andrew Bowles and Sadiq Al Razi sworn on 22nd June 1990 and 11th December 1990 respectively;
- (ii) the said 8 acre parcel of land (or a substantial portion thereof) was covered initially in mangrove, and at some stage the mangrove was filled in by members of the unincorporated Jamaat;
- (iii) on the 29th December, 1984, the Corporation applied for and obtained against Yasin Abu Bakr and the Jamaat Al Muslimoon (the defendants therein) an Ex Parte injunction restraining "the defendants and each and every one of them whether by themselves their servants or agents or otherwise howsoever from trespassing on the Corporation's land - (the 1.5203 hectares) -

and from erecting or continuing to erect any building on the Corporation's said lands described in the Corporation's plan annexed to the affidavit of Oscar Blenman and bounded on the North by Mucurapo Road, on the South by proposed extension of Wrightson Road as shown on the plan and which said extension is now known as Audrey Jeffers Highway, on the East partly by lands of Fatima College and Maraval River and on the West by Bournes Road Ravine". It was further ordered that 'the said defendants forthwith demolish and/or remove the columns and steel beams and construction carried out on the North-Western side of the existing illegally completed structure painted green and white'.

- (iv) all the buildings belonging to the unincorporated Jamaat were constructed by the said organisation on the Corporation's parcel of land at Mucurapo - the 1.5203 hectares. See again the affidavit of Andrew Bowles and the Exhibits thereto appended;
- (v) the aforementioned injunctive order (prohibitory and mandatory) was never discharged or dissolved by a Court of Law. The contention of the Applicant in this regard is that injunction has been impliedly waived by the Corporation, a contention which this Court will examine at a later stage in order to determine whether there is any substance in it, or not;
- (vi) a temporary Mosque was built by the Guild in 1969 on the North-eastern portion of the Corporation's land;
- (vii) contempt proceedings were subsequently instituted against Yasin Abu Bakr by the Corporation for disobeying the Restraining Order made against him by a Judge of the High Court, and the said Yasin Abu Bakr was made to serve a term of 21 days simple imprisonment for breach of the said Restraining Order;
- (viii) no planning permission was granted by the Town and Country Planning Division either to the unincorporated Jamaat or to the Applicant Company to carry out any development works (which included the erection of the Mosque and other buildings) on the said site at No. 1 Mucurapo Road, St. James, Port of Spain, at any material time;

(ix) following the attempted 'coup', a State of Emergency was proclaimed in Trinidad and Tobago on the 28th day of July 1990 by the then Ag. President of the Republic of Trinidad and Tobago, which continued in existence until the 9th day of December 1990 when same came to an end. See Legal Notices Nos. 140 and 217 of 1990. During the period of Emergency, various Curfew Orders were published.

And now for a look at the relevant portions of the Republican Constitution.

Section 14 of the said Constitution enacts:

"14. For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.

2. The High Court shall have original jurisdiction -

- (a) to hear and determine any application made by any person in pursuance of subsection (1); and

may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.

3. The State Liability and Proceedings Act shall have effect for the purpose of any proceedings under this section."

Section 4 provides (so far as material) -

"4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely -

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (h) freedom of conscience and religious belief and observance."

And, for the sake of completeness, Section 5(2)(h) ordains:-

"5. (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not -

- (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

By Section 75 of the Constitution:

- "(i) There shall be a Cabinet for Trinidad and Tobago which shall have the general direction and control of the Government of Trinidad and Tobago and shall be collectively responsible therefor to Parliament;
- (ii) The Cabinet shall consist of the Prime Minister and such number of other Ministers (of whom one shall be the Attorney General) appointed in accordance with the provisions of section 76, as the Prime Minister may consider appropriate."

"Cabinet"; according to section 2 of the Constitution, means the Cabinet constituted under the Constitution.

Pursuant to the said 'attempted coup' in Trinidad and Tobago on the 27th day of July 1990 by members of the organisation called the Jamaat Al Muslimeen, a State of Emergency was declared in Trinidad and Tobago.

The Proclamation, which gave effect to that State of Emergency reads as follows -

**"LEGAL NOTICE No. 140
REPUBLIC OF TRINIDAD AND TOBAGO
No. 1 of 1990**

**By His Excellency JOSEPH EMMANUEL CARTER,
Acting President and Commander-in-Chief
of the Republic of Trinidad and Tobago.**

**J. EMMAN CARTER
Acting President**

A PROCLAMATION

WHEREAS-

(a) it is enacted-

- (i) by section 10(4) of the Constitution that a "period of emergency" means inter alia any period during which there is in force a Proclamation by the President declaring that a state of public emergency exists; and
 - (ii) by section 8(2) of the Constitution that a Proclamation made by the President shall not be effective unless it contains a declaration that the President is satisfied that action has been taken or is immediately threatened by any person, of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community of supplies or services essential to life; and
- (b) I am satisfied that such action has been taken or is immediately threatened.**

Now, therefore, I, JOSEPH EMMANUEL CARTER, Acting President as aforesaid in pursuance of the powers conferred upon me by section 8(1) of the Constitution hereby declare-

- (a) that action has been taken or is immediately threatened by persons or bodies of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life; and
- (b) that a state of emergency exists in the Republic of Trinidad and Tobago.

Given under my hand the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 28th day of July, 1990."

That period of Emergency in Trinidad and Tobago was extended on the 9th November 1990 for a further period of one month by means of a Resolution which was passed in the House of Representatives, and which runs as follows -

"LEGAL NOTICE No. 217
REPUBLIC OF TRINIDAD AND TOBAGO

THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

RESOLUTION

WHEREAS it is enacted by section 8(1) of the Constitution of the Republic of Trinidad and Tobago that the President may from time to time make a Proclamation declaring that a state of public emergency exists:

And whereas the President has by Proclamation made on the 28th day of July, 1990, declared that a state of emergency exists in the Republic of Trinidad and Tobago:

And whereas it is enacted by section 9(2) of the Constitution that a Proclamation made by the President for the purposes of and in accordance with section 8 shall, unless previously revoked, remain in force for fifteen days:

And whereas it is enacted by section 10(1) of the Constitution that before its expiration the Proclamation may be extended from time to time by resolution supported by a simple majority vote of the House of Representatives, so however that no extension exceeds three months and the extensions do not in the aggregate exceed six months:

And whereas on the 10th day of August, 1990 the Proclamation was extended by resolution of the House of Representatives for a further period of three months:

And whereas it is necessary and expedient that the Proclamation made by the President on the 28th day of July, 1990 declaring that a state of emergency exists in the Republic of Trinidad and Tobago, should be extended for a further period, not exceeding three months:

Now, therefore,

Be it Resolved:

That the Proclamation made by the President on the 28th day of July, 1990 declaring that a state of emergency exists in the Republic of Trinidad and Tobago be extended for a further period of one month.

Passed in the House of Representatives this 9th day of
November, 1990.

R. CUMBERBATCH
Acting Clerk of the House."

The State of Emergency was discontinued in Trinidad and Tobago
on or about the 9th day of December 1990.

During the period of Emergency, a curfew was imposed, embracing
different periods of time.

Reference should ^{be} made to the Curfew Order which, I think, is
most pertinent. It is Curfew Order No. 11, dated 17th September
1990. It is couched in the following terms:-

"LEGAL NOTICE NO. 184
REPUBLIC OF TRINIDAD AND TOBAGO

THE EMERGENCY POWERS REGULATIONS, 1990

ORDER

MADE BY THE COMMISSIONER OF POLICE UNDER REGULATION 4 OF THE
EMERGENCY POWERS REGULATIONS, AND BY VIRTUE AND IN EXERCISE
OF ALL OTHER POWERS ENABLING HIM IN THAT BEHALF.

THE CURFEW (NO. 11) ORDER, 1990

1. This Order may be cited as the Curfew (No. 11) Order, 1990.
2. The Curfew Order, 1990 is amended by deleting the Schedule
and substituting therefor the following new Schedule-

'SCHEDULE

The Curfew is in force in Trinidad only, between the
hours of 11.00 p.m. and 5.00 a.m. on the day following'.

Made this 17th day of September, 1990.

J. BERNARD
Commissioner of Police."

Mr. R.L. Maharaj for the Applicant opened his Address by
saying that the simple issue in this case was whether the action of
the Executive arm of the State (viz. the Police Service or the Army)
contravened and/or threatened to contravene the fundamental rights
of the Applicant in relation to its right to the enjoyment of
property, and the right not to be deprived thereof, except by due
process of law, the right to the protection of the law, and the right
to freedom of conscience and religious belief and observance, i.e.
section 4(a),(b) and (h) of the Constitution of the Republic of
Trinidad and Tobago.

It is trite law, he continued, that section 5 of the

Constitution further and better particularized the rights mentioned in section 4 of the Constitution, and therefore in determining whether the State contravened the rights of the Applicant, and in construing the full ambit of the rights protected in section 4(a),(b) and (h) of the Constitution, it was open to the Court to consider and determine whether, in the circumstances of this case, the action of the police and the army constituted cruel and unusual treatment of the Applicant, as it can form part of the rights prayed for under section 4(h) of the Constitution.

It was also open to this Court, he added, to determine whether the action of the State was fettered, having regard to the provisions of section 5(2)(h) of the Constitution as in the Whiteman case (Privy Council Appeal No. 52 of 1990), unreported.

Mr. Maharaj [for the Applicant] first of all submitted that the undisputed facts of this case show that the Applicant had been in possession of the entire parcel of land (8 acres, 2 roods, 5 perches) from 1972; that the Respondents in their affidavits acquiesced in the Applicant's possession of the said land; that whilst the lands were in the occupation of the Applicant, and with the full knowledge of the State, the Applicant constructed several buildings on the lands (the entire area). As it turned out (Mr. Maharaj added), most of the buildings are on the land owned by the Port of Spain City Council. These buildings multiplied over the years, consisting of a Mosque, school buildings, boutiques, and residential quarters. He referred to a letter dated 23 January 1969, addressed to the Islamic Missionary Guild, to which was exhibited a plan (a blurred one) which related to the same parcel of land at No. 1 Mucurapo Road, Port of Spain, surveyed by Mr. Bowles, and which is now reflected in the new plan drawn by Mr. Bowles which is appended to his (Bowles') affidavit.

In 1969, Mr. Maharaj continued, Government gave permission to the Guild (an organisation) to enter the entire parcel of land to do any works necessary for the construction of an Islamic Cultural Centre - e.g. preparing the lands for buildings etc. The Government was there telling the Guild (he argued) that it was permitted to enter the lands described in the plan (annexed to the letter) - the entire parcel - to construct an Islamic Cultural Centre, and to

carry out any works necessary for establishing such a Centre.

Further, Mr. Maharaj contended, the undisputed evidence is that at the time the Guild took possession of the lands, the lands abounded in mangrove and substantial sums of money were spent over the years in filling the lands to prepare same for construction works. It was also undisputed, Mr. Maharaj claimed, that the Guild, with the consent and approval of the Government of Trinidad and Tobago, handed over the lands to the Jamaat Al Muslimeen - referring at the same time to the affidavits of Massahood Ali Aziz, sworn to on the 29th May 1990 and Sadiq Al Razi sworn on the 8th January 1991 (para 4).

It was also stated by Mr. Maharaj that the Muslimeen, since about 1972, started occupying the lands, and its occupation thereof continued uninterrupted to the knowledge of the Trinidad and Tobago Government, and buildings were erected to its (Government's) knowledge. It is not a case (he exclaimed) where the applicant had trespassed on those lands - or had entered without (Government's) approval, express or implied. This was a case (he insisted) where Government condoned the occupation and/or possession of those lands by the Jamaat from 1972 onwards. It is significant (he asserted) that the State has admitted that it does not own the entire parcel of land, and the parcel of land which the State admits it owns is the lower portion of land on which there were only one or two buildings on that portion. The upper portion (consisting of 1.5203 hectares) is the portion of land on which the Mosque, the boutique, the dormitories, the schools and the other administrative buildings were constructed.

Next, complained Mr. Maharaj, it is also not disputed that the Executive arm of the State on the dates referred to by the applicant forcibly entered into possession of the land and forcibly remained in possession of same on the dates mentioned. In short, Mr. Maharaj maintained that the undisputed evidence showed that the Government, whilst the applicant was in possession of those lands in which its Executive arm acquiesced, without recourse to a Court Order to occupy same, and with the use of force (viz. firearms), entered upon the lands and maintained an armed presence thereon. Such action by the State, it was claimed, affected the applicant in its use and enjoyment of the land and affected it in the exercise of its rights to worship, and to observe its religion, and the State took that action without resort to law, thereby denying the applicant the protection of the

law. This forcible entry by the State upon the land to disturb the possession of the applicant constituted criminal conduct contrary to the provisions of the Statute of Forcible Entry - and no reasons have been advanced by the State for its forcible entry and maintenance of an armed presence upon the land.

Attorney for the Applicant, in the course of his arguments before the Court, made the following additional submissions on behalf of the Applicant Company:-

- (1) that the State (assuming it is contending that it entered the lands on grounds of national security) is not entitled to take possession of lands or buildings belonging to a subject for any administrative purpose, security purpose, or any other purpose connected with the defence of the realm. See Liversidge v Anderson 1942 A.C 206. If the State wishes to acquire private property (leasehold or freehold) there are provisions in the law enabling it to so acquire - for example, under the Land Acquisition Act. In acquiring the land, the State would have had to pay compensation to the Corporation and to the Jamaat, as the State cannot take away people's property without paying compensation therefor - citing Burmah Oil Co. v Lord Advocate 1965 AC 75. An Executive (he insisted) cannot interfere with the liberty or property of a subject unless it can show that it acted under powers bestowed on it by the law - Eleko v Government of Nigeria 1931 AC 662. There is no existing law or any law whatsoever (he stressed) which authorised the State to act as it did;

- (2) that the word 'property' and the expression "enjoyment of property" appearing under section 4(a) of the Constitution must be given a broad, generous and purposive construction. 'Property' includes not only concrete rights of property, but also abstract rights of property - both of which are protected under the fundamental rights provisions. Encompassed within its ambit is the goodwill of a business; and persons who have an interest in property - legal or equitable. The concept of 'enjoyment of property' involves a case of possession of land which is an integral part of enjoyment of property. And, he cited -
 - (a) Society Union Docks case, reported in the Law Reports of the Commonwealth - 1985, p.801;

(b) Attorney General of Gambia v Jobe - 1985
Law Reports of the Commonwealth, 556;

(c) Attorney General v Lawrence - Law Reports
of the Commonwealth, 421;

(d) Prakash Singh v Attorney General of Trinidad
and Tobago, unreported H.C.A #2443/1982, p.3.

Unless the State can show (Mr. Maharaj argued) that the interference with the rights of the Applicant had been lawful under a law in force in Trinidad and Tobago prior to the commencement of the 1976 Constitution, the applicant is entitled to redress under section 14 of the Constitution. The Respondents would also have to show that the resort to self-help was lawful, as being part of the law prior to 1976;

(3) that the entry and occupation of the ^{Corporation's} land in question by the State was unlawful and unauthorized by law (including the manner of entry), and was in violation of the due process clause and the protection of the law. He referred to the case of Shyroon Mohammed v The Attorney General of Trinidad and Tobago, unreported, H.C.A No. 1128 of 1980;

(4) that as regards the parcel of land owned by the Corporation, the question would obviously arise that the State had no basis whatsoever for going onto that land, as it was not the owner of the land, and, on the available evidence, it was not authorized by the Corporation to go onto that land, and it (i.e the State) had shown no basis whatsoever for being entitled to go onto the land. Moreover, by the State Liability and Proceedings Act (section 2 thereof), the Corporation is not regarded, according to Mr. Maharaj, as part of the State. See section 2 thereof. In public law, if the Corporation contravened a fundamental right, the Corporation was regarded as being answerable under section 14 of the Constitution on the basis that it is a public authority endowed with coercive powers. The Corporation is not a servant or agent of the State;

(5) that it was established law that a person in possession of land has a title to that land against the whole world except the true owner. Accordingly, as against the State, the Corporation has a better title to that

part of land belonging to the Corporation than the State. On the evidence, the buildings which stood on the Corporation's land were the Mosque built at an estimated cost of \$500,000, a medical clinic valued at approximately \$50,000, a dormitory valued at approximately \$85,000, an Islamic grocery, boutique, a garment factory valued at some \$750,000, four housing quarters, a primary school and a secondary school valued at approximately \$200,000 - and on the land owned by the State, a building had just commenced (i.e in the stage of construction);

- (6) that the case for the applicant had been put on the basis that there were buildings on the land and the State knew about the buildings and the State acquiesced in the construction of the buildings. Assuming the Court felt that those buildings were constructed not in accordance with the law - in that there was no planning permission obtained for them, and no prior health approval - it would make no difference (he said) to the redress to which the Applicant was entitled, because the applicant was in lawful possession of the land. As long as the applicant was in lawful possession, that is all that is required, together with an unauthorized act done to it by the State, which has resulted in a contravention of the applicant's fundamental rights. That was the reasoning in the Prakash Singh case and the Shyroon Mohammed case. In Prakash Singh, the State acquiesced in the possession of Prakash Singh ; in Shyroon Mohammed, the State did not do so. As far as section 4(a) of the Republican Constitution is concerned, all that the Applicant has to show is that he was in lawful possession. on the evidence before the Court, the applicant was in lawful possession, and the State acquiesced in that possession. Since the applicant was in lawful possession, the applicant had the right to the occupation and possession of the land - that is to say, the right to the enjoyment of the land (entire) and to the buildings on the land;
- (7) that there was a Constitutional obligation on the State to ensure that procedural provisions are in place so as to give effect and protection to the rights enshrined in section 4 of the Constitution, and if there are no such provisions, the State must create such a procedure and such provisions;
- (8) that as long as the facts give rise to a remedy under

section 14 of the Constitution, the fact that other remedies are available does not prevent the Court from granting redress under the said section 14 - See Maharaj v Attorney General, 1979 AC 395; Uric Bobb, unreported, H.C.A #967/78; Premnath Ramlochan, unreported, H.C.A #2441 of 1987; Mayor, Aldermen and Burgesses of San Fernando v Chandrawatee Ramlogan, unreported, Civil Appeal #54/1985. The Court would recognize that there was an avenue open to the State (as the City Council saw in the Ramlogan case) for demolishing buildings, which it considered to have been unlawfully constructed, provided it can satisfy the requirements of the Public Health Act, Chapter 35.01, section 16 thereof - Mayor, Aldermen and Burgesses of San Fernando v Chandrawatee Ramlogan, above. But the law prohibits the State from acting in that way (i.e making forcible entry etc.). The Town and Country Planning Act, Ch. 35:01, provides an appeal up to the Court of Appeal for a person who is aggrieved by a decision of the Town and Country Planning Authority. The rules of natural justice are available to a person who broke the law by erecting an unauthorized structure on his land. Remedies are available to such an individual at common law, under the State Lands Act, under the Public Health Ordinance, and under the Town and Country Planning Act. It was open to the State to have resort to the law to acquire possession if it so wanted. It did not do that, and so it denied the applicant the protection of the law;

- (9) that on the affidavit evidence (and in particular that of Sadiq Al Razi and Shafiyah Atiba) the Respondents have not denied it had knowledge of the presence of the applicant on the lands over the period of years, as alleged in the affidavit. The State also has not denied that substantial sums of money were spent on the premises in filling the lands and constructing buildings thereon. The affidavit of Shafiyah Atiba provides some positive evidence that the police and the armed forces were in occupation of premises, and whilst they were in occupation of the said premises, buildings were demolished and destroyed and the Mosque suffered damage - i.e holes in the building. Reference was made to Legal Notice #162/1990 - that those premises during the state of emergency were declared 'a prohibited area' on September 6, 1990. If there is a prima facie case established to show that there was destruction of property by the State and the Respondents have not adduced any evidence to contradict same, then the Court is entitled to infer on the balance of probabilities that the State had either demolished the

buildings, or was responsible for their demolition. The Court was referred to Cross on Evidence, 6th Edition, p.16 and p.32 - under the rubric "Failure to give evidence";

- (10) that as regards the State's portion of the land, there was evidence of occupation of the State's portion of the land, which was evidence of occupation by the Jamaat. There was on it the foundation of a building - from the 9th April 1990 - indicative of possession by the Jamaat. By Noor Kenny Mohammed's affidavit, the State was admitting that it had forcibly entered the land, using the strength of the police and the army. By Order 94 of the local Rules of the Supreme Court, machinery is provided for recovery of possession of land by means of summary proceedings;
- (11) that despite the fact that there was an action by the Corporation, and it had filed an action for trespass, the Corporation subsequently recognized that the applicant was in lawful occupation of the land, and it negotiated and treated with the applicant - even offering to grant to the applicant a tenancy in respect of the land. The Corporation, notwithstanding that it had got that order in 1984 (the injunctive order), collected rates and taxes in relation to that piece of land (viz. the Corporation's piece). But, in any event, the Respondents had no locus standi in relation to that piece of land, and could not use any order made in respect of that piece of land against the applicant, especially in light of the fact that a person in possession has better title, except the true owner. On the evidence, the Corporation has not regarded the applicant as a trespasser or a squatter. On the contrary, the Corporation has recognized the applicant as having a lawful and a legal interest to be there, and the State has not shown that from 1985 - 1990 the Corporation took any steps to enforce the order (injunctive) made in its favour. There was accordingly a waiver of that order - an abandonment of it - referring to Bowie and Lowe on Law of Contempt - 2nd Edition, at pp 460 and 462. The Corporation, having decided not to enforce the order (injunctive) - i.e to waive same - it cannot now be relied upon by a third party with no interest in the land. Reference was made at this stage to the affidavits of Muhammad Ahmad Tariq (paras 5 & 12 thereof); Victoria Charles and Jules Bernard;

(12) that there is no existing law in Trinidad and Tobago which gave the Executive the authority during peacetime to enter upon the land(s) on the grounds of national security, unless legislation authorises that action, or a state of emergency is proclaimed in relation to that particular land, and there are appropriate regulations made, giving the Executive the power to do so. The existing law in Trinidad and Tobago authorises the Executive (via the police) to enter upon land and to remain for a certain period of time on the land, if there is reasonable suspicion of criminal activity or actual crime being committed on the land. According to Mr. Bernard's affidavit, there was no legal basis for the police to have acted on those grounds by entering the land and remaining upon it. He could have entered with warrants, but we have no warrants before us. He could have entered without warrants if offences were being committed there, but there is no evidence of any offences having been committed. The Civil Service Union case (1984)3 All E.R 1935 had nothing to do with land, or with a written Constitution guaranteeing rights to the enjoyment of property. It is not a case on which the Respondents could rely. The Royal prerogative is now vested in the President, but the powers are circumscribed by the provisions of the Constitution - in particular, Chapter I of the Constitution .

After 1976, whatever prerogative power remained went to the State of Trinidad and Tobago, and the President exercises that prerogative on behalf of the State - See section 5(1) of the Constitution. Private property must be enjoyed and the State cannot hinder the enjoyment of private property, unless it acts in accordance with law. The common law of England does not permit even the Queen during peacetime to authorize an entry onto private property on grounds of National Security or to take property on grounds of National Security. There must be statutory powers to regulate that - See Burmah Oil Co. v Lord Advocate 1975 AC 75. In the absence of a state of emergency, or in the absence of specific statutory powers, it is contrary to the common law of England for the Executive to enter or remain on private property on grounds of National Security. There are in England statutory enactments, such as the Defence Act, which give the Executive specific powers. The Executive here has the machinery to deal with this sort of situation, which must be by way of Parliamentary approval or through a state of emergency. See the Attorney General of St. Christopher, Nevis & Anguilla v Reynolds 1980 AC 637; Eleko v Government of Nigeria 1931 AC 662, at 670.

Mr. Maharaj then referred to the second affidavit of Sadiq Al Razi filed on the 9th January 1991 - and in particular to paragraph 5 thereof. The evidence shows, he said, that rates were being paid by the Applicant Company respecting the lands, and that the lands were being used by persons.

He next dealt with the affidavit of Andrew Bowles sworn on the 22nd June 1990. It shows, he asserted, that all the buildings are on the City Council's lands. The only thing which lies on the State's land is the foundation of a building and army camps - positive evidence, he asserted, that the Jamaat Al Muslimeen occupied the land belonging to the State.

Attorney for the Applicant Company next drew attention to the affidavit of Vincent Harding filed on the 11th March 1991 - with reference to paragraph 2. This evidence has not been contradicted at all - he claimed. Citing Nixon Mungroo, unreported, H.C.A #2386 of 1987, he commented that affidavits must answer material allegations and there has been no denial by the Respondents' affidavits that the Applicant Company has been in continuous possession of the lands (entire) since 1972. It is the strongest circumstantial evidence that certain persons committed the act - there being no direct denial from people who could have answered. Such evidence, therefore, must be conclusive evidence that the Respondents burned, destroyed and demolished the buildings, and that they were responsible for their burning and destruction of same.

The next affidavit to be touched upon was that of Abdul Barr filed on the 11th April 1991 - (para 6 thereof). One sees, he stated, as respects the State's parcel of land (but for the short period between 2nd April 1991 and the 9th April 1991) that the Respondents had occupied that parcel of land from the 21st April 1990 to the present day and continuing. That occupation was in spite of the fact that there was an order of the High Court made by Mr. Justice Hosein on the 6th February 1991 - a Conservatory Order. The army left the land on the 2nd April 1991, but returned on the 9th April 1991. The state of emergency ended on the 9th December 1990. Other affidavits mentioned were those of Christopher Grant sworn to on the 10th May 1991 and Anisa Abu Bakr filed on the 21st May 1991.

Concluding his Opening Address, Mr. Maharaj summarised his points as follows -

- (i) that the applicant was in lawful occupation of the land. The State was not entitled to possession of those lands. The acts of interference by the State with the enjoyment of those lands were not authorized by law and were therefore in breach of the rights aforementioned. The acts of interference by the State directly affected the right to worship and of religious observance. The applicant was entitled to the protection of the law in that if the State wanted to interfere with its rights to the enjoyment of property and the right of religious worship and observance and the right to the protection of the law, it was obliged and required and mandated by the Court - that is to say, the Respondents were required, mandated and obliged by the Constitution to use the existing legal machinery to obtain either entry and/or occupation. Both the fact of entry and the manner of entry and occupation by the State contravened the Respondents' rights;

- (ii) the State has no locus standi to dispute the possession of the applicant or the right to possession of the Corporation's land. It is totally immaterial whether at the time when the Islamic Missionary Guild was given a licence by the State respecting those lands the State owned the Corporation's part of the land or not - as on the date of the impugned State action, the applicant was in possession, and the State has no locus standi whatsoever in challenging its possession or to dispute its possession or right to possession.

Rounding off his arguments, Mr. Maharaj said that the plea of abandonment of premises is available to a landlord only after he has determined a tenancy in respect of premises - for him to re-enter the premises occupied by a tenant - if the tenant has abandoned possession of the premises, provided the landlord can do so peaceably and without contravening the statutes of Forcible Entry. Mr. Maharaj further stressed that, having regard to the facts of this case, it was not open to the Respondents to rely on the principle of abandonment in regard to lands owned by the Corporation. And, he cited Hill and Redman's - Law of Landlord and Tenant - 15th Edition, 590, (Ch. vi)

in support of his contention; and Lacey v Lear 117 E.R 247. The conditions for the plea have not been satisfied, as the Respondents are trespassers on the land of the Corporation occupied by the Jamaat. The State entered forcibly before the 27th July 1990 and have maintained an armed presence there (on those lands) since the 27th July 1990. There could be no question of abandonment as the evidence shows that the State had prevented persons from going onto the land. Factually, Mr. Maharaj stated, the Respondents have not shown abandonment. On the contrary, the Respondents have recognized the entitlement and interest of the applicant in remaining on the land.

At this stage, the Court's attention was drawn to the affidavits of Messrs Yasin Abu Bakr and others filed on the 12th June 1991, para 4 of the affidavit of El Farouk Hosein, Jamilah Askari filed on the 12th June 1991, Jamila Alimayu sworn on the 12th June 1991 (paras 4,5 and 6 thereof), Zarib Abdal Karim sworn to on the 12th June 1991 and Ameena Abdul Wahid filed on the 12th June 1991. The Board of Management, he said, is the authority which has responsibility for conducting the affairs of the Jamaat Al Muslimeen. It is a Company which occupies through human beings. The affidavit of Jamilah Askari shows that there were valuable items stored on those premises. The premises were secured on the 27th July 1990. There was an intention on the part of the members of the Jamaat to return to Mucurapo the next day. Within two to three days after the 27th July, a member of the Jamaat was expelled by the armed services, with a specific warning that members of the Jamaat would not be permitted to re-enter the premises. The Respondents also took away articles from a building that was on the premises, whilst armed soldiers supervised the operations. Counsel for the applicant added that if someone leaves premises for a temporary period, but leaves articles thereon, it is incontrovertible evidence that the organization retained possession of the premises - that the members intended to continue occupying the premises. The applicant, through its members, continued their occupation of the premises, indicated an intention to return to the premises, and had their personal belongings on the premises. If the Respondents are relying on abandonment, they must show facts in support of abandonment. Tricia Charles appeared to

have been expelled from the premises. Mr. Maharaj reiterated that he merely had to show that the Jamaat was in lawful possession of land, and as long as he could show that the Jamaat was in lawful occupation, enjoying the use of the land, and that the State interfered with that enjoyment without lawful authority, then the applicant was entitled to the new remedy provided by section 14 of the Constitution, notwithstanding any other remedy which might have been available to it.

Mr. Thorne for the Respondents began his arguments by telling the Court that much of the matters deposed to in the affidavits filed on behalf of the applicant is really not evidence at all. There is a clear distinction, he noted, between a statement of fact or what is alleged to be facts, and the evidence by which those facts are to be proved. See Order 18 of the Rules of the Supreme Court. It is said in one of the affidavits, Mr. Thorne added - and also in the grounds of the Motion - that the licence granted by the Government to the Islamic Missionary Guild was continued by the Government in favour of the applicant. That is not evidence, Mr. Thorne said - and the Court would be asked in assessing the evidence in support of the applicant to reject that argument. No evidence has been adduced to show that it was so continued. In fact (Mr. Thorne continued), what is contained in that particular affidavit - which constitutes the background of the applicant's case - is of no avail for the grant of any constitutional relief sought.

Mr. Thorne next argued that throughout the affidavits (applicant's) and Mr. Maharaj's address, reference have been made to the Jamaat - without any apparent grasp of the implications that the applicant is a Limited Liability Company. A Company is a legal person, and has constitutional rights (see LJ Williams Ltd. v Percival Smith, H.C.A #176/78, unreported). A company is a separate legal entity, and has a separate legal existence from that of its members. There are no circumstances (Mr. Thorne stressed) in which the Court may in any respect whatsoever merge the identity of the Company with that of its members - or for that matter pierce the corporate veil. The corporate veil would only be pierced if the Company is a mere facade set up for the purpose of concealing facts. There is no justification here for piercing the corporate veil. A share-

holder cannot insure the property of the Company. Although the case for the applicant is that the applicant is in lawful occupation, there is nothing in the affidavits from which that might be apparent.

There are two fundamental situations to be addressed here, urged Mr. Thorne. They are:-

- (i) Was the applicant lawfully in possession of any lands at Mucurapo? and
- (ii) If the applicant alleges it was lawfully in possession of any lands at Mucurapo, what are the facts, and what is the evidence supporting those facts which show that the applicant was lawfully in possession.

The lands at Mucurapo, Mr. Thorne continued, consist of 8 acres, 2 roods, 5 perches - comprising two separate pieces of land - one in the ownership of the State; the other, in the ownership of the Corporation. Any rights alleged to exist in relation to these lands must be shown to exist in relation to the State Lands, and secondly, the Corporation's lands. If therefore a right is alleged to exist in relation to either or both pieces of land, it must be clearly shown with respect to either piece how the right arose. For example, it is alleged (Mr. Thorne contended) in the affidavits (applicant's) that a licence was granted to the "Guild" by the Government to enter upon the whole parcel of land. It will be seen that the applicant at some point declined to treat with the Corporation because of promises it said were made not to the applicant but to certain persons by the Government, and the Court has been told that this Minister said this, and the other Minister said the other. The Government could not (he said) (and it does not matter what any Minister wrote) grant rights to anybody relating to lands that did not belong to the State. Whatever was said or written, or done by the Government, or by any Minister of Government, or by anybody else on behalf of Government which purported to grant permission or a licence or any rights or shadow of a right in relation to the Corporation's land remained totally ineffective, and was incapable of providing a basis for an assertion of any rights whatsoever. The land belongs to the Corporation, and the Government could not give anybody any permission to go on it. This, Mr. Thorne stressed, should be borne in mind because Mr. Maharaj said that most of the

buildings occupied by the applicant and its members are on the Corporation's land. Later, Mr. Maharaj said that all the buildings are on the Corporation's land. Mr. Thorne pointed out that the case for the applicant was that it was promised this land.

It is impossible to say (Mr. Thorne pointed out) that the Company has been occupying any lands since 1972 - because the Company did not come into existence until 1989. It makes no sense to say that the Jamaat Al Muslimeen was functioning as an unincorporated body. The Company, when it came into existence, was completely different, and had nothing to do with who had been functioning as an unincorporated body. That distinction is important. That is why (Mr. Thorne declared) the Rent Restriction Ordinance, for example, makes a provision in section 14 of the Ordinance - at p.980. The reason for that is that even though the person who is carrying on business continues to carry on business there - as far as appearances are concerned, if he incorporates the business, then he has transferred the tenancy to the business - but the Company, being a completely separate entity, it is necessary for the Ordinance to say that the transfer is deemed to have had the consent of the landlord, otherwise the Company would be faced with proceedings for eviction. The applicant could not have been in occupation of any land at Mucurapo before 1989 - and this is not a mere technicality. It was not within the competence of the Government to grant a licence to the Guild or to anybody else to enter upon the Corporation's land. Whatever Mr. Moore said, was ineffectual, and it merely purported to authorize a trespass on lands belonging to the Corporation.

Mr. Thorne went on to state that no evidence was given of the transfer of any licence. The applicant's name, he emphasized, is Jamaat Al Muslimeen, and it was not in existence to take over any licence from anybody. Secondly, if a licence had been granted to the Guild, the Guild could not transfer that licence to anybody else. There is no question of any possessory title having been acquired by the Applicant. The Court will see (he continued) from the grounds and from the affidavit that what the applicant is really relying on (when it speaks of a licence) is an equitable interest deriving from the grant of that licence. That is to say, an Inwards v Baker equitable estoppel, arising from its being put into possession of the

8 acres of land, and in reliance on the promise that it would be granted an interest in the 8 acres of land, by reason of the acquiescence and the expenditure by it in improving the land, it has acquired an equity. That is what their case really is about. But it is impossible on the facts adduced by the applicant to show any such case, even if one accepted everything that was deposed on behalf of the applicant. It is impossible to say that the facts show any such equity, and it was impossible further as a matter of law to say that such equity can be shown. It was impossible (he noted) for any rights to arise with respect to any part of the lands as a result of the alleged treating with the Corporation.

In addition, the following points were made by Mr. Thorne Q.C. during the course of his submissions on behalf of the Respondents before the Court:-

- (1) that the Court was being asked to make a declaration with respect to lands belonging to the Corporation, which declaration will necessarily involve, or rather affect, or have some impact on the rights of the Corporation in relation to its own lands when the Corporation has not been made a party to these proceedings;
- (2) that the fact that applicant came into existence in 1989 quite precludes the applicant from availing itself of certain acts alleged or certain rights alleged in relation to other persons. Since the applicant company did not come into existence until 1989, it would not have spent money between 1972 and 1989. One of the distinct disadvantages of not being born is not being able to act, or to do anything for any purpose;
- (3) that the applicant is registered as a charitable non-registered profitable Company, whose objects are the promotion of the social goals - the welfare of humanity - referring at the same time to the Company's Certificate of Incorporation, its Memorandum of Association, and its Articles of Association. Paragraphs 2,3,4 and 6 of the affidavit of Mr. Razi are vigorously denied. No evidence was put on record that certain persons were trading as Jamaat Al Muslimeen - a non-registered Corporation.

The Plan drawn by Mr. Bowles has been acknowledged by the applicant, which plan shows the two separate pieces of land - one belonging to the State; the other, to the Corporation, both pieces making up altogether the 8 acres, 2 roods, 5 perches of land in dispute;

- (4) that there is pending against the Applicant Company an action by the State involving a claim for trespass on the State's lands at Mucurapo, and for an interlocutory injunction. And in answer thereto, Mr. Razi has exhibited certain plans drawn by Mr. Bowles - land surveyor, which shows that the 8 acres of land consist partly of land owned by the Corporation and partly by the State, and he says that the buildings erected by the applicant are all on the Corporation's lands. That action filed by the State alleges that the applicant began to lay the foundation for a structure on the State's land. There was a site hut on it. And the State stopped it - i.e went onto the land and stopped it - or, in any event, the applicant was prevented from continuing any construction on the land by the State sending the police onto the land;
- (5) that the Corporation had obtained an injunction against the applicant, restraining the applicant from entering or remaining on the Corporation's land, and ordering that all the buildings on it be demolished. This injunction is still in force;
- (6) that no details were provided by the Applicant of what constitutes this "treating". Why is the Court not furnished with this evidence? Because, there is no such evidence. The injunctive order is still in force, albeit it was obtained at the instance of the Corporation. It is an order of the Court, not an order of the Corporation. And, there is no way of waiving such an order. It can only be disposed of by being discharged. It (the order) is in force, and if indeed the Corporation has been "treating with" the applicant, at the very worst (from the Corporation's point of view, or from anybody else's point of view except that of the applicant), the only effect such a "treating" could have had would be to provide the applicant with a plea, or an answer, if proceedings in contempt were taken out by the Corporation for disobedience of the order. It is

nonsensical to say that the order was waived. There is no evidence that the Corporation has done so. Furthermore, the Corporation acted on the order by applying for and taking out contempt proceedings against Mr. Lennox Phillips, otherwise called Yasin Abu Bakr. Bakr was committed to prison for contempt of Court. If an injunction has been granted, and the party in whose favour it was granted sits around and does nothing about enforcing it, then, if after a long delay, he seeks to have the defendant punished for contempt, he might find that the Court might say that the defendant is in contempt, but might not inflict punishment because you sat around and did nothing about it. But the fact that nothing further has been done in no way operates to remove the injunction, nor is this situation capable of constituting a waiver;

- (7) the Corporation at one stage offered to grant a lease to the applicant - to discuss with the applicant what was termed "regularising the situation". The applicant then said we were not going to have anything to do with you. The State had promised to lease those lands to us. It is now immaterial because the Corporation has done nothing further. The injunction was obtained against a body called Jamaat Al Muslimoon. That injunction is still in force. Since the grant of that injunction, the applicant company has come into existence. Nonetheless, the applicant is bound by that injunction, because if an injunction is obtained against a party and some other party knows of its existence and has a direct interest in it, he must obey it - even though it was not obtained against him. The applicant could not escape the consequences of that injunction by saying it was not granted against him in those circumstances. The applicant company has notice of the injunction. In any event, Yasin Abu Bakr is the leader of the applicant, and he was a party to those proceedings, and also the applicant company accepts it is bound by the injunction except that it says that the injunction has been waived. The applicant company is not relieved of the consequences of that injunction merely by saying I was not a party to those proceedings - that I was not in existence. It is now attempting to do so;

- (8) the Corporation has not been made a Respondent to these proceedings. The Corporation ought to have been made a party. No inference favourable to the applicant company may be drawn from the fact that it has declined to make the Corporation a Respondent herein. The fact that the Corporation has not been made a Respondent deprives the Court of information which would have come from the one authoritative source on the point as to what is its (Corporation's) attitude. We simply do not know. This is a case where - having regard to the relief sought and since it affects land belonging to the Corporation - should not the Corporation have been made a party to these proceedings? The answer simply is 'yes'. We do not know if the Corporation is even aware of the existence of the applicant company. It (the applicant company) ought to have produced evidence from the Corporation which might explain why the Corporation is not a party - or that the Corporation is not interested. This company (applicant's) wishes to be treated differently from everybody else - that is to say, from all other companies;
- (9) that the licence was granted to the Guild, not to an offshoot of the Guild. The licence purported to have been in respect of the entire 8 acre block - part of which related to land belonging to the Corporation - and since the licence related to the entire 8 acres, it was inoperative for all purposes. In any event, that licence was granted to the Guild, and it was obvious the Guild abandoned it;
- (10) that with reference to the matter of acceptance of rates and taxes by the Corporation in relation to the buildings on the Corporation's land, quite apart from the fact that the statements thereon (i.e on the relevant Exhibits) refer to the "Islamic Missionary Guild", the Corporation was collecting rates and taxes relating to lands and buildings owned by the Guild. That apart, the Corporation has a statutory duty to collect rates and taxes on all buildings within its boundaries or area. It is bound to do so regardless of whether the buildings have been erected in breach of the law or not, and since it is saddled with such a duty, no inference against it may be drawn from the fact that it has collected such taxes, and to draw such an inference against the Corporation from its having done so would be to act in derogation

of the Corporation's title and rights to the possession and ownership of its lands in proceedings in which it is not a party;

- (11) that the Corporation's letter (dated June 24, 1984) states that the Corporation would be prepared to consider granting a suitable lot on the site. The letter was written in June 1984 - long before the Corporation undertook proceedings in trespass against the applicant company. The letter, therefore, has no effect. It is merely part of the history of events - except that it shows that the attitude of the Jamaat throughout has been to "fool around with" the Corporation and to base its claim to possession on an alleged promise made by the Government, and it was only after the failure of proceedings it launched with the object of having the Court pronounce in its favour in respect of its occupation of the Corporation's land that the Jamaat Al Muslimeen was prepared to talk to the Corporation at all;
- (12) that the case for the applicant company seemingly is that the title to the 8 acres of land is an equity that is based on or has come into existence by virtue of the promise of an interest in the 8 acres by the Government, and the expenditure of money on the improvement of the land in reliance on that promise - which is an Inwards v Baker equity. The other is an interference with the right of worship and freedom of religion. The applicant is a Limited Liability Company, and obviously, a limited liability company has constitutional rights which is capable of residing in a non-natural person such as a limited liability company - a company cannot worship;
- (13) that (reiterating) if an infringement of property right is alleged, then that right must be shown to exist, and to have been in existence at the time of the alleged infringement. A constitutional motion should not be used for the purpose of establishing a title to land or an interest in land. You must show the interest or title; you must show that it is your property. You must have that interest, right or property before you are able to ground a Constitutional Motion alleging an infringement. You cannot come to the Court with a Constitutional Motion, and ask the Court to decide, and then say that your interest has been infringed.

The Prakash Singh case (where the applicant was in possession of land) may be distinguished on a number of grounds. One must show a title, an interest, a property in the land before you can ground a Constitutional Motion. A right to possession would be an interest, but it must be shown. Here, all the affidavits filed are designed to establish a right which should have been established before /^{the Applicant} came to Court in these proceedings. Quite apart, it is impossible for this Motion to provide any relief on the basis of the affidavits filed in support. The Court must not go looking to see if there is a right of property, otherwise the Motion is misconceived. The situation here was not present in the Prakash Singh case. The claim of the applicant is a claim in "X" acres of land;

- (14) that where a party comes before the Court and says "I was let into possession of land by the owner, with a promise that I could occupy the land, and acting on that promise I expended substantial sums of money improving the land", the party cannot say that he is asserting any rights other than an equity. What he is talking about is an Inwards v Baker equity. Where a party asserts a right of this nature, that right is an equity, the precise definition of which, the nature of which, and the boundaries of which are not defined until the Court defines it, or them. It is for the Court (as Lord Denning said) to say what form the equity will take. But the party comes to the Court with the facts, and it is not until the Court pronounces in its favour that one is able to say precisely what that right is. The Courts may, or will formulate the right(s), depending upon the facts of the particular case. It may take any form, but until the Court says what the form is, nobody knows exactly what the right is. So, on the case set out by the applicant, there has not been a definition of any right(s). If the applicant wished to assert a right in constitutional proceedings, it should first have gone to the Court and asked the Court to declare the equity, and the Court would define the shape of the equity, and the applicant would then be able to say this is my right. That for the equity to be shown, the facts must be established - that the owner or person entitled to the land granted permission or acquiescence etc and in reliance on that, the plaintiff expended money in improving the land. The equity to be asserted must be based on expenditure on the owner's land;

(15) that the buildings which were demolished belonged to the Corporation, not to anybody else. They belonged to the Corporation, and it is for the Corporation to complain about their demolition - and not anybody else. If the applicant was lawfully in possession of the Corporation's land, the buildings thereon belonged to the Corporation. The Inwards v Baker equity is based on an equitable estoppel or a proprietary estoppel. But the route by which the equity is established is the law of estoppel. The Companies Ordinance stipulates that a Company such as this may not hold more than 2 acres of land without the consent of the President. See section 16 of the Companies Ordinance. It specifies a form of licence to be granted by the President for that purpose. The applicant here is asserting that it holds 8 acres of land. An estoppel cannot be set up in the face of a statute, if the statute imposes a certain requirement: UDC v Shoucair (1968)2 All ER 904. An exception to the rule is the Statute of Frauds - e.g. The Jamaican Moneylenders Law. This is not one of those cases in which the law allows an estoppel to be set up in the face of a statute - Kok Hong v Leong Cheong Kwong Mines Ltd. [1964]1 All ER 300; It is not the applicant's case that it is a squatter on 8 acres of land, or that it is a trespasser. The applicant is saying that it is in possession of 8 acres by right. The applicant has come to Court without any right, because the shape of the equity is only defined when a Court of Law defines it;

(16) the applicant acknowledges that the buildings were erected without planning permission. The erection of the buildings, and the failure to remove them were in disobedience of an order of the Court, that is still in force. What the applicant is therefore asking the Court to do is to put equity at its feet when it is in breach of the law with respect to its occupation of the land because the injunction requires the applicant to get off the land - the buildings having been erected without planning permission, and an order of the Court to pull them down has been disobeyed - a disobedience which has never been mitigated by any display of contrition on the part of the applicant company. No equity could have arisen by acquiescence on the part of the Government of the possession by the applicant of the Corporation's land, and its improvement of the land in reliance on a promise that it would be given an interest in the land, because the State was not the owner of the

Corporation's land. Whoever went into possession either under a licence, or at the behest of the Government was a trespasser;

- (17) it is said that the applicant was promised a deed of lease by the Government - but a lease, or an agreement for a lease is not enforceable, unless the lease provides a commencement date for the lease itself. See Harvey v Pratt [1965]2 All ER 786. No such right has been shown. Even the claim to the right is not an Inwards v Baker equity.

At this stage, Mr. Thorne Q.C. summarised his arguments as follows:

- (a) that the licence alleged to have been granted by the State was granted to the Islamic Missionary Guild. The evidence emanating from the Guild is that the Guild abandoned that licence, referring to the affidavit of Mr. Massahoud Ali Aziz sworn on 24th May 1990. The Guild could not abandon that licence or transfer it to anybody else;
- (b) the State had no authority to grant any licence to anybody in respect of the 8 acre block of land. It could grant a licence in respect of its own land. The Guild went into possession and performed reclamation works;
- (c) the evidence shows clearly that an attempt was made in 1990 by the Jamaat to erect or lay the foundation of a building on the State's land. At that point, the applicant was stopped. State has filed an action for trespass. The Court would expect some evidence that there was actual occupation of the State's land. Evidence points to the fact that it was only the Corporation's land that was occupied. That is where the buildings were erected. The Guild availed itself of the purported licence and occupied the Corporation's land only. There is no evidence therefore on which this Court could find that there has been any occupation of the State's land. The affidavit of Harding was sworn after the applicant made use of plans drawn by Mr. Bowles for the purpose of these proceedings. Harding could hardly be talking of occupation other than of the Corporation's land. Nobody else has given any indication of the nature of the occupation on

the State's lands. On the balance of probabilities, therefore, ^{the} Court must hold that there is no evidence to support a conclusion that there has been occupation of the State's land;

(d) the members of a Company are not the agents of the Company. They do not act on behalf of the Company. Their acts are not the acts of the Company. A Company acts by its Board of Directors - which delegates some of its powers to its officers. Not even an individual Director may act on behalf of the Company, because the directors are an authority as a Board. See Gower on Principles of Modern Company Law, 4th Edition, pp140/1. The acts of its members are not acts of the Company at all. The Articles of Association of a Company usually provide that the affairs of the Company will be managed by the Board of Directors. It is common also for an article to provide for the Board to appoint one of its members to perform certain functions of the Board. He would be the Managing Director. Separate identity is a fundamental requirement of Company Law. The situation in this Company is even more restricted. The members do not have authority in general meetings to act on behalf of the Company. See the Articles of Association and the powers of the Board of Management of the Applicant Company. They cannot in a general meeting reverse or rescind a decision taken by the Board. The members of this particular company at a general meeting cannot do anything on behalf of the company. They elect the Board and that is the end of the matter. The decision of the Board is final;

(e) if a licence is granted to a person, and that person dies, the death terminates the licence, unless the terms of the licence specify otherwise. But death automatically terminates the licence. In the sameway, if a licence was granted to an unincorporated body, and that body ceased to exist, the licence ipso facto came to an end. A close scrutiny of Mr. Harding's affidavit indicates that he was speaking about the Corporation's land. Mr. Razi in his affidavit states that the Jamaat (the unincorporated body) was occupying approximately 8 acres of land; yet when he comes to talk about erecting several buildings, he is referring to the buildings erected exclusively on the Corporation's land. The suggestion is that they filled in the lands - the whole 8 acre parcel. Even if the whole 8 acre parcel was filled in, the

filling in could not by itself constitute occupation. The filling in represents no more than an intention to occupy. There is nothing at all to show occupation of the State's land. When Mr. Razi speaks about an invasion in 1990, he is saying that the Jamaat had been in occupation since 1972 of 8 acres. But it was not until April 1990 - some 18 years later - that any building operations began on the State's land. What it points to is this - that it was not until 1990 that an attempt was made to occupy the State's land. They completed all the other buildings (Mosque etc. at great costs over the 18 year period on the Corporation's land;

- (f) that the sections of the Port of Spain Corporation Ordinance which impose a duty on the Corporation to collect rates and taxes can be found in Ordinance No. 35 of 1954, subsection 88 and 90, as amended. Section 88 provides for the Corporation to determine the gross rental value of every hereditament within the limits of the City. And section 90 provides for the collection by the Corporation of Corporation taxes on rateable hereditament - an annual rate of tax not exceeding 1%. "Rateable hereditament" is defined in section 87 as any dwelling house, warehouse, shop etc. And there is a definition provided of the term "reputed owner", as being some person whose name is entered on the books of the Corporation. In short, the Corporation's books do not necessarily show who the owner of the property is.

The Corporation's Register merely enables the Corporation to levy the rate on whosoever's name is entered in the Books of the Corporation. The Corporation is not concerned with who the owner is. Appendage G will show that the rates and taxes were still being paid in the name of the Islamic Missionary Guild. The Corporation had no choice but to collect the rates and taxes - a statutory obligation. There is no suggestion even in Razi's affidavit that anyone was expelled from the State's land. What Razi says is that they entered on the land and occupied an unfinished building. The applicant was not in occupation of the State's land. It was vacant. If anybody had been occupying the State's land or had been ejected from it, Mr. Razi would have said so. What the applicant's affidavit really complain about is the unsettling presence of the army and the police on the State's land - right next to the land that they occupy - the Corporation's land. There is nothing to contradict Mr. Kenny's affidavit that an attempt was

made to occupy the State's land (by their laying the foundation of a building thereon), but that attempt was stopped by the entry of the army and the police;

- (g) the State could not acquiesce in the taking over or assignment of a licence which it had no power to grant - and there was nothing in its terms to entitle the licensee to transfer it to anybody else. There could be no transfer by the Guild. No amount of acquiescence by the State could in any way give substance to a nullity. We are left with a situation that the land occupied by the unincorporated persons was a trespass on the Corporation's land - and no meetings with any Government Ministers or assurances allegedly given by them could clothe the occupation of anybody occupying that land - the Corporation's land - with legality. Moreover, the occupation as trespassers by a body known as Jamaat Al Muslimeen - an unincorporated body - was succeeded by a trespass by a Company called Jamaat Al Muslimeen;
- (h) if the Corporation had not taken proceedings in 1984, it may well have found itself faced with a claim to a possessory title to its land. Nobody is claiming any possessory title here;
- (i) to say that the applicant has been 'treating' with the Corporation is to say nothing. First of all, there has been no allegation or evidence that the Corporation at any point consented to the presence of the applicant on its land. Secondly, it has not been shown that the injunction obtained by the Corporation is not in force;
- (j) if certain individuals assert that they have a Constitutional right to worship at a particular Mosque, and that they have been obstructed in the exercise of that right, it is they who must institute proceedings in respect of that alleged infringement;
- (k) that the letter from Anisa Abu Bakr exhibited to the affidavit of Mr. Grant filed on the 10th May 1991 states quite unequivocally that she constructed the building and that she paid for it out of her own funds. She was saying in that letter that she owned and carried on a factory and that she had a stock of materials in it. That letter was written on the 22nd April this year (1991). Razi said it was built by the applicant. It is evident that all the buildings

were erected before the applicant company came into existence - so that they were not erected by the applicant company and there is no evidence to show that there was any purported transfer of ownership of the said buildings or any of them to the applicant company. There is nothing on record or in the affidavits of the applicant to show any purported transfer of any of those buildings to the applicant company, so as to entitle the applicant to make any claim whatever for damage or destruction to them.

The applicant was not the owner of these buildings at the time of their destruction, and had no rights to them at all - or any purported rights. The affidavit put in by Anisa Abu Bakr is plainly nonsensical - either one owns a building, or one does not. She is either the owner or she is not. She had already said in that letter that she had put up the building. She could not now say that the Jamaat had put it up. So she is saying at this stage that the money - her money - that she used to put it up was a gift to the Jamaat. She is not saying that having put up the building, she made a gift of the building to the Jamaat - which is on the face of the affidavit a lie - used to repair the damage to the applicant's case caused by her letter. She had already said in her letter that she had put up the buildings with her own money. Anisa Abu Bakr had gone to experienced Attorneys, and they wrote a letter in the clearest possible terms, claiming compensation for destruction to Anisa Abu Bakr's property. It is clear from the affidavit of Anisa Abu Bakr sworn to on the 18th May 1991 that she had voluntarily left the premises on the 27th July 1990. There is nothing to suggest that she was forcibly removed from the premises, and it is clear that she lived there until the 27th July 1990. The Court will observe that every member of the Board of Management of the applicant company is charged with offences relating to an insurrection against the State, and is in prison on those charges - that it is an irresistible inference that a decision was taken by the applicant company to mount the insurrection - that the applicant company was party to a conspiracy to overthrow the Government. Where therefore the applicant company was involved in a conspiracy which involved an armed assault on the Red House and Television house (Port of Spain), the Court is with the greatest respect bound to find that the applicant company had abandoned possession of the

premises for the purpose of mounting an insurrection against the State. The directors of the company acted in concert. The Court must infer that the applicant company had abandoned the premises. T The applicant company had left the premises for a criminal purpose, and the Board well knew that that criminal enterprise might have ended in the incarceration of the entire Board - that in every likelihood it might not have been able to return to the premises at Mucurapo. No evidence has been adduced to show that any other person have elected to act in place of the imprisoned directors. The applicant company left there (the premises) with its Board not knowing whether any of them would survive or come out with their freedom. That was an abandonment of the premises. It ceased to be in occupation from the 27th July 1990. They knew that it was more than likely that they would not be going back there. They moved out leaving anything there. Additionally, when the army went into possession of the Corporation's land on the 28th July 1990, there was no one in possession. There was nobody on the premises at that time. The army took possession of land which had been given up by the Applicant Company, which had been trespassing on it. When a trespasser goes out of possession, and somebody goes into possession, that trespasser is dispossessed. Accordingly, possession having been abandoned by the company, no infringement of any Constitutional rights can be alleged to have arisen from the possession taken by the army. Therefore, when the buildings were destroyed, the applicant company was not in possession;

(1) that the buildings were part of the land. See Mitchell v Cowie [1964] 7 WIR 118. The value of the land was enhanced by the erection of the building; but the buildings remained part of the land. Therefore, since the applicant company was a trespasser, and not a tenant, the buildings, or whatever their status, belonged to the Corporation. The buildings were the property of the Corporation. And if they were destroyed, it was for the Corporation to complain about their destruction. The buildings were destroyed at a time when the Applicant Company had ceased to be in possession;

(m) that since at the time of the destruction of the buildings on the Corporation's land, the army was in possession, the proper inference to be drawn from

the presence of the army on the Corporation's land may be as follows:

First, there is no allegation based on any direct evidence that the army destroyed the buildings, so that the Respondents therefore have not been presented with evidence which they are required to rebut. Secondly, an inference is not to be drawn from Colonel Brown's silence. Thirdly, the army must have known that the buildings were being demolished. It is inconceivable that so substantial an operation as the demolition of these structures could have taken place without the army being aware that it was taking place. But to know that it was taking place, to condone it even, is not evidence prima facie that the army did it. They must have known who did it, but that is no justification for inferring that it was the army or police who did it. There being no prima facie evidence to rebut, there was nothing to deny or to dispute about. If, for example, the applicant had come to Court and shown that the army or the police had had a bulldozer, which was seen on the ^{Corporation's} land at that particular time, or shortly afterwards, that would have been circumstantial evidence which the Respondents would have had to rebut;

- (n) no evidence had been adduced to show who erected the buildings. There is no evidence that ownership of the buildings had ever been transferred to the applicant company. Evidence has been put before the Court that a number of people had gone into possession of land at Mucurapo, and these people had called themselves Jamaat Al Muslimeen - an unincorporated body, referring to the affidavit of Razi sworn to on the 12th December 1990. The evidence shows that the process by which that body of persons called the Jamaat Al Muslimeen (unincorporated) replaced the Islamic Missionary Guild could not have been a voluntary one. Paragraph 7 of the affidavit of Razi says that the Jamaat Al Muslimeen "took over" from the Islamic Missionary Guild - whatever "took over" means. But there is no evidence that the Applicant Company, when it came into existence, took over possession of any lands from the group of persons calling themselves the Jamaat Al Muslimeen, or that there was any transfer of the buildings from the group of persons called Jamaat Al Muslimeen to the Applicant Company;

- (o) referring to the allegation that the Respondents have been in breach of the Conservatory Order, the position of the Respondents remains what it has always been - that is to say - that the Court had no jurisdiction to make it - that it is completely nugatory and without effect and that it is no order at all. So that if the Respondents wish, they can treat it as if it did not exist. But since the purported order is an order of the Court, the Respondents nonetheless would put such construction on it as it appears to intend, and pay respect to it;
- (p) that all the declarations sought involve the estate of the Corporation in the land. Since the Corporation is a public authority, then a declaration that the entry by the army and the police is unconstitutional is one to ^{which} the Corporation ought to have been made a party. Where a party is going to be affected by a declaration, he ought to be made a party to the proceedings. See Zamir on Declaratory Judgments, 282, Ch. 8 - Court should refuse a declaration, unless Corporation is a party. See Derek v Najaar [1976]28 WIR 340: ^{the} Court should refuse ^a declaration if the proper parties are not before the Court. The Corporation owns the land, and it got an injunction against that body of persons. The Corporation, therefore, should be a party: See Young on Declaratory orders - 1985 Edition, pp 49,50. Persons whose interest may be affected should be made parties. A person ought not to be made a party unless his interest is going to be affected - Guardian Assurance Co. Ltd. v Sutherland [1939]2 All ER 246. Court should not grant relief when the Corporation has been deliberately kept out of these proceedings. The Krakash Singh case, unreported, [H.C.A #2443 of 1982] has no relevance to these proceedings. In Krakash Singh, the Court accepted the lawfulness of title of Krakash Singh on the basis that the land had been in the occupation of his predecessor, or else that Krakash Singh had lawfully obtained possession from Dharansingh. No similarity exists between this case and that of Krakash Singh from which any principle may be extracted. The grant of a parcel of land to the Guild in Caroni shows an abandonment by the Guild of the licence. (Massahood Ali Aziz's affidavit). The Jamaat 'took over' at Mucurapo - which is proof of the termination and abandonment of the licence.

In Reply to the arguments advanced by Mr. Thorne Q.C.,
Mr. Maharaj urged that -

- (1) it was not the applicant's case that it is the owner of the property in question, or that it had an Inwards v Baker equity, or that it had acquired a possessory title in the lands. The case for the applicant in these proceedings simply is that it was on those lands, not as a trespasser, but in lawful possession thereof, and that the State interfered with the enjoyment of that possession. Unless the Respondents can show that the applicant was a trespasser, and that it did not acquiesce in the possession of the applicant, the applicant is entitled to redress;
- (2) As respects the Corporation's land, in law, the Respondents have no defence, and it is not open to the Respondents to say the Corporation owns the land, and assert title by the Corporation as against the applicant for the Respondents' wrongful acts. It is trite law that the applicant's possession of the Corporation's land is good against the whole world except the true owner. The applicant's possession of the Corporation's land in law as against the Respondents in prima facie evidence of title, and is sufficient to sustain the applicant's case against the Respondents, who cannot show a better title. Similarly, it is not a defence for the Respondents to say as regards the demolished buildings that the Corporation had a better title or right to possession of the buildings;
- (3) declaration No. 2 does not affect the rights of the Corporation regarding the land. The Corporation's rights are not affected;
- (4) Hilda Goodial in her affidavit admitted that the applicant was in occupation of the lands;
- (5) the Respondents have admitted and accepted that the applicant company had the same interest in the lands which the unincorporated association had;
- (6) the Respondents have also admitted and accepted that on the formation of the company, it (the company) continued in possession of the lands which were in the possession of the unincorporated association;

- (7) in any event, the affidavits filed on behalf of the applicant alleged and raised the issue of the applicant company being in occupation of the lands with the assent of the Respondents, and the Respondents did not specifically traverse that issue - and therefore the Respondents ought not to be allowed to contend seriously that the applicant company was not in possession or occupation of the lands. The undisputed evidence shows (especially the affidavits of Carson Charles and Brinsley Samaroo) that the Government wanted the unincorporated association to be an incorporated association - to be incorporated so that it could conduct negotiations with it in respect of the lands it was occupying. See affidavit of Sadiz Al Razi, paras 2 & 3 thereof. There was no doubt from the evidence that the Minister made it quite clear that the organisation had to be formed into a legal entity before the Government considered it could formalize any interest in the land in favour of the applicant. It was at the request of Government that a company was formed;
- (8) the right to worship is a right on behalf of its members. If the organisation's members were praying at the Mosque on the 21st April, that is evidence of the company being in possession. It is a charitable company. It is a legal entity. The Government regarded the unincorporated association as the same, and Brinsley Samaroo was saying in his affidavit that the applicant was in occupation;
- (9) the Respondents accepted and admitted that the unincorporated body had the same interest in the land as the corporate body, and therefore if the Government negotiated with the unincorporated body respecting the land, and that body formed itself into a corporate body with the same interest, it must follow that those aspects of the treating and negotiating with the unincorporated organisation have to be considered and weighed in favour of the Applicant Company as regards its status on the land;
- (10) as respects the State's land, the Government took no steps to get those people out of the land, and did not assert any right to the possession of those lands from 1969 to 1990;

- (11) assuming the Applicant Company does not have an equitable interest in those lands, and assuming that the licence is not transferrable either to the unincorporated or incorporated body, if the Applicant Company was in possession with the implied approval or licence of the State, and the State acquiesced in that possession, and interfered with the enjoyment of the possession of that land by its forcible entry on the land and by remaining thereon, that is sufficient/^{for the Court} to grant redress in favour of the applicant;
- (12) section 14 of the Constitution clothes the Court with jurisdiction to determine whether a person's interest (even an equitable one) has been violated by the State in an application before it. The Court is there as a custodian;
- (13) for the applicant to succeed, all that it has to show is that it was in possession of the land, and that the inference of its possession by the State was unlawful. Unless the Respondents can show that its action in forcibly entering the land and forcibly remaining in possession was action authorized in law, the applicant must succeed; property includes possession - which is property to be protected under Constitutional Law;
- (14) if a company is a Church, it can only worship through its members. The right to worship is given on behalf of its members. The Court should, disregard 'tabulated legalism';
- (15) the basis of my possession is that 'I was there as an unincorporated body from 1972, engaged in the promotion of an Islamic Centre from 1972 to 1989 - and that there were several discussions with Ministers of Government - previous and present - respecting my occupation of the lands. I got onto the land, with the permission of the Government and the Islamic Guild. My possession was acquiesced in by Government over the years after I had taken over from the Guild. Over the years, the Government talked with me, but took no steps to evict me';
- (16) the Guild got a perpetual licence from Government and that perpetual licence could have been transferred to the Jamaat, and there is evidence that that transfer was effected with the knowledge and acquiescence of the Government - and furthermore, that perpetual licence is an equitable interest in the land - see

Wuta Obei v Mabel Danquah [1961] WLR 1;

- (17) the licence was transferrable; The Guild was entitled to lease or sell its interest in the land;
- (18) the applicant, once in possession, does not have to show title, or how he got into possession, or his right to the land;
- (19) the principle in McPhail v Persons Unknown [1973] 3 WLR 71, and the Common Law principle relating to the defence of the Jus Tertii apply to the facts and circumstances of this case;
- (20) there has been no answer to the allegation made in relation to Ministers MacDavidson and Cuthbert Joseph. There have been no specific denials to this uncontradicted evidence. The actions of previous Ministers bind successive Governments;
- (21) only the Commissioner of Police had power to authorize persons to go onto those premises if that person was not a police officer or a member of the Defence Force in uniform. Any other person wishing to go there had to get the permission in writing of the Commissioner of Police. Civilians were not permitted to go there, unless they had the written permission of the Commissioner of Police.

That evidence (Harding's) at least raised a prima facie case that the Respondents were responsible for the demolition of the buildings, in that they either demolished the buildings by their servants or agents, or caused or facilitated the said demolition or destruction - See Cross on Evidence, at pp 32 and 33; There was no evidence called by the Respondents to deny that they had nothing to do with the demolition of the buildings. With respect to the fire, the place was not a prohibited area at that particular time. But when the demolition works took place, the area was a prohibited area. This circumstantial evidence/^{in this matter} called for an explanation from the Respondents. The circumstantial evidence was (1) there was a curfew in force at the particular time, and it was to be expected that the police would uphold the law. During the curfew hours civilians could not be outdoors without the permission in writing of the Commissioner of Police;

(2) the premises at Mucurapo were occupied by the police and the army (3) that shortly before the outbreak of the fire uniformed men of the Defence Force were

seen coming out of the building which went ablaze; (4) that Mr. Harding said he had telephoned the Fire Services Department, and when the Fire Service units arrived on the scene, the units were prevented for about 20 to 30 minutes from entering the said premises; (5) that when the units did enter the premises, the top portion of the building had already been destroyed by fire.

At this stage, leave was granted to Mr. Thorne Q.C. to deal with certain new points raised by Mr. Maharaj in his Reply.

Mr. Thorne forcefully reminded the Court that the applicant's case initially was that it was lawfully in possession of the 8 acre parcel of land at Mucurapo (and this was reiterated by Mr. Maharaj on more than one occasion) - and not simply that the applicant was in possession, as his Reply now disclosed - which raised a new case (and an entirely new issue).

Next, it was pointed out (by way of repetition) by Mr. Thorne that the 8 acre parcel of land consisted of two separate pieces of land in different ownership, and therefore it had to be shown (by the Applicant Company) that there was lawful possession of both parcels of land, which lawful possession could only arise from some right(s) shown to exist in the Applicant Company, arising from its dealings or transactions in relation to each parcel of land with the owner of that parcel. Secondly, that lawful possession must be shown apart from their (the Applicant Company) showing how possession came to be lawful possession in the Applicant Company. It was never the applicant's case that it was a trespasser.

Reference was then made by Mr. Thorne to the averments contained in the affidavit of Hilda Goodial filed on the 25th June 1990 on behalf of the Respondents. It was apparent from her affidavit, he said, that the discussions (held with members of the Applicant Company) were centered around the occupation of the Corporation's land - concerning whether a solution could be found with regard to the problem created by certain persons being on the Corporation's land.

One simply cannot say one is in possession, Mr. Thorne stated, because one's rights would depend upon the quality of that possession. The quality of the possession is vital because if the applicant is

in possession as a trespasser and/^{had} abandoned possession, then he has no complaint against anybody who goes into possession. This is what happened here. The quality of possession is also vital, as it determines what rights are created by that possession, and there is no evidence that the applicant was in possession of any land at all.

The Prohibited Area Order dated 6 September 1990 sets out in a schedule the boundaries of the Mucurapo lands, public access to which was prohibited by that Order, Mr. Thorne said. Mr. Maharaj had stated that because of that statement in the Order that that was proof that the applicant was in possession. It is no such thing, Mr. Thorne asserted. The Commissioner of Police merely found it necessary to define the area (i.e the lands) in terms which would generally be understood by the public at large, to whom the order was directed. The Order does not constitute any kind of estoppel. What would the Commissioner of Police know about a corporate body and their organisation? As to the contention (by Mr. Maharaj) that at the date of the Order the Jamaat Al Muslimeen was in occupation of land - the obvious answer to that is that all that the Order had achieved was to furnish a description of the area in terms which would have left no doubt in anybody's mind as to the definition of the area, and of an organisation known as the Jamaat Al Muslimeen, which had been for several years in occupation (albeit unlawfully) of the Corporation's land. That description was necessary in order to make the definition of the area clear.

There is no challenge to the evidence, Mr. Thorne insisted, that when the army went into occupation of the Corporation's land (the police had already been in actual physical possession thereof) on the 28th July 1990, the premises had been completely deserted, save for the presence/^{thereon} of one terrified woman, in an advanced state of pregnancy, clutching on to a knife for her own protection. It means that whoever occupied the premises on the 27th had fled the premises. To flee is to abandon, in the hope that at some time in the future you might be able to go back there. That was the situation on the ground.

The following authorities were referred to and relied upon by Mr. Maharaj during the course of his arguments before the Court -

- (1) Krakash Singh v The Attorney General of Trinidad and Tobago, H.C.A #2443 of 1982, unreported;
- (2) Shyroon Mohammed v The Attorney General of Trinidad and Tobago, H.C.A #1128 of 1980, unreported;
- (3) The Mayor, Aldermen and Burgesses of San Fernando v Chandrawatee Ramlogan, Civil Appeal #54 of 1985, unreported;
- (4) The Attorney General of Trinidad and Tobago v Wayne Whiteman, Privy Council Appeal #52 of 1990, unreported;
- (5) The Attorney General v Lawrence [1985] Law Reports of the Commonwealth 921;
- (6) Societe United Docks & Ors. v Government of Mauritius [1985] Law Reports of the Commonwealth 801;
- (7) The Attorney General of Gambia v Jobe [1985] Law Reports of the Commonwealth 556;
- (8) Plimmer & anor. v The Mayor, Councillors and Citizens of the City of Wellington [1883-84] Law Reports 9 AC 699;
- (9) London Passenger Transport Board v Moscrop [1942] AC 332, at 345;
- (10) Attorney General of Southern Nigeria v John Holt & ors. [1915] AC 599;
- (11) Wuta Ofei v Mabel Danquah [1961]1 WLR 1238;
- (12) Guardian Assurance Co. Ltd. v Sutherland [1939]2 All ER 246;
- (13) Lacey v Lear 107 ER 247;
- (14) Nickson Mungro v Magistrate Algernon Jack, H.C.A #2386 of 1987, unreported;
- (15) Jamaat Al Muslimeen v Commissioner of Police, Chief of the Defence Staff and ors - Application for leave to apply for judicial review - H.C.A #540 of 1990, unreported;

- (16) *Jamaat Al Muslimeen v Jules Bernard*, Commissioner of Police, Colonel Ralph Brown, Ag. Chief of Defence Staff and Attorney General of Trinidad and Tobago - H.C.A #3982 of 1990, unreported;
- (17) *Jamaat Al Muslimeen v Jules Bernard*, Commissioner of Police & ors., Civil Appeal #29 of 1991, unreported;
- (18) *Words and Phrases Legally Defined*, 1st Edition, 200;
- (19) *The Companies Ordinance*, Ch. 31, No. 1, section 20;
- (20) *The State Liability & Proceedings Act*, Ch. 8:02, section 2;
- (21) *The State Lands Act*, Ch. 57:01;
- (22) *Hill & Redman's Law of Landlord & Tenant*, 15th Edit., 590;
- (23) *Basu's Commentary on the Constitution of India*, Vol. E - [1981], p. 35;
- (24) *Cross on Evidence*, 6th Edition, 32;
- (25) *Megarry & Wade's Law of Real Property*, 5th Edit., 798 and 1036;
- (26) *Hansbury's Modern Equity*, 12th Edition;
- (27) *Underhill on Torts*, 14th Edition, 74;
- (28) *Borrie & Lowe's Law of Contempt*, 2nd Edit., 460;
- (29) *Mcphail v Persons Unknown* [1973] 3 WLR 71;
- (30) *Burmah Oil Company v Lord Advocate* [1965] AC 75;
- (31) *Eleko v Government of Nigeria* [1931] AC 663;
- (31A) *Clerk & Lindsell on Torts*, 15 Edit., p 1103, para 22-12;
- (32) *Liversidge v Anderson* [1942] AC 207;
- (33) *Legal Notices #184 of 1990 - Curfew Order No. 11 dated 17th September 1990*;
- (34) *Legal Notices Nos. 140 of 1990, 152 of 1990*.

The undermentioned authorities were cited and relied upon by Mr. Thorne Q.C. in support of his contentions:-

- (1) National Dock Labour Board v Pinn and Wheeler Ltd. & ors, The Times Newspaper, November 17, 1988.
- (2) Gower's Principles of Modern Company Law, 4th Edit., pp 140; 141;
- (3) Dorothy Enez Derek v Affif Nazzar and the Attorney General of Trinidad and Tobago [1976] 28 WIR 340;
- (4) Palmer's Company Law, 8th Edit., 246;
- (5) Rent Restriction Act, Ch. 27 No. 18, 963;
- (6) LJ Williams Ltd. v Percival Smith and the Attorney General of Trinidad and Tobago: 32 WIR 395.
- (7) Zamir's on Declaratory Judgments, Ch. 8, 282;
- (8) Young's on Declaratory Orders, 1985 Edition 607, p.49;
- (9) Inwards v Baker [1965]1 All ER 446;
- (10) Mitchell v Cowie [1964-5] WIR 118 - Vol. 7;
- (11) United Dominions Corporation (Jamaica) Ltd. v Shoucair [1968]2 All ER 904;
- (12) Kok Heong v Leong Cheong Kweng Mines, Ltd. [1964]1 All ER 300;
- (13) Crabb v Arun District Council [1975]3 All ER 865;
- (14) Ordinances of Trinidad and Tobago 1954, No. 36 of 1954, subsection 88 and 90;
- (15) Greaves v Barnett [1978]31 WIR 88.

It will be useful, I think, for me to review a few of the cases cited before dealing with the legal arguments put forward in this case.

In Krakash Singh v Attorney General ante, Krakash Singh's case was that he was on the land and had erected his dwelling house thereon, with the permission of his father in law, one Dharam Singh, who was in lawful possession thereof, as far back as 1950 and remain

in possession in 1982 when the said dwelling house was demolished by the State. The Respondent's case was that one Kitaban was a tenant of the said land, but was dispossessed by the said Dharamsingh in or about 1970/1971, after which he continued in possession up to the present time. The Judge found that the said parcel of land formed no part of Kitaban's parcel, and that Dharamsingh was in possession thereof since the 1950's, and was still in possession. Alternatively, the Judge found that Dharamsingh had dispossessed Kitaban from the said land in 1970/1971, had taken possession of it, thereafter had cultivated it, and still remained in possession thereof. The Trial Judge in that case found that the State had acquiesced in Dharamsingh's possession of the said land, as he was in possession of the said land, and the State had taken no steps to recover possession from him under the Land Acquisition Act. The applicant, therefore, had legitimately erected his dwelling house on the said land and was entitled to remain there until his occupation was brought to an end - which could have been done either by Dharamsingh's revocation of his licence or by the State recovering possession of the land from Dharamsingh. The Judge was of the view that the applicant's position conferred on him a right to the enjoyment of his dwelling house on the said land, and consequently the right to the due process protection

The Shyroon Mohammed case was one which concerned a squatter on State land, whose dwelling house was demolished by the State. It was held by the Court that the applicant had no right to the occupation or possession of the land. She had a right to the enjoyment of the dwelling house per se, but could only enjoy that right without violating the right of the owner of the land. She had clearly violated the right of the State by trespassing and erecting her house on State lands. Mohammed, therefore, could not complain of any infringement of her fundamental right to the enjoyment of the chattel house since she had no right to the enjoyment of that house on State lands.

In the case of the Mayor, Aldermen and Burgesses of San Fernando v Chandrawatee Ramlogan, the Respondent's house was demolished by the Appellant Corporation under section 47 of the Public Health Ordinance, for erecting a building without the approval of either the Town and Country Planning Authority, or the Local Health Authority. The decision of the Court at first instance was overturned

by the Court of Appeal, which held that the Local Health Authority was entitled to take the action it took by having the building demolished.

Next is the case of Attorney General v Lawrence (supra). There, Edmund Lawrence (the applicant/respondent) was Managing Director and Chairman of the Board of Directors of the St. Kitts/Nevis/Anguilla National Bank Limited. On the 8th March 1982, the House of Assembly passed through all its stages a Bill which received the Governor's assent the same day and became the St. Kitts/Nevis/Anguilla National Bank Ltd. (Special Provisions) Act 1982. On the afternoon of the same day six members of the Police Force, including the Commissioner of Police entered the head office of the Bank and purported to hold meeting there. On the same afternoon, Edmund Lawrence received three letters. One from the Minister of Finance purported to remove him as Director of the Bank; others (signed by a "Chairman of the Board") notified him that a new Board of Directors had been appointed under the Act, and that the Board had decided to terminate his services with immediate effect, requiring him to vacate the premises. On the 15th March, Edmund Lawrence applied to the High Court under the then Constitution, section 16, claiming redress for an alleged contravention of section 6 of the Constitution (which protected property rights from compulsory acquisition except under legislation providing for compensation). The High Court (Bishop J.) granted declarations that the Act contravened section 6 of the Constitution and was therefore unconstitutional and void, together with the purported appointment of Directors, their assumption of control of the Bank and their dismissal of the applicant. It was held, inter alia, that "property rights which are protected by the Constitution, section 6, should be given a wide and liberal construction, to include not only concrete rights of property, but also abstract/^{rights} such as rights of management of a company.

Also, it was held as part of the ratio decidendi in the *Societe United Docks* case that section 3 of the Constitution of Mauritius, which opens Chapter II, "Protection of Fundamental Rights and Freedom of the Individual", by recognising and declaring the existence of basic human rights and freedoms, is not a mere preamble or introduction, but an enacting section. A Constitution protecting fundamental rights and freedoms should not be narrowly construed but should

receive 'a generous and purposive construction' (citing the dictum of Lord Diplock in Attorney General of Gambia v Jobe [1984]3 WLR 17 at p.183. Loss caused by deprivation without compensation, is the same in quality and effect as loss caused by compulsory acquisition, and may therefore give a right to redress under the Constitution.

Plimmer v Wellington Corporation (ante). That was a case in which land, having become vested in the respondents under the Wellington Harbour Board and Corporation Land Act, 1880, the appellants claimed compensation under the Public Works Act, 1882, on the ground of their having some estate or interest therein within the meaning of the latter Act. It appeared that the appellants' lessor (or his predecessor in title) had in 1848 erected a wharf on the said land, with the permission of the Government, and in 1885 a jetty; that in 1856, at the request and for the benefit of the Government, he incurred large expenditure for the extension of his jetty and for the erection of a warehouse; that in subsequent years the Government used land paid for, and with the consent of the said lessor, improved the said land and works. Held, that the lessor must be deemed to have occupied the ground from 1818 under a revocable licence to use it for the purpose of a wharfinger; that by virtue of the transactions of 1856 such licence ceased to be revocable at the will of the Government, whereby the lessor acquired an indefinite, that is, practically, a perpetual right to the jetty for the purposes aforesaid. The equitable right so acquired is "an estate or interest in, to or out of land" within the wide meaning of the Act of 1882, which directs that in ascertaining title to compensation the Court should not be bound to regard legal rights only but should do what is reasonable and just.

In Mcphail v Persons Unknown, squatters, who in two claims for possession under Rules of Supreme Court, Order 113, had broken into empty houses and started to live in them without any authority from the respective owners who in both cases had obtained orders that they "do recover possession". On appeals by the squatters who sought stay of execution, the Court of Appeal held (dismissing the appeals) that since the squatters had entered and remained in the houses as trespassers, the Court had no discretion to suspend the orders for possession. In the course of his delivering the leading judgment,

Lord Denning MR, in the course of his judgment, commented as follows:-

"What is a squatter? He is one who, without any colour of right enters on an unoccupied house or land, intending to stay there as long as he can. He may seek to justify or excuse his conduct. He may say that he was homeless and that this house or land was standing empty, doing nothing. But his plea is of no avail in law. Now I would say this at once about squatters. The owner is not obliged to go to the Courts to obtain possession. He is entitled, if he so desires, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the Court of Law. This is not a course to be recommended, because of the disturbance which might follow. But the legality of it is beyond question. The squatters were themselves guilty of the offence of forcible entry, contrary to the Statute of 1381 (4 Ric.2, Stat. 1.c.7). When they broke in, they entered "with strong hand" which the Statute forbids. They were not only guilty of a criminal offence. They were guilty of a civil wrong. They were trespassers when they entered, and they continued to be trespassers so long as they remained there. The owner never acquiesced in their presence there. So the trespassers never gained possession. The owner, being entitled to possession, was entitled forcibly to turn them out. See Browne v Dawson [1840] 12 Act and El. 624. As Sir Frederick Pollock put it in his book on Torts:

'A trespasser may in any case be turned off land before he has gained possession, and he does not gain possession until there has been something like acquiescence in the physical fact of his occupation on the part of the rightful owner': See

Pollock on Torts, 15 Edition (1951), p. 292."

The Board, in Kok Hoong v Leong Cheong Kweng Mines Ltd. held (inter alia) that an estoppel could not be set up in face of a statute applied in relation to the Moneylenders Ordinance, as also in relation to the Bills of Sale Enactment, and although a default judgment was capable of giving rise to an estoppel, an estoppel based on it could not exclude pleas involving such enactments. Furthermore it was held that the respondent company was not estopped from raising defences based on the Moneylenders Ordinance and the Bills of Sale Enactment for the simple reason that default judgments, though capable of giving rise to estoppels, must always be scrutinised with extreme particularity for the purpose of ascertaining the bare essence of what they must necessarily have decided and could raise estoppels only for what they must necessarily and with complete precision have determined. The issue in that case involved a preliminary point of law. In that action, the appellant sued the respondent for moneys alleged to have been due to him and for certain other relief, and he objected to a defence or set of defences put in by the respondents on the ground that the latter was estopped from raising them because of a previous judgment given in an earlier action between the same

parties. It was the validity of that objection that was argued and decided as a preliminary point.

If I recall correctly, Crabb v Arun District Council (ante), and U.D.C (Jamaica) Ltd. v Shoucair (supra) were quoted in the same vein by Mr. Thorne as being illustrative of the principle enunciated in the Kok Hoong case.

Mitchell v Cowie was a case, the facts of which revolved around what was commonly known as a chattel house. A fundamental issue in dispute was whether the house in question was a fixture, or a chattel house. Wooding CJ who delivered the judgment in the Court of Appeal remarked:

"What, however, is pertinent to this appeal is that so long as a fixture remains affixed to the land, it is part of the freehold: See Lee v Risdon."

In Inwards v Baker (above), the defendant (in 1931) was considering the building of a bungalow on land which he would have to purchase. His father, who owned some land, suggested that the defendant build the bungalow on his land and make it a little bigger. The defendant accepted that suggestion and built the bungalow himself, with some financial assistance from his father, part of which he repaid. He lived in the bungalow ever since. In 1951, the father died. The trustees of his will, who in fact visited the defendant at the bungalow, took no steps to get him out of the bungalow until 1963, when they claimed possession of it on the ground that, at most, the defendant had a licence to be there which had been revoked. It was held that since the defendant had been induced by his father to build the bungalow on the father's land, and had expended money for that purpose in the expectation of being allowed to remain there, equity would not allow that expectation so created to be defeated, and accordingly the defendant was entitled to remain in occupation of the bungalow as against the trustees.

As Lord Denning MR explained:-

"It is quite plain from those authorities that, if the owner of land requests another, or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity. Counsel for the plaintiffs urged before us that the licensee could not stay indefinitely. The principle only applied, he said, when there was an expectation of some precise legal term; but it seems to

me, from Plimmer's case in particular, that the equity arising from the expenditure on land does not fall -

'merely on the ground that the interest to be secured has not been expressly indicated . . . the Court must look at the circumstances in each case to decide in what way the equity can be satisfied'.

So in this case, even though there is no binding contract to grant any particular interest to the licensee, nevertheless the Court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the Court will not allow the expectation to be defeated where it would be inequitable to do so."

I turn now to examine the various legal arguments which had been addressed to me in Court by Attorneys on both sides.

In order to appreciate fully the issues which are involved in this matter, it will be useful, I think, to begin at this juncture.

Undoubtedly, the lands situate at No. 1 Mucurapo Road, St. James, in the City of Port of Spain (comprising 8 acres, 2 roods, 8 perches, which form the subject matter of this Motion) consist of two separate parcels or pieces of land, each in different ownership. One parcel, totalling some 1.5203 hectares, is owned by the Port of Spain City Council ('the Corporation'); the other, amounting to 1.9324 hectares, belongs to the State.

It is quite clear from the affidavit of Andrew Bowles (whose evidence I accept) and the exhibits appended thereto, as well as from the utterances of Mr. Maharaj made from the Bar table, that the present Mosque and the other buildings belonging to the members of the unincorporated Jamaat all lie on the Corporation's portion of the land.

The history of this matter commenced with a letter written by the Permanent Secretary, Ministry of Planning and Development, (one Eugenio Moore) to the General Secretary, Islamic Missionary Guild, dated 23rd January 1969.

The letter is in these terms:

"Mr. M.K. Hosein,
General Secretary,
Islamic Missionaries Guild,
Port of Spain.

23rd January, 1969.

Dear Sir,

Islamic Cultural Centre

I refer to your request for a parcel of land for the establishment of the Islamic Cultural Centre.

The Government is willing to offer you a site at Mucurapo lands as indicated in the plan which has been forwarded by the Sub-Intendant to Mr. Kumaludin Mohammed, Minister of West Indian Affairs.

This letter serves as the authority for you to enter the land to carry out any works necessary for the construction of the Centre.

Yours faithfully,

Permanent Secretary,
Ministry of Planning & Development."

It would appear from paragraph 8 of the affidavit of Muhammad Ahmad Tariq (which said paragraph is undisputed) that a temporary Mosque had been constructed by the Guild on the North/Eastern section of the Corporation's land in 1969, and that during the period 1972 to 1984 the members of the unincorporated Jamaat extended it to include an Islamic Book Store, a primary school, and a temporary secondary school.

What then was the true nature of the letter written by the former Permanent Secretary (acting for and on behalf of the Government) to the Guild? Did it confer on the Guild an equity of the *Inwards v Baker* type? Or, did it by its terms confer on the Guild some other kind of estate or interest in the land, legal or equitable? What really did the letter intend, or achieve by its terms?

Another thing, suppose the offer contained in the Permanent Secretary's letter amounted to an *Inwards v Baker* equity (or a proprietary estoppel as Hansbury and Maudsley in their book on *Modern Equity*, 12th Edition, p.855 prefer to call it), was the licence transferrable - eg. from the Guild to the Jamaat (the corporate or unincorporated body)? Alternatively, was the said letter framed in terms which enabled the Guild to transfer or assign the licence to anybody else?

Quite clearly, the letter cannot be construed as a deed of gift of land from the Government to the Guild; nor is it a conveyance of land by deed from the Government to the Guild. It was not a lease, or a tenancy, or a contract to grant a lease. The said letter was put forward before me by opposing Counsel as nothing other than an *Inwards v Baker* type of licence.

This is how the licence is described by the authors of *Modern Equity* (12th Edition), at page 851 of the said Edition, under the heading "Licences by Estoppel" -

"It will be seen that the doctrine of estoppel by encouragement or acquiescence has formed a fruitful area of operation in the field of licences, under the newly acquired name of proprietary estoppel; its success in this area has been largely due to the fact that, unlike estoppel by representation or promissory estoppel, it can found a cause of action and, in the licence context, enables the Court to award a proprietary interest to the licensee."

And, at page 855 of the said Edition, the authors further state -

"Distinct from the types of estoppel by representation previously explained is estoppel by encouragement or by acquiescence. This doctrine is applicable where one party knowingly encourages another to act, or acquiesces in the other's actions, to his detriment and in infringement of the first party's rights. He will be unable to complain later about the infringement, and may indeed be required to make good the expectation which he encouraged the other party to rely on. Unlike other estoppels, therefore, this doctrine may in some circumstances create a claim and an entitlement to positive proprietary rights; in others, it can operate negatively, or can produce a compromise situation appropriate to the particular circumstances."

In endeavouring to construe the letter of the Permanent Secretary Ministry of Planning and Development, and to determine its effects (if any), it is important, I think, to bear in mind the evidence in the case. The affidavit evidence (especially that of Andrew Bowles) shows quite conclusively, and almost without a shadow of a doubt, that the Guild occupied the Corporation's portion of land at Mucurapo initially - that is to say from 1969 onwards; and that from 1972 up to 1984, the Guild was replaced on the Corporation's land at Mucurapo by the unincorporated Jamaat. All the activities and construction works carried out by the unincorporated Jamaat (eg. the erection of buildings etc.) seem to have been concentrated on and centred upon the Corporation's portion of the land. There is no indication whatever that the Guild or the Jamaat (the corporate or unincorporated body) ever occupied the State's portion of the land at No. 1 Mucurapo Road. According to Mr. Thorne (with whose submission on this point I agree), an attempt was made by members of the unincorporated Jamaat to occupy the State's portion of the land at Mucurapo in April 1990 by their endeavouring to lay the foundation of a building there, but the army and the police intervened and stopped it on the 21st April 1990 - by preventing further construction, and by putting a physical end to their attempted occupation. In this regard, see the affidavits of Noor Kenny Mohammed, Jules Bernard and Andrew Bowles, which I accept. See also paragraph 8 of the affidavit of Muhammad Ahmad Tariq as illustrative of these facts.

In my opinion, if the Corporation's portion of land at No. 1 Mucurapo, St. James, was owned by the Government in 1969, the entry by the Guild upon that parcel of land at that particular time would have led to the creation of a contractual licence. In short, the acceptance by the Guild of the terms of that letter would have conferred upon the Guild a contractual licence to occupy that land

for an indefinite period.

To me, the Permanent Secretary's letter had all the characteristics of a contract. First, there was the offer by Government to bestow a site on the offeree, followed by the acceptance of the said offer by the Guild (by conduct) by entry upon the said land - the consideration for the agreement being the money to be expended on the land by the Guild and the setting up of the Islamic Centre by the Guild.

In R. v Tao [1976]3 All ER 65, at 68, Roskill LJ said:

"The second, in which a number of other cases in this field were cited, is the recent decision of this Court, *Heslop v Burns*. I need do no more than refer to two passages in Scarman LJ's judgment. The first reads: 'A licence to occupy is itself a legal relationship, or, perhaps, more accurately, occupation under a licence to occupy is itself a legal relationship'. The second reads: 'Indeed, *Evington v Evington and Woods* is now authority binding on this Court to the effect that a contractual licence may confer on a licensee an exclusive right to the occupation of land in the sense that during the currency of the contract the licensee may keep out the licensor'."

To my mind, therefore, what was offered by the Permanent Secretary's letter was more than an *Inwards v Baker* equity. It was a contractual licence to occupy land for an indefinite period.

What effect(s) then did the Permanent Secretary's letter have on the two portions of land at Mucurapo?

For all intents and purposes, the purported licence was applicable only to the State's portion of land at Mucurapo, but ineffectual for all purposes as respects the Corporation's parcel of land there for the simple reason that the State could not give what it did not have (*Nemo dat quod non habet*). However well intentioned or well meaning the Government may have been, it could not effectively grant a licence to anyone to enter and occupy the Corporation's land, as the Corporation's land did not belong to the Government - the Corporation itself being a body corporate, with perpetual succession, and power to acquire land and to sell or lease land: see *The Port of Spain Corporation Ordinance*, Ch. 39, No. 1, ss 5, 134 & 135.

It would appear, therefore, that the Guild's entry onto the Corporation's land at Mucurapo from the outset constituted a trespass to land - whether the Guild was aware of it or not. In the same breadth, I am of the opinion that the Guild could have taken advantage of the Permanent Secretary's licence to enter upon the

State's parcel of land at Mucurapo for the purpose of carrying out all necessary works there for the construction of their Islamic Cultural Centre. But the undisputed evidence is that neither the Guild nor the unincorporated Jamaat ever occupied the State's portion of the land at Mucurapo. And there is nothing to indicate that the Applicant Company ever did, and I so find.

Was the contractual licence, or for that matter the *Inwards v Baker* type licence transferrable?

It was contended by Mr. Maharaj that the *Inwards v Baker* type licence was transferrable. Mr. Thorne Q.C, on the other hand, emphasized that it was not. In support of his contention, Mr. Maharaj relied on (a) *Plimmer v Wellington Corporation* (above) and (b) *The Attorney General of Southern Nigeria v John Holt & Co. (Liverpool) Ltd.* (ante). An examination of the terms of the letter itself will disclose that the letter did not say that the Guild could transfer or assign the land(s) which it was intended the Guild should occupy to anybody else. Also, I must confess that I could find nothing in the *Plimmer* case or in the *John Holt* case, either by way of ratio or obiter, to suggest that such a licence [*the Inwards v Baker* type] could per se be transferrable. Indeed, *Plimmer's* case is distinguishable from the present one on the facts. There, it appeared that the appellants' lessor (or his predecessor in title) had in 1848 erected a wharf on the land in question with the permission of the Government, and in 1855, a jetty; then, in 1856, at the request of and for the benefit of Government, he incurred large expenditure for the extension of his jetty and for the erection of a warehouse, and in the subsequent years the Government used, paid for and with the consent of the lessor, improved the said land and works. It was held, inter alia, that the lessor had acquired an indefinite, practically, a perpetual right to the jetty for the purposes aforesaid. And further, that the equitable right so acquired was an estate or interest in or out of the land within the wide meaning of the Act of 1882, which directed that in ascertaining title to compensation the Court should not be bound to regard strict legal rights only, but should do what was reasonable and just.

The position in the instant case is entirely different from that of *Plimmer*. This is not a case where the Jamaat (corporate or un-

incorporated) had entered the Corporation's land with the permission of the Government or the Corporation. Nor is it the case here that the Jamaat (corporate or unincorporated) had erected buildings (or had incurred large expenditure) at the request of or for the benefit of the Government or the Corporation. It is not even the applicant's case here that the Guild had constructed the present buildings on the Corporation's land and had handed them over to them.

The position appears to me to be no different with contractual licences. In Cheshire and Burn's Modern Law of Real Property [13th Edition] pp358 & 359, the learned author clearly indicates that the cases of Errington v Errington and Woods (ante), National Provincial Bank Ltd. v Ainsworth [1965] AC 1175, and Binions v Evans [1972] 2 Ch. 359 provide no support for the view that contractual licences generally are binding on third parties. It is quite unnecessary to recite the facts of these three cases here.

It is for these reasons that I am constrained to hold (in agreement with Mr. Thorne) that licences of the Inwards v Baker type and, I would add, contractual licences are not transferrable by the holder to a third party. In addition, I have found no authority to that effect. The John Holt case (cited by Mr. Maharaj), as far as I can see, is inapplicable to the facts and circumstances of the present case.

The Applicant Company in this case became a body corporate on the 28th day of November 1989. It is well established law (since 1896) that a company incorporated such as the Applicant Company is a separate legal entity, and is a different person altogether from the subscribers to its memorandum. Furthermore, " . . . though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers, or a trustee for them" per Lord Macnaughten in Saloman v Saloman & Co. Ltd. (1897) AC 22, at p51. See also the dicta in the speeches of Lord Halsbury at pp30, 33 and 34, Lord Herschell at pp42-46, and Lord Macnaughten at p53. So far is a shareholder divorced from the legal persona of a company that a shareholder cannot insure the property of the company: Macaura v Northern Assurance Co. Ltd. (1925) AC 619. See ^{too} the speeches of Lord Buckmaster at pp625-627, Lord Sumner at p630,

and Lord Wrenbury at p633. The only circumstance (it seems) when it may be appropriate to pierce the corporate veil is when it is proved that there are special circumstances existing which indicate that this is a mere facade for the purpose of concealing the true facts: see *National Dock Labour Board v Pinn and Wheeler Ltd.*, *The Times Newspaper*, November 17, 1988; also *Woolfson v Strathclyde Regional Council* [1979]38 P&CR 521, at 526.

As is stated in Gower's *Principles of Modern Company Law* (4th Edition), at p.140 -

"It will be observed the authority to exercise the Company's power is delegated, not to the members, nor even to the individual directors, but only to the directors as a board, although it may, as we shall see, be subdelegated by the board to individual managing directors, and to other officers."

And at page 141, the authors have this to say:

"All registered companies must have directors and normally there must be at least two, though one suffices for a private company or one registered before 1929. The company must publicise the names of its directors at the Company's Registry, and at its registered office, and on its letter headings."

The following passage also appears in Charlesworth on the *Principles of Company Law*, 6th Edition, at p 131 -

"The management of a company is therefore usually entrusted to a small body of persons commonly called 'directors', but who are sometimes called governors, managers or committee of management. A director is an officer of the company."

Article 14 of the Applicant Company's Articles of Association provides that:

"The business of the Association shall, subject to terms of these Articles, be managed by a Board of Management to consist of a Chairman, a Vice Chairman and five other members. The first members of the Board of Management shall be appointed at the first meeting of the Association. Thereafter, the Board shall be elected at the Annual General Meeting of the Association in each year, and shall hold office until the next annual general meeting, but shall be eligible for re-election. All the members of the Association shall be eligible to vote at the election of the Board or be elected as such."

Article 15 of its Articles of Association reads as follows:

"Until the first members of the Board of Management shall have been appointed, the subscribers to the Memorandum of Association shall be deemed for all purposes to be members of the Board of Management notwithstanding the provisions of Article 14 hereof."

In short, the affairs and business of the Applicant Company are controlled and managed by its Board of Management, which makes

all necessary decisions on behalf of the Applicant Company.

As will be appreciated, the applicant is a limited liability company formed within the proviso to section 16 of the Companies Ordinance, Ch. 31 No. 1, for the purpose of "promoting art, science, religion, charity or other like objects, not involving the acquisition of gain by the company or by its individual members, shall not without the licence of the President hold more than two acres of land, but the President may by licence empower such company to hold lands in such quantity and subject to such conditions as the President thinks fit".

It is my view, therefore, that Mr. Thorne's submission on the corporate identity of the Applicant Company is well founded and should be upheld. The point is not one of mere technicality. One cannot get rid of a hundred years of company law just like that, he said, by just sweeping it below the carpet. A registered company, has a separate identity of its own. Once incorporated, it becomes a separate legal entity - a non-natural person in law - separate from that of its members, subscribers, or shareholders. The applicant, therefore, in my opinion, is in no different position from any other limited liability company formed. It is not simply a question of "legal tabulism", as Mr. Maharaj insisted; or, a company acting through its members (as Mr. Maharaj contended).

In directing my mind to that question, and in weighing and considering same, I have kept in mind ^{that part of ratio in} the case of The Attorney General of Gambia v Jobe (1984)3 WLR 174, at p.183 ^{which says} that a Constitution protecting fundamental rights and freedoms should not be narrowly construed, but should receive ' a generous and purposive construction'. A Constitution should be considered "as sui generis, calling for principles of interpretation of its own, suitable to its character . . . without necessary acceptance of all the presumptions that are relevant to legislation of private law", per Lord Wilberforce in Minister of Home Affairs v Fisher [1979]3 All ER 21, at p.26. Tacit approval was given to that dictum in Ong Ah Chuan v Public Prosecutor (PC) [1960]3 WLR 85 by Lord Diplock. But in the same vein, although a Constitution is not to be construed in a narrow and pedantic sense, but a broad liberal spirit should inspire those whose duty or task it is to interpret it, nonetheless, it must be remembered that that does not mean that a Court of Law is free to stretch or pervert the

language of a Constitution in the interests of any legal or Constitutional theory, or for the purpose of correcting omissions, or supposed errors: See Seevai, Constitutional Law of India, paragraph 2.2.

It was submitted by Mr. Thorne that the Applicant Company was precluded (by reason of section 16 of the Companies Ordinance) from basing its claim to relief on more than two acres of land, since the basis of that claim is an estoppel, and an estoppel cannot be set up in the face of a statute: Kok Hoong v Leong Cheong Kweng Mines (ante), and UDC (Jamaica) Ltd. v Shoucair [1968]2 All ER 904, at p.908 (Letter B). The reliefs sought by the Applicant Company are in respect of the entire 8 acre parcel of land (to be precise, 8 acres, 2 roods, 8 perches). By section 16 of the aforementioned Ordinance, the Applicant Company may not, without the President's consent, "hold more than 2 acres of land". There is no evidence that the Applicant Company had, before this Motion, obtained the President's consent" to hold more than two acres of land", the Applicant Company being of a type which fell within the proviso to section 16 of the Companies Ordinance.

Section 16 of the Companies Ordinance, Ch. 31 No. 1, provides as follows:

"(1) A company incorporated under this Ordinance shall have power to hold lands in any part of the Colony: Provided that a company formed for the purpose of promoting art, science, religion, charity or any other like object not involving the acquisition of gain by the company or by its individual members, shall not, without the licence of the Governor, hold more than two acres of land, but the Governor may by licence empower any such company to hold lands in such quantity, and subject to such conditions, as the Governor thinks fit;

(2) A licence given by the Governor under this section shall be in accordance with the form set out in the Second Schedule to this Ordinance, or as near thereto as circumstances admit."

This submission is not without merit. But there is no evidence here at Mucurapo. that the Applicant Company is holding more than 2 acres of land. In fact, the Applicant Company's claim in these proceedings is based simpliciter on possession (whether lawful or otherwise). The Applicant Company is not saying that it is the owner of the lands at No. 1 Mucurapo, St. James. The expression "to hold" is not defined in the said Ordinance, but it seems to me that the words "to hold" mean to hold by way of ownership.

The next question which needs to be addressed by this Court is this: Was the Applicant Company (and/or for that matter, the unincorporated Jamaat) at any material time in lawful possession and/or occupation of the 8 acre parcel of land at No. 1 Mucurapo (or any part thereof) to the knowledge of and with the acquiescence of the Government, and was there interference with the enjoyment of that possession and/or occupation by the State (via its Executive arm) without lawful justification or excuse? In other words, was the interference (if any) by the State with the Applicant Company's alleged occupation and/or possession or that of the unincorporated Jamaat at any material time contrary to law?

I have already indicated, for the reasons outlined above, that the Guild's occupation initially of the Corporation's land at Mucurapo was to my mind unlawful, and that since the purported licence under which the Guild entered was ineffectual for all intents and purposes, and not transferrable, it followed, as a matter of consequence that the unincorporated Jamaat's occupation and/or possession of the Corporation's portion of land at Mucurapo from 1972 - November 1984 was also unlawful - at least vis a vis the Corporation. The members of the unincorporated Jamaat were, therefore, in my opinion, trespassers on the Corporation's land; and so also was the Applicant Company - from 1984 onwards. Did the Corporation then acquiesce in the unlawful occupation and/or possession by the unincorporated Jamaat or indeed ^{by} the Applicant Company of its portion of land at No. 1 Mucurapo from 1972 to 1984, or for any period of time thereafter - but prior to the commencement of proceedings in this matter?

It is apparent that the Corporation did have knowledge of the presence of the members of the unincorporated Jamaat (and later the Applicant Company) on its land at Mucurapo at some stage during the relevant periods. The brief facts surrounding this issue appear to be as follows: The Corporation, in its endeavour 'to regularise the situation' as respects the unincorporated Jamaat's occupation of its land at Mucurapo, by letter dated June 22, 1984 made an offer to the unincorporated Jamaat to lease to it a suitable lot of land of ^{the} adequate size for/unincorporated Jamaat's requirement at Mucurapo "under such terms and conditions as the Corporation may decide,

and subject to the consent of the President being obtained". But, the unincorporated Jamaat did not embrace the Corporation's offer; neither did it respond to the Corporation's letter (either orally or in writing). The letter dated 22nd June 1984 from the Corporation to the unincorporated Jamaat reads as follows -

"City Clerk's Office,
The City Hall,
Port-of-Spain,
Trinidad.

1984 06 22

Mr. Yasin Abu Bakr
Imam,
Masjid Al Muslimeen
1 Mucurapo Road
WOODBROOK.

Dear Imam,

Offer to Lease Parcel of land at Mucurapo

The Port of Spain Corporation is presently in the process of regularising the tenancy of lands under its control at Mucurapo.

In this regard it is noted that although your organisation has been occupying a certain section of land at Mucurapo for some time, its name is not listed in the rent roll of the Corporation as a registered tenant or lessee. It does not appear, as well, that your organisation has ever made any formal application to the Corporation for a lease or tenancy agreement in respect of the said parcel of land.

In order to regularise this situation the Corporation is now considering the offer to you of a lease of a suitable lot at Mucurapo of an adequate size to meet your requirement, under such terms and conditions as the Council may decide and subject to the consent of the President being obtained to the grant of such lease.

His Worship The Mayor has also indicated his willingness to meet with you to discuss the Council's plan for the area and should you be interested in such a meeting you may wish to phone his Secretary at 62-36024 or call at City Hall to fix an appointment.

Yours faithfully,

City Clerk."

Thereafter, the Corporation brought an action (H.C.A #5927 of 1984) against the unincorporated Jamaat for trespass etc. On the 29th December 1984, McMillan J (as he then was) by an order granted at the instance of the Corporation an ex parte injunction against Yasin Abu Bakr (the leader of the Jamaat) and a body (unincorporated) called the Jamaat Al Muslimoon 'restraining the defendants and themselves their servants or agents or otherwise howsoever from trespassing on the plaintiffs' said lands (that is to say, on the

Corporation's land) and from erecting or continuing to erect any building on the Corporation's said lands described in the Corporation's plan annexed to the affidavit of Oscar Blenman and bounded on the North by Mucurapo, on the South by the proposed extension of Wrightson Road and as shown on the plan and which said extension is now known as Audrey Jeffers Highway, on the East partly by lands of Fatima College and Maraval River, and ordering further 'that the defendants forthwith demolish and/or remove the columns and steel beams and construction carried out on the North/Western side of the existing illegally constructed structure painted green and white'.

There was obviously a non-compliance with the said injunctive order by members of the unincorporated Jamaat, and on the 17th day of January 1985, the first defendant, Yasin Abu Bakr, was committed to prison for 21 days for contempt of Court for failing to comply with the said injunctive order of Mr. Justice McMillan made on the 29th day of December 1984 by -

- (a) continuing to trespass on the Corporation's land, and by erecting or continuing to erect a building or buildings on the Corporation's land; and
- (b) failing forthwith to demolish and/or to remove the columns and steel beams and construction carried out on the North/Western side of the existing illegally completed structure painted green and white on the Corporation's land.

In light of the above-mentioned injunctive order, it cannot now be seriously argued that the Corporation 'treated and negotiated' with the unincorporated Jamaat as regards the unincorporated Jamaat's occupation of the Corporation's land, since the Corporation's offer (by letter dated 22 June 1984) to negotiate and treat with the unincorporated Jamaat as regards the unincorporated Jamaat's occupation of the Corporation's land at No. 1 Mucurapo Road came to an end when the Corporation obtained the injunctive order against Yasin Abu Bakr and the body of persons called the Jamaat Al Muslimoon on the 29th December 1984. And, there is no evidence that the Corporation thereafter held any further talks or discussions with, or made any further offers to 'treat and negotiate' with the unincorporated Jamaat (or indeed the Applicant Company) after that date. It is evident that the State could not treat or negotiate

with either the Applicant Company or with the unincorporated Jamaat with regard to the Corporation's land, as it is not the owner of the Corporation's land, and there is no evidence that the State had any authority from the Corporation to act on the Corporation's behalf in that regard.

But, the matter does not end there.

The evidence discloses that the Guild went into occupation of the Corporation's land at No. 1 Mucurapo Road, St. James, in 1969. See paragraph 8 of the affidavit of Muhammad Ahmad Tariq, which is undisputed.

The evidence further reveals that from 1972 onwards the Guild was replaced on the Corporation's land at Mucurapo by the unincorporated Jamaat - although it is not clear by what means it did so. The fact remains, however, that from 1972 onwards the unincorporated Jamaat went into occupation and possession of the Corporation's land at Mucurapo, and this evidence is uncontroverted. The history of events further indicates that the unincorporated Jamaat, on becoming incorporated on the 28th November 1989, remained in occupation and possession of the Corporation's land at Mucurapo. Furthermore, the Board of Management of the Applicant Company is comprised of persons who made up the old unincorporated Jamaat, and its membership is more or less the same. Both Sadiq Al Razi and Muhammad Ahmad Tariq deposed that a permanent Mosque was ^{first} constructed by the unincorporated Jamaat on the Corporation's land in 1984 - and ^{then} later on a medical clinic, a primary school, a grocery, a boutique, a garment factory, and four housing quarters - all on the said land. This evidence was unchallenged, and I accept same.

There can be no doubt that the occupation both by the unincorporated Jamaat and by the Applicant Company of the Corporation's portion of the land at Mucurapo was illegal - at least vis-a-vis the Corporation. But, as regards any other person (including the State) who was not the owner, it was not. The Guild was first of all in occupation and possession; then, the unincorporated Jamaat; and thereafter, the Applicant Company. This occupation and possession by the unincorporated Jamaat and finally by the Applicant Company gave them a better right and title to the Corporation's land than the

State. It also gave them (and in particular, the Applicant Company) a better right and title to the Corporation's land than anybody else, except the true owner - which is the Corporation.

In Salmond on the Law of Torts, 16th Edition, p95, it is said that -

"Even a wrongdoer with possession can bring trespass against a person without title, but not against the owner of the goods or anybody acting with his authority."

The defence of jus tertii can only be successfully pleaded where the defendant acted under it - that is to say, where the defendant acted for and on behalf of the true owner, or is defending the action by the authority of the true owner.

The matter is put by Clerk and Lindsell on Torts, 14th Edition in the following way -

"A de facto possession gives a right to retain possession and undisturbed enjoyment as against all wrongdoers. It is not, however, sufficient against the lawful owner. He who has such a possession may, just as the lawful owner, use a reasonable degree of force in its defence. He may sue in trespass anyone who disturbs his possession, and in such action it is no answer to show that the title and right to possession is in another person: jus tertii is no defence to the action, unless the defendant can show that the act complained of was done by the authority of the true owner. Nor does it matter how recently possession was acquired." (emphasis mine).

And in Perry v Clissold [1907]AC 73, Lord Macnaughten observed:

"It cannot be disputed that a person in possession in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by process of law within the period prescribed by the provisions of the Statute of Limitations applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title."

There is no evidence here that the State at any material time was acting for and on behalf of the Corporation, or with the authority of the Corporation when it entered upon the Corporation's land which was in the occupation and possession of the Applicant Company at that particular time. Whilst the Corporation's land was in the occupation and possession of the Applicant Company for however short a period, apart from the Corporation, the State was not at liberty to interfere with that occupation and possession without lawful justification or excuse. Furthermore, no lawful justification or excuse has been shown by the State at any time in these proceedings for its

interference with the Applicant Company's occupation and possession of the Corporation's land at No. 1 Mucurapo Road, St. James by the State's entry upon the occupation of the Corporation's land there whilst it was in the occupation and possession of the Applicant Company at the material times. The State has no business upon the Corporation's land whilst it is in the possession and occupation of the Applicant Company - and it cannot plead or rely upon the Applicant Company's illegal occupation as against the Corporation as a defence, as this defence can only be successfully asserted by the rightful owner of the land itself - the Corporation, or by the State if it was defending these proceedings with the authority of and for and on behalf of the Corporation, which is not the case here. To assert here, as the State has done, that the ex parte injunction granted by McMillan J is still in force is of no avail to the State, as the State cannot rely on that Order. The injunctive order can only be relied upon by the Corporation as a defence, if it had been made a Respondent in these proceedings, or if it had intervened in them as a defendant.

Mr. Maharaj's argument on this point must accordingly be upheld. He had first of all contended that the Applicant Company (and indeed the unincorporated Jamaat) was in lawful occupation and possession of the Corporation's land at Mucurapo to the knowledge of and with the acquiescence of the Government, and that the State (through its Executive Arm) had interfered with that possession without lawful justification or excuse. Later on, in his Reply, Mr. Maharaj altered that argument by stating that all that he had to do was to show that the Applicant Company was in possession, and that there was interference by the State with that possession without lawful justification or excuse - and in breach of the due process clause and the protection of the law - and that that was sufficient to ground his claim under sections 4(a), 4(b) and 4(h) of the present Constitution. Thus, Mr. Maharaj's contention, expressed in the latter and more modified form, is, in my view, sustainable.

As is stated in Clerk and Lindsell on Torts, 15th Edition, paragraph 22-11, p.1102:

"A de facto possession gives a right to retain the possession and undisturbed enjoyment as against all wrongdoers. It is not, however, sufficient as against the lawful owner."

It was urged on behalf of the applicant that the payment by the Applicant Company of rates and taxes for the year 1990 to the Corporation amounted to 'a treating and negotiating' with the Corporation. I do not think so. I am not at all persuaded by this argument. Like Mr. Thorne, I feel that the Corporation is bound to accept rates and taxes tendered to it by an 'owner' or 'reputed owner' of land or buildings within the meaning of the Port of Spain Corporation Ordinance, Ch. 39 No. 1, as amended, and within the limits of the 'City' as defined therein. The Corporation is not primarily concerned with disputes over ownership of land; its primary task, it seems to me, is the collection of rates and taxes due to it. 'Owner' under the Ordinance means the person in possession of or in receipt either of the whole or of any part of the rents or profits of any land or tenement, whether in his own right, or as a trustee or personal representative of any person, or in the occupation of such land or tenement other than as a tenant from year to year, or for any less term, or as a tenant at will.

"Reputed owner" of any building or of any vacant lot of land means the person entered as the owner of such building or of such vacant lot of land in the House Rate Book for the time being in force, or in any register of ownership kept by the Corporation.

"City" means the City of Port of Spain as defined by this Ordinance, together with any extensions thereof under the powers conferred by section 6 of this Ordinance.

Section 88(1) of the Port of Spain Corporation (Amendment) (No. 2) Ordinance, 1954, is worded as follows -

"The Corporation shall determine the gross annual rental value of every rateable hereditament within the limits of the City."

Section 89 of the said amended Ordinance runs thus:

"The annual rateable value of any rateable hereditament shall be the gross annual rental value of such rateable hereditament as ascertained in accordance with section 88 of this Ordinance, less such allowances for voids and loss of rent (and for these only) as the Corporation may in their discretion think fit to make."

Section 90 is couched in the following terms:

"There shall be raised, levied and collected by and paid to the Corporation for each year beginning the 1st day of January, upon and in respect of every rateable hereditament an annual rate of tax not exceeding ten per centum of the annual rateable value of such hereditament (hereinafter referred to as the "House Rate") as determined by the Corporation in accordance with the provisions of this Part of this Ordinance."

"Rateable hereditament" means any dwelling house, warehouse, store, shop, counting-house, manufactory, factory, workshop, electric substation, stable, shed, garage, racetract, stadium, industrial or commercial storage tank, pier, underground cable, or any other building installation, structure, or property whatsoever within the limits of the City and the lands in, under or upon which any of the foregoing are built, erected, standing, kept or maintained, together with any lands appurtenant to or occupied with any of the same respectively; and includes every vacant parcel of land within the limits of the City not appurtenant to or occupied with any of the same, but shall not include -

- (a) buildings occupied solely as churches, chapels and places of public worship of any religious denominations."

In my view, nothing significant turned on the question of payment of rates and taxes by the Applicant, added to which it should be noted that the exhibits displayed (which are appended to the affidavit of Sadiq Al Razi sworn to on the 18th December 1990) reveal that the said payments were made in the name of the 'Islamic Missionary Guild', and not that of the Applicant Company.

What is the position with regard to State's portion of the land at No. 1 Mucurapo Road?

With respect to this issue, it was pointed out by Mr. Thorne that there was no evidence to indicate that either the unincorporated Jamaat or the Applicant Company had ever been in possession or occupation of the State's land at Mucurapo. He went further. He stressed that an attempt was made by the unincorporated Jamaat sometime in April 1990 to occupy the State's land, and the army and police stopped it - i.e physically prevented the members of the unincorporated Jamaat from so doing. Generally speaking, I am in agreement with Mr. Thorne's submission on this point. I find this to be the factual position as regards the alleged attempted occupation by the unincorporated Jamaat of the State's land at Mucurapo. And, the mere filling in of the State's land at Mucurapo by the unincorporated Jamaat is merely indicative of an intention on the part of the unincorporated Jamaat to occupy same. It is not per se evidence of actual occupation by the Jamaat. Wuta-Ofei v Mabel Danquah [1961] 1 WLR 1238 is irrelevant, and in my view of no assistance whatsoever on this point. In that case, it was held inter alia that the type of conduct which indicates possession must vary with the type of land, and further that the slightest amount of possession by an owner against a trespasser without title is sufficient. That, however, is not the case here. The State was entitled to turn off the unincorporated Jamaat or the Applicant Company (i.e the trespassers) before they had gained possession of the State's portion of the land. See Pollock on Torts, 15th Edit. at/

It was vigorously asserted by Attorney for the Applicant Company that the State (by its actions) had treated and negotiated with the Applicant Company and with the unincorporated Jamaat both as regards the State's land at Mucurapo and the Corporation's land there, and had acquiesced in their occupation of the said lands, drawing attention at the same time to the affidavits of Minister Brinsley Samaroo sworn to on the 24th day of May 1990, Minister Carson Charles sworn to on the 20th May 1990, Hilda Goodial sworn to on the 25th day of June 1990, and paragraph 7 of the affidavit of Muhammad Ahmad Tariq sworn to on the 24th April 1990, as being evidence in support of his contention. It was further stated by Attorney for the Applicant Company that there was no answer by the Respondents (by way of affidavit) to those allegations made by the Applicant as respects that treating and negotiating etc, and that accordingly the allegations should be deemed by the Court to have been admitted by the Respondents. And he cited (a) Cross on Evidence, 6th Edition, p.32, and Nickson Mungroo v Magistrate Algernon Jack, H.C.A #2386 of 1987 (unreported) in support of this assertion.

As I have indicated earlier, the State could not 'negotiate and treat' either with the unincorporated Jamaat or with the Applicant Company with respect to the Corporation's land. It had no authority to do so. And there is no evidence on record to indicate that the Corporation had given the State any authority or permission to act on its behalf in this regard. The Corporation is a separate legal persona, and is not in any way subject to control and direction by the State.

Additionally, I do not regard the affidavit of Ministers Brinsley Samaroo, Carson Charles and Hilda Goodial (whose affidavits I accept), as amounting to a treating, negotiating and an acquiescence on the part of Government of the Jamaat's (unincorporated or corporate) occupation of the State's portion of the Mucurapo land. I do not think that these affidavits are capable of bearing such a construction. At most, they tend to establish quite affirmatively what Government's policy was in matters of those kinds. And, those affidavits seem to make it quite clear that the Ministers' discussions with the unincorporated Jamaat were not intended to be and did not constitute a 'treating and negotiating' with the unincorporated Jamaat (or with

the Applicant Company), or as amounting to acquiescence in the Jamaat's allegedly illegal occupation of anyone of the two pieces of land at Mucurapo. This is what Brinsley Samaroo said in paragraph 4 of his affidavit:

". . . The purpose of that meeting was to ascertain whether the Jamaat Al Muslimeen, the applicant herein, was a genuine offshoot of the Guild and whether the Guild would be in agreement with the Government's treating with the applicant with a view to considering a lease to it of part of the said lands - whether, in effect, this would be consistent with the aims of the Guild and what the Guild's attitude to it would be. The applicant had been seeking to have such facilities from the Government. At the end of these discussions it was clear to me that the Guild did not want to be closely associated with the Jamaat Al Muslimeen."

And in paragraph 5 of his affidavit, Minister Samaroo swore -

"At the first meeting, representatives of the applicant who included Imam Yasin Abu Bakr enquired about obtaining a lease from the Government of the lands illegally occupied by the applicant at Mucurapo. I told them that the policy of Government with respect to the leasing of State lands was, that as a prerequisite of any negotiations it would treat with the Jamaat Al Muslimeen only if it were a registered and incorporated body: the Government would not consider allocating lands to any one individual."

And at paragraph 7, he stated:

"Before any such instruction can be given to the Solicitor General, proposals must first be put to Cabinet for consideration and approval. Up to the time of my departure from the Ministry of Decentralisation no such proposals had been submitted to Cabinet. My meetings with the representatives of the applicant were entirely fact finding." (emphasis mine).

Minister Carson Charles at paragraph 4 of his affidavit deposed -

"At the meeting I indicated that Government would not as a matter of policy be prepared to treat with any group of individuals concerning the leasing of State Lands. The policy of the Government was that it would, in an appropriate case, consider applications for a lease of State Lands where an applicant for such a lease was registered as an incorporated body. I was informed by representatives of the applicant that the Jamaat Al Muslimeen had been incorporated. I subsequently discovered that they were, in fact, in the process of being incorporated at that time. I indicated that any proposal for a lease to the applicant would have to be submitted to Cabinet for its consideration. At the meeting I expressed my concern about reports of further unauthorised construction activity by the applicant's members at the premises at Mucurapo. A spokesman for the applicant said that the City Council was engaged in filling adjacent lands. I was assured by the applicant's representatives that they were not engaged in any further unauthorised construction activity. I am unable to recall who these representatives were, except that a Mr. Yasin Abu Bakr was one of them."

Then, at paragraph 5, the said Minister stated:

"Furthermore, a decision on the leasing or any alienation of State Lands cannot be made by any one Minister of Government but must be considered and agreed upon by Cabinet. In view of the assurances of the representatives of the applicant that they were not engaged in further unauthorised construction activity, I proceeded, in good faith, to instruct the officers of my Ministry to obtain all relevant information, and to consult my Cabinet colleagues with a view towards making

appropriate recommendations to Cabinet in respect of the situation created by the illegal occupation by the applicant of Government lands and all questions, including the request of the applicant for the regularisation of its occupation, relating to the situation. I was however subsequently informed sometime in April 1990, that members of the applicant have in fact been involved in further unauthorised construction on lands at Mucurapo."

And finally at paragraph 6, the said Minister said -

"With respect to the possible regularisation of the applicant's illegal occupation, several matters needed to be examined e.g. the determination of ownership of lands at Mucurapo, and the respective roles to be played by the Port-of-Spain City Corporation and Central Government, the owners of the said lands.

There has been no Cabinet decision with respect to any lease of the premises at Mucurapo lands to the applicant. I had made absolutely clear to the representatives of the applicant at the meeting referred to, that no land could be promised to it and that the question of the grant of a lease was a matter for Cabinet. They could not have left the meeting in any doubt about that."

Hilda Goodial made the following statements in paragraphs 6,7 and 8 of her affidavit:-

"6. With respect to the matter of incorporation, neither Minister Charles nor Mr. Wilkie nor I requested that the applicant be incorporated. I merely inquired whether the Applicant was incorporated and Minister Charles explained what the policy of the Government was with regard to requests to enter into arrangements with unincorporated bodies. The allegation in Mr. Hafeez Ali's affidavit that a copy of the Applicant's certificate of incorporation was "delivered" to me "pursuant to" my "request to have the organisation incorporated in order that the Deed of Lease in respect of the lands which the Jamaat Al Muslimeen occupy could have been vested in an incorporated body" is totally false. I never made any such request for any such purpose. During the course of my telephone conversation with Mr. Hafeez Ali, he told me that he had received a communication from the Registrar General since July, 1988, directing that he publish on behalf of the Applicant the necessary notice under the 14th Schedule of the Companies Ordinance, but that he had not yet done so, but that he would proceed to do so and send me a copy of the letter referred to; and that he would send me a copy of the draft memorandum and articles of association which he did under cover of a letter dated November 10, 1989, in which he requested a copy of the "draft lease". A true copy of my reply to this letter dated November 30, 1989 which simply acknowledged its receipt and said that its contents were receiving attention, is hereto exhibited and marked "H.G.1".

7. With regard to paragraph 4 of the said affidavit of Hafeez Ali, sworn April 24, 1990 and filed herein, the statements attributed to me and to Mr. Wilkie are totally untrue. What I told Mr. Ali was that the parcel of land of which the Applicant was in occupation was not vested in the State but was in fact owned by the Port-of-Spain City Corporation and that my view, therefore, was that there needed to be some agreement between the Government and the City Corporation before any arrangement with any third party could be arrived at.

8. It has been necessary for me, in the course of my duties, to make inquiries and to investigate the records relating to the matters which have given rise to complaint in these proceedings. The records are the records of the Ministry of Works, Infrastructure and Decentralisation. My researches have revealed that the Islamic Missionaries Guild was never granted a lease of any lands at Mucurapo because of objections raised by local Islamic organisations - in particular, by the Anjuman Sunnatal Jamaat Association (ASJA) were that the Guild was not an indigenous body, that it was not representative of all the Muslim organisations in Trinidad and Tobago and that, in fact, it was a completely foreign body."

These three affidavits (especially the paragraphs quoted above)

in my view provide a complete answer to the allegations made by the Applicant Company with respect to the 'treating and negotiating' etc. They are not tantamount to an admission of the kind alleged by the applicant. Accordingly, I am constrained to uphold Mr. Thorne's contention on this thorny issue. One further comment. I do not believe paragraph 7 of Mr. Muhammad Tariq's affidavit sworn on the 24th April 1990 - to the effect that "in several meeting which the Jamaat Al Muslimeen had with Ministers in the Government of Trinidad and Tobago between 1972 and 1983, the Government promised to regularise the tenancy of the premises in question in favour of the Jamaat Al Muslimeen by having a Deed of Lease prepared in its favour. These meetings were held with Ministers Cuthbert Joseph and Muriel MacDavidson who both gave assurances to the Jamaat Al Muslimeen that the Government would have the necessary Deed of Lease prepared and signed granting the lease of the premises described in the statement dated 24th day of April 1990 which accompanies this affidavit to the Jamaat Al Muslimeen". These are bald assertions, which are not backed up by either written or documentary evidence. How could Government (except with the authority and consent of the Corporation) regularise an alleged tenancy over the Corporation's land, which in the first place never existed? - And, about which there is not one tittle of evidence? Again, how could Ministers Cuthbert Joseph and Muriel MacDavidson give assurances to the Jamaat Al Muslimeen that Government would have the necessary deed of lease prepared and signed, granting a lease of premises which involved in part the Corporation's land over which Government had no control? These alleged promises strike me as being preposterous - albeit, I would not doubt that the unincorporated Jamaat might have held some discussions at some time with the very said Ministers. But bearing in mind that most of the activities in that period (1972-1983) were concentrated on the Corporation's land, I simply do not believe that such extravagant and unrealistic promises could have been made by such responsible Ministers of Government to the unincorporated Jamaat.

It will be seen, therefore, that there is no room for the application of the principle alluded to by Ibrahim J at page 13 of his judgment in Mungroo (ante), or for the observations made by Sir Rupert Cross at page 32 of his Book on Evidence (6th Edition); or

for the general rule enunciated at page 35 of Basu's Commentaries on the Constitution of India - Vol. E - 1981 - under the rubric 'Counter-affidavits'. These principles - all of which concern a failure on the part of a Respondent to provide a counter-affidavit to material allegations made in the affidavit of an applicant, or/^apetitioner, are, to my mind, all common sense principles, which should be applied sensibly, and as the occasion warrants. They are not applicable to this particular situation.

Of course, if the Jamaat's alleged illegal occupation at Mucurapo had been acquiesced in by the State, or by the Corporation, the position at common law would have been different. I bear in mind the ratio in Mcphail v Persons Unknown (supra), which I think, was followed by Deyalsingh J. in the Prakash Singh case. In that case, the Master of the Rolls (Lord Denning) quoted with approval a passage from Pollock on Torts, 15th Edition, at p.292, to the effect that "a trespasser may in any case be turned off land before he has gained possession, and he does not gain possession until there has been something like acquiescence in the physical fact of his occupation on the part of the rightful owner". The position in this case is however entirely different. There has been no acquiescence by the State or by the Corporation in the occupation of the unincorporated Jamaat or of the Applicant Company.

Notwithstanding the fact that Counsel for the applicant had altered his argument radically in his Reply by asserting: "that all I have to show is that I was in possession, and once that possession was interfered with by the State unlawfully, I am entitled to the reliefs claimed" - an argument which was completely different from his original argument wherein he insisted "that the applicant was in 'lawful possession'" - nonetheless the principle in Mcphail v Persons Unknown would still not have applied here, because on the evidence I hold that there has been no acquiescence by Government or by the Corporation in the illegal occupation of the Mucurapo lands by the unincorporated Jamaat or by the Applicant Company.

The question arises and must be answered: Can the Applicant Company - an incorporated body, and a non-natural person - enjoy the fundamental rights of freedom of worship and religious observance? Or, are these rights pertinent only to an individual in esse i.e. a natural person? Of course, I am conscious of the fact that there are certain fundamental rights and freedoms which can be enjoyed by an artificial person in law - as for instance, the right to the enjoyment of property, and freedom of the press.

It is well recognised that the Applicant Company was established with certain objects in mind. One of them is the promotion and propagation of the religion of Islam in Trinidad and Tobago, the Caribbean and in the international arena, and also to cooperate and co-ordinate plans with other Islamic Organisations for the benefit of the Muslim Community. Another is to educate the population about the teachings of the Islamic faith. How then is the Applicant Company to attain and achieve its objectives, seeing that it is a non-natural person? For my part, my own belief is that the Applicant Company

(being a corporation) can only do so by acting through its Board of Management. In my view, the Applicant Company can therefore worship by doing so through its Board of Management, and can hold religious beliefs and observances via the same medium. I can see no reason why it could not do so. Otherwise, the Applicant Company would be incapable of fulfilling its aims and objectives, and its formation as a Company would be in vain, and in this regard, it should be placed in no different position from that of a natural person. It can perform these functions in my opinion through its Board of Management, which represents the directing mind and will of the Company and controls what it does. The state of mind of the Board will be the state of mind of the Company: See, for example, Bolton (Engineering) Co. v Graham [1957]1 Q.B 159, at 172.

Is the ex parte injunction obtained in 1984 by the Corporation against the unincorporated Jamaat and Yasin Abu Bakr still in force? And secondly, what is the extent of that injunction?

It was contended by Mr. Maharaj for the Applicant that the injunction had been waived by the Corporation as it had not been acted upon by the Corporation following the committal to prison of Yasin Abu Bakr in 1985. Mr. Thorne, on the other hand, insisted that it was still in force; that it cannot be waived unilaterally by a party; that it is only disposed of when it is discharged or dissolved by a Court of Law, as it is an order of the Court. There is great force in this argument advanced by Mr. Thorne. For a restraining order cannot in reality be got rid of unless it is discharged or dissolved by the Court. Until that is done, it remains in full force and effect. It cannot be waived unilaterally by a party to proceedings, because it is in effect an order of the Court, and as such it must be obeyed until it is properly and legally brought to an end. No authorities were cited before me on this point, but I have no doubt that it cannot be relied on by him for the reasons I have already mentioned. If an injunction is breached, and committal proceedings for its breach are not instituted by the party in whose favour it was granted, that fact may be pleaded in mitigation of penalty by the party enjoined in any subsequent action between the selfsame parties. The injunction granted by McMillan J (as he then was) against Yasin Abu Bakr and the Jamaat Al Muslimoon (the unincorporated body) is still binding on them, as it has not been discharged by a Court of Law.

As was stated by Eveleigh LJ in Z Ltd. v AV [1982]1 All E.R

556:

"I think that the following propositions may be stated as to the consequences which ensue when there are acts or omissions which are contrary to the terms of an injunction. (1) The person against whom the order is made will be liable for contempt of court if he acts in breach of the order after having notice of it. (2) A third party will also be liable if he knowingly assists in the breach, that is to say, if knowing the terms of the injunction, he will fully assist the person to whom it was directed to disobey it."

It is important to bear in mind though that notwithstanding the fact that the injunctive order (prohibitory and mandatory) still remains in force, no legal steps (save the committal proceedings brought for contempt of Court) have been taken by the Corporation to enforce the order - for example, by the institution of proceedings under Order 94 of the Rules of the Supreme Court for summary possession, or by its taking steps to remove the Applicant Company or the former unincorporated Jamaat from its land.

It is essential to remember, too, that the unincorporated Jamaat only became incorporated because of the suggestion and intimation made by Ministers Brinsley Samaroo and Carson Charles that it was Government's policy in matters of these kinds not to deal with an individual, but with a corporate body. Thereafter, the unincorporated Jamaat in its anticipation (it would seem) of having to deal with Government became incorporated.

Are the Respondents herein responsible for the demolition and/or destruction of the buildings on the Corporation's land?

On this particular score, Mr. Maharaj [for the applicant] advanced his argument in this way. First, he said, only the Commissioner of Police had power to authorize any person to go onto the premises if that person was not a police officer or a member of the Defence Force in uniform. Any other person had to procure the written permission of the Commissioner of Police to enter those premises. Civilians were not allowed to go there unless they had the written permission of the Commissioner of Police. The buildings, he said, belonged to the Jamaat. And, it was during the time that the prohibition was in force that the buildings were demolished. That evidence (he claimed) raised at least a prima facie case that the Respondents were responsible for the demolition of the buildings in that they either demolished the buildings through their servants or agents, or they caused or facilitated such demolition or destruction. It was further submitted that no evidence was called by the Respondents to deny that they had anything to do with the demolition of the building. It was reasonable to expect, he continued, that they would have been able to say what had happened, having regard to the circumstances of the case, and to fact that they were the sole occupants of the place at the material time. As regards the

fire, the place was not yet a prohibited area. But when the demolition took place, the premises were a prohibited area. Thus, the circumstantial evidence called for an explanation from the Respondents. And, he cited Legal Notice No. 162 of 1990, and various curfew orders, and the affidavit of Vincent Harding as supportive of his contention.

In response to this, Mr. Thorne's argument went like this: That (a) the Applicant Company had given up possession on July 27th, 1990. That (b) when the buildings were destroyed, the Applicant Company had ceased to be in possession thereof. That (c) the buildings had become part of the land (see Mitchell v Cowie above), and the value of the land was enhanced by the erection of the buildings thereon. That (d) the buildings were the property of the City Corporation, and it was for the Corporation to complain about their destruction. That (e) there was no direct evidence that the army (or police) had destroyed the buildings, so that the Respondents had not been presented with evidence which they had to rebut. That (f) the army must have known that those buildings were being demolished. It was inconceivable that so substantial an operation as that could have taken place without the army being aware it was taking place. But knowledge that it was taking place (to condone it, even) is not prima facie evidence that the army did it. They (the army and the police) must have known who did it. But that was no justification for inferring that it was the army or the police who did it. It would have been a different matter, for example, (he declared), if the Applicant Company had come to Court and had shown that a bulldozer belonging to the army or police had been spotted on the land at the material time or shortly thereafter. There must be some real connexion shown (he stressed) between the army and/or police and damage done before the army or police can be saddled with such responsibility. In short, there must be something connecting the army or the police with the damage done to those buildings, which there is not.

Legal Notice No. 162 of 1990 reads as follows:

"REPUBLIC OF TRINIDAD AND TOBAGO

THE EMERGENCY POWERS REGULATIONS, 1990

ORDER

MADE BY THE COMMISSIONER OF POLICE UNDER REGULATION 4 OF THE EMERGENCY POWERS REGULATIONS, AND BY VIRTUE AND IN EXERCISE OF ALL OTHER POWERS ENABLING HIM IN THAT BEHALF

THE PROHIBITED AREA ORDER

1. This Order may be cited as the Prohibited Area Order, 1990.
2. This Order applies to the area described in the Schedule, (hereinafter called "the Prohibited Area").
3. No person other than a police officer or a member of the Defence Force in uniform may enter, or remain in, the Prohibited Area unless he is authorised in writing to do so by the Commissioner of Police.

SCHEDULE

The Prohibited Area is bounded -

- (a) on the North by the fence running parallel to Mucurapo Road and enclosing the premises occupied by the Jamaat-al-Muslimeen;
- (b) on the West by the fence immediately East of the Bournes Road River;
- (c) on the South by the northern boundary of the northern carriageway of the Audrey Jeffers Highway; and
- (d) on the East by the southern side of the road running along the boundary of premises occupied by the Jamaat-al-Muslimeen, connecting to a mangrove and continuing through the mangrove to the northern boundary of the northern carriageway of the Audrey Jeffers Highway.

Made by the Commissioner of Police this 6th day of September, 1990.

J. BERNARD
Commissioner of Police."

And Legal Notice No. 184 of 1990 runs thus:

"REPUBLIC OF TRINIDAD AND TOBAGO

THE EMERGENCY POWERS REGULATIONS, 1990

ORDER

MADE BY THE COMMISSIONER OF POLICE UNDER REGULATION 4 OF THE EMERGENCY POWERS REGULATIONS, AND BY VIRTUE AND IN EXERCISE OF ALL OTHER POWERS ENABLING HIM IN THAT BEHALF.

THE CURFEW (NO. 11) ORDER, 1990

1. This Order may be cited as the Curfew (No. 11) Order, 1990.
2. The Curfew Order, 1990 is amended by deleting the Schedule and substituting therefor the following new Schedule -

'SCHEDULE

The Curfew is in force in Trinidad only, between the hours of 11.00 p.m. and 5.00 a.m. on the day following'.

Made this 17th day of September, 1990.

J. BERNARD
Commissioner of Police."

Can this Court, therefore, draw the inference called for on this particular point by Attorney for the Applicant Company?

According to Harding's affidavit, the fire occurred about one week after the State of Emergency had been declared. It involved a building which housed a boutique, a grocery, a garment factory and living quarters of Anisa Abu Bakr and Atiyah Abu Bakr. Shortly before the building became engulfed in flames, Harding claimed he had seen uniformed members of the Defence Force upstairs of the said building. As soon as they had come from upstairs of the said building, he saw the building on fire. At the time, the premises had not yet been declared a prohibited area. Fire units responded, but Mr. Harding swore that he noticed that the Fire Service units were blocked for some 20-30 minutes before being allowed to enter. The blaze was subsequently put out, but the top of the building was burnt. In the case of the fire, there are not sufficient positive facts here proved from which a Court can reasonably infer or conclude with any degree of practical certainty that it was the army who had set fire to that building. To do more than that would be to speculate. The fact that members of the army were seen upstairs the said building and thereafter were seen to descend shortly before the outbreak of the fire does not automatically lend itself to an inference that it was the members of the army who were either instrumental or responsible for causing the said fire. The reference here does not go beyond a mere possibility.

It was said that the demolition of the buildings on the Corporation's land was carried out between the 17th and the 19th September, 1990. It was deposed too by Harding that during that period armed members of the Defence Force were in control of the premises at Mucurapo, and the police were guarding the outside of the premises. All the buildings were demolished with the exception

of the Mosque and an adjoining shed. A curfew was in force during the relevant period between the hours of 11:00 p.m. and 5:00 a.m. the following day. The area itself encompassing the Mucurapo lands was declared a 'prohibited area'. The Prohibited Area Order, 1990 ("The Order") merely described the Mucurapo area for the benefit of members of the public. It did not achieve anything more. It is not indicative of an admission on the part of the police of occupation by the Applicant Company or the unincorporated Jamaat of the lands at Mucurapo. The relevant curfew hours commenced at 11:00 p.m. The Order itself did not amount to a complete prohibition. A person other than a police officer or a member of the Defence Force in uniform may enter or remain in the Prohibited Area, but he will only be allowed to do so with the authority of the Commissioner of Police in writing. The order, therefore, did not constitute an absolute prohibition.

It must be remembered that the standard of proof required in civil cases is generally expressed as proof on the balance of probabilities. If the Court or Tribunal can say "it thinks that it is more probable than not", the burden is discharged. The degree of probability which must be established will vary from case to case. But a civil court does not adopt as high a degree of probability as a criminal court. See Phipson on Evidence, 15 Edition, at paragraph 4-35.

The evidence is that by The Prohibited Area Order (Legal Notice #162 of 1990) the Police had custody and control of that entire area - the Prohibited Area. No person could have entered that Area unless he was authorized in writing to do so by the Commissioner of Police, or unless he was a police officer or a member of the Defence Force in uniform. During the relevant period the army was in occupation of the said Area. What is abundantly clear (and I so hold) is that the army and the police must have known who the person(s) were who had destroyed those buildings. The facts enumerated above by the Applicant Company surrounding this particular issue give rise to a prima facie presumption (on the balance of probabilities) that the Respondents were responsible for the demolition of the said buildings in that they had either demolished the buildings through their servants or agents, or had caused or facilitated such demolition. And that

prima facie presumption has not been displaced by the Respondents by way of affidavit evidence in answer thereto. The circumstances surrounding the demolition and destruction of those buildings called for some explanation or satisfactory explanation from the Respondents who had complete charge and control of the Area at the material times, and they have failed to do so.

There is no direct evidence that the servants and/or agents of the State caused any damage to the Mosque which stands on the Corporation's land, but the circumstantial evidence in this case points almost inescapably to a conclusion of responsibility on the Respondents' part for the said damage, having regard to the fact that the entire area was under the control, charge and custody of the army and the police at the material time, and I so find.

Can this Court grant the declarations sought by the Applicant Company in respect of reliefs 1,2,3,4 and 6 of the Originating Motion (as amended)?

On this point, Mr. Maharaj maintained that no complaint has been made by the Applicant Company against the Corporation. All the declarations, he stressed, relate to the conduct of the State Officers going onto the land(s). The reliefs claimed (he declared) are reliefs against the State officers. Not a single declaration of any reliefs claimed (he insisted) would affect the Corporation's interest or title in the land - either directly or indirectly. The Corporation has no interest in any of the reliefs claimed, he added - the reliefs claimed being reliefs against the conduct of the State. The Respondents (he maintained) cannot rely on a third party's title to the Corporation's land. In relation to the Corporation's land, the State cannot question whether the Applicant was a trespasser or not, nor can the Respondents set up the defence of *jus tertii*, as the Applicant was in possession.

Mr. Thorne, on the other hand, countered by stressing that all the declarations sought involve the estate of the Corporation in the land, referring at the same time to *Zamir on Declarations*, [1962 Edit.] and *Young on Declaratory Judgments*, [1985 Edition]. Where a person is going to be affected by a declaration, he ought to be made a party to the proceedings, Mr. Thorne insisted. The Court should refuse a declaration if the Corporation is not a party (see *Derek v Najaar ante*). The Court should refuse a declaration (Mr. Thorne added) if the proper parties are no

before it. In this case, he went on, there is the clearest evidence of the Corporation's interest. The Corporation owns the land, and has obtained an injunction against a body of persons. The Corporation owns the buildings on the land, the buildings being part of the land. Therefore, the Corporation ought to have been made a party to these proceedings, he added. Persons whose interest may be affected should be made parties. All the reliefs claimed, Mr. Thorne pointed out, must necessarily involve some derogation of the title of the Corporation.

A powerful submission indeed, and one which must be examined.

The general rule (according to Zamir on Declarations) is that all persons who appear to have a real interest in objecting to the grant of the declaration should be made defendants. As Lord Maugham declared in *London Passenger Transport Board v Moscrop* [1942] AC 332, at p.345:

"The persons really interested were not before the Court It is true that in their absence they were not strictly bound by the declaration, the Courts have always recognized that persons interested are or may be indirectly prejudiced by a declaration made by the Court in their absence, and that, except in very special circumstances, all persons interested should be made parties, before a declaration affecting their rights is made."

Zamir on Declarations [1962 Edition] puts it this way at page 272 of the said Edition:

"The rule requiring the joinder of all interested persons is supported mainly by two reasons. First, since the Court, in the exercise of its discretion, may take into account the interests of such persons, it is only just that they be given an opportunity to present their arguments. And secondly, a declaration made in the absence of such persons will not bind them. They will, therefore, be in a position to raise, in new proceedings, the question already decided by the Court. Such multiplicity of actions will be avoided if all interested persons are joined as parties."

I wholeheartedly endorse the sentiments echoed by the learned author of Zamir in the passage quoted above, and I also find myself in agreement with the dictum expressed by Viscount Maugham in the *London Passenger Transport Board* case.

To my mind, these passages reflect the relevant law on this particular topic.

In support of his contention on this point, Mr. Maharaj relied
on -

- (a) Legal Notices Nos. 142 of 1990, 140 of 1990, 147 of 1990, 152 of 1990, and 162 of 1990;
- (b) Curfew Orders Nos. 2-12 of 1990;
- (c) Legal Notice No. 217 of 1990 - a Resolution;
- (d) Underhill on Torts, 14 Edition, p.74;
- (e) Dorothy Enez Derrick v Affif Nazgar and the Attorney General of Trinidad and Tobago [1976]28 WIR 340.

Conversely, Mr. Thorne drew attention to -

- (1) Zamir on Declaratory Judgment, 1962 Edition;
- (2) Young on Declaratory Orders, 1975 Edition;
- (3) London Passenger Transport Board v Moscrop [1942]AC 332, at 345;
- (4) Derrick v Najaar [1976]28 WIR 340;
- (5) Guardian Assurance Co. Ltd v Sutherland [1939]2 All ER 246, at 251.

In Derrick v Najjar (ante), Phillips JA commented:

"This appeal raises a question of fundamental importance. It concerns the operation of the adversary system which is employed for the conduct of civil litigation. It involves consideration of the rule of natural justice expressed in the maxim 'Audi alteram partem', whereby the Courts will not make an order which could possibly affect a person's rights without giving to that person a full opportunity of being heard."

D (in that case) agreed to purchase from the Crown a 99 year lease in a parcel of Crown land ("the property") for a premium of \$26,500, and made a down payment of \$2,600. Thereafter, D orally agreed to assign to N all her rights and interests in the property for \$30,000. The sum of \$6,060 was to be paid to D, and the sum of \$23,940 (being the balance owed by D to the Crown - price of the property) was to be paid to the Sub-Intendant of Crown Lands. Notice of the assignment of D's interest in the property to N was given to the Sub-Intendant who was instructed by D to execute the lease in favour of N who thereafter paid to the Crown Solicitor the relevant conveyancing fees. Subsequently, in compliance with full instructions from D, who alleged that she had not received the full consideration for the assignment, the Sub-Intendant refused to execute the lease

of the property to N. By a Writ of Summons N sued D and the Attorney General. The action against D was for specific performance of the oral contract, damages for breach of contract in lieu of or in addition to specific performance, and an injunction restraining the disposal of the property. Against the Attorney General, N claimed declarations that the oral contract was still valid and subsisting and binding on the Attorney General, and that he was entitled to have the property conveyed to him by the Sub-Intendant. The Writ was never served upon D. In his defence, the Attorney General admitted the facts as hereinbefore stated. Pursuant to Order 33 Rule 6 of the Rules of the Supreme Court, 1946, N applied by notice of motion to the High Court for a judgment upon admissions in the Attorney General's defence. The Judge granted the reliefs claimed by N against the Attorney General. It was held, *inter alia*, that -

- (ii) since the foundation of the relief claimed by N was a declaration that the oral contract made between him and D is valid and subsisting and binding upon the Attorney General, the issues can be properly litigated only in proceedings to which D is a party;
- (iii) that admissions by the Attorney General were such as may possibly affect D's interest and cannot be properly used for the purposes of a motion for judgment under the provisions of Order 33 Rule 6;
- (iv) D was entitled *ex debito justitiae* to have the judgment against the Attorney General set aside.

It should be noted that the facts in the Dorothy Enez Derrick case are not on all fours with those of the present case, and as such are distinguishable from the present case. The issues in both cases are entirely different.

There is great force in the submission made by Mr. Thorne Q.C on this issue, but with the greatest of respect to him, I do not see how the reliefs claimed at (2),(3),(4),(5) and (6) of the Originating Motion (as amended) would in any way affect the Corporation's interest or title in its land, or for that matter derogate from it. Take, for example relief No. (2). The Applicant Company is merely asking for a declaration against the Respondents that the entry on and occupation

by the State of a parcel of land (measuring 1.5203 hectares and 1.9324 hectares as described in the plan of Mr. Bowles) from the 10th December 1990 to the 6 February 1991 was unconstitutional and illegal in that it contravened the Applicant's rights as guaranteed in sections 4(a), 4(b) and 4(h) of the Constitution. In short, the Applicant is merely saying that the Respondents' entry on and occupation of lands of which I am in possession is unconstitutional and illegal. Now, therefore, how on earth can such a declaration really affect the Corporation's interest or title in the land or in any way derogate from it? What is more, the Corporation must have had notice of these proceedings, as these proceedings received wide coverage in the media. It has chosen not to defend this matter or to intervene in it.

The Corporation has stood by idly and indifferently and has watched all that has taken place without lifting a finger in its own interest. Furthermore, it will be observed that all the other reliefs sought by the Applicant Company are in similar vein. Accordingly, I am unable to uphold Mr. Thorne's submission on this point. The general principles enunciated by him on this issue do not, in my respectful view, apply to the circumstances of this case. In short, I do not think that the Corporation will in any way be prejudiced or affected by the grant of the reliefs sought in this matter.

I should add that the power to make a declaratory order is discretionary. The discretion should be exercised judicially and with proper care and caution, having regard to all the circumstances of the case. It will not be exercised where the relief claimed will be unlawful, unconstitutional, or inequitable to grant, or contrary to the accepted principles upon which the Court exercises its jurisdiction: see Halsbury's Laws of England, Vol. 1, 4th Edition, paragraph 186.

Before moving on to another topic, I think it will be useful to reproduce in full for the sake of completeness this little passage which appears in Kerr on Injunctions, 6th Edition, at page 668. It goes as follows:

"An order for an injunction must be implicitly observed, and every diligence must be exercised to obey it to the letter. However erroneously or irregularly obtained, the order must be implicitly observed, as long as it exists. A party affected by it cannot disregard it or treat it as a nullity, but must have it discharged on a proper application. A man who does not obey it to the letter so long as it exists is guilty of contempt unless there be something to mislead upon the plain reading of the order, or a pressing emergency should make it impossible to comply with the order."

It was pointed out by Mr. Thorne that -

- (a) all the buildings (including the Mosque) were erected on the Corporation's land before the Applicant Company came into existence;
- (b) the buildings were not erected by the Applicant Company, and there is no evidence to indicate that there was any purported transfer of ownership of the buildings, or any of them to the Applicant Company.

Thus, it followed, Mr. Thorne emphasized, that the Applicant Company was not entitled to make any claim whatsoever in respect of any damage or destruction done to them by anybody. There is no positive or affirmative evidence that those buildings had been erected by somebody else, because they had been erected before the Applicant Company came into existence. If any damage or wrong was done to the buildings, then the vesting of them in the Applicant Company must be shown, so that the Applicant can claim, Mr. Thorne stressed. Therefore (maintained Mr. Thorne) the interference with the buildings alleged by the Applicant Company, or the destruction of same, is not something which is capable of giving rise to any claim by the Applicant Company, which was not the owner at the material time. The Applicant, according to him, has no right or purported rights to the buildings at all.

Mr. Maharaj's response to Mr. Thorne's argument on this delicate issue was as follows:

- (i) that the Respondents had admitted and accepted that the Applicant Company had the same interest in the lands which the unincorporated Jamaat had;
- (ii) that the Respondents had also admitted and accepted that on the formation of the Company, it continued in possession of the lands which were in the possession of the unincorporated Jamaat;
- (iii) that in any event, the affidavits filed on behalf of the Applicant Company alleged and raised the issue of the Applicant Company being in occupation of the lands with the assent of the Respondents, and the Respondents did not specifically traverse that issue, and therefore the Respondents ought not in these proceedings to be allowed to contend seriously that the Applicant Company was not in possession or occupation of the lands;

- (iv) that the undisputed evidence (especially the affidavits of Carson Charles and Brinsley Samaroo) show that the Government wanted the unincorporated Jamaat to be incorporated, so that it could conduct negotiations with it in respect of lands it was occupying.

It must be borne in mind at all times that the Applicant's claim in this matter is based on possession, and not on ownership. The evidence here is that on the formation of the Applicant Company, it remained in possession of the Corporation's land which was formerly occupied by the unincorporated Jamaat, and that (except as against the Corporation) the Applicant Company has a better right or title to the Corporation's land than the State by virtue of its possession and occupation of the Corporation's land. There has been no denial by the State of the allegation that the buildings on the Corporation's land at Mucurapo were erected by the unincorporated Jamaat - and that consequent upon the formation of the Applicant Company, the Applicant Company remained in possession and occupation of the said buildings. This, more than anything else, is the substance of their claim. So that it is not absolutely essential for the Applicant Company to establish ownership of those buildings, as the word 'property', it will be seen, must (I think) include within its ambit a right in law to the possession of property. The Applicant Company, therefore, was at the material time enjoying 'property' at No. 1 Mucurapo Road, St. James, by virtue of its occupation and possession of those buildings on the Corporation's land, and there was interference with that possession by the State unjustifiably and in a manner contrary to law. Such interference, therefore, entitled the Applicant Company to redress under the provisions of section 4(a), 4(b) and 4(h) of the Constitution, irrespective of the availability of any other remedy therefor.

Accordingly, Mr. Maharaj's argument to this effect on this particular issue must be sustained.

It is axiomatic that a person seeking redress for an alleged contravention of one of the fundamental rights and freedoms enshrined in section 4 of the Republican Constitution must show what the right or freedom is that has been contravened, is being contravened, or is likely to be contravened in relation to him, and must also prove that

there was a contravention of the said right or freedom alleged without due process of law. This is both elementary law, as well as trite law. In the same way, where, for instance, the right involved falls under the scope or ambit of section 4(a), viz. the right to the enjoyment of property, and the right not to be deprived thereof except by due process of law, the Applicant for redress must come to the Court and prove that he had a right to enjoy property, and that he has been deprived of that right without due process of law, or else that there has been some interference with that right, resulting in a deprivation of it without due process of law. In other words, you must show that you have a right to property, or to the enjoyment of it, and that there has been some interference with that right by the State (or one of the organs of the State), or by a public authority endowed with co-ercive powers, such as a municipality or a corporation, without due process of law. Unless an applicant seeking redress can establish these pre-requisites, his motion will not succeed. It will fail, as being misconceived. He will not be able to get off the ground.

'Property', in this context, should be given a wide and liberal meaning, and should include within its ambit not 'only concrete rights of property, but also abstract rights', such as rights of management of a company (*Attorney General v Lawrence supra*), choses in action, such as a debt owed by a banker to a customer, (*Attorney General of Gambia v Jobe*), a right to possession of land, personal property, goodwill, rights under a contract, and real property.

In the instant case, the Applicant Company must show that it has a right to property, or a right to the enjoyment of property, and that that right has been interfered with by the State (via the Executive) arbitrarily and unjustifiably - that is to say, in breach of a Constitutional right - in order to be entitled to relief. This was a general submission made by Mr. Thorne, and there is nothing illogical or farcical about same.

The facts recounted in the undermentioned affidavits were accepted by the Court, as being credible and probable:

- (i) that of Victoria Mendez Charles sworn on the 25th June 1990;

- (ii) the affidavits of Jules Bernard sworn to on the 29th May 1990, and on the 22nd day of June 1990 respectively;
- (iii) that of Andrew Bowles sworn on the 22nd June 1990;
- (iv) the affidavit of Christopher Grant sworn on the 10th May 1991, and the one filed on the 24th December 1990;
- (v) the affidavit of George Robinson sworn on the 29th May 1991;
- (vi) the affidavit of Noor Kenny Mohammed sworn on the 17th day of December 1990;
- (vii) that of Brinsley Samaroo sworn on the 24th May 1990;
- (viii) the affidavit of Carson Charles sworn on the 28th May 1990;
- (ix) the affidavit of Hilda Goodial sworn on the 25th June 1990;
- (x) the affidavit of Joseph Theodore sworn to on the 5th day of July 1990.

There are certain parts of the affidavit of Sadiq Al Razi (sworn to on the 11th December 1990) which I do not believe. For instance, I do not believe that Minister Brinsley Samaroo in 1988 made any promises to Sadiq Al Razi and the other representatives to the effect that Government was committed to providing the unincorporated Jamaat with a deed of lease for the premises at Mucurapo conditional upon the said Jamaat registering as a legal entity. Also, I do not accept that the Jamaat (corporate or unincorporated) was occupying the entire 8 acre parcel of land at Mucurapo Road, as stated by Razi in his affidavit. Paragraphs 11,12 and 19 of Razi's affidavit were not pursued by Mr. Maharaj. Again, I do not think that the unincorporated Jamaat's replacement of the Guild at Mucurapo Road was effected with the approval or concurrence and/or acquiescence of the Government of Trinidad and Tobago. But for these aforementioned observations, I have no quarrel or complaint with the remainder of Razi's affidavit. In particular, I believe paragraphs (2) [save that the Jamaat was not spread over the entire 8 acre parcel], (3) [save the portion that concerns Anisa Abu Bakr's property], (4),(5),(8),(9) and (10) of Razi's said affidavit.

There is no reason to disbelieve the affidavits of Shafiyah Atiba sworn on the 12th, and 18th December 1990 respectively. No claim is being made by her in her personal capacity for denial of her right to worship at the Mosque at Mucurapo at any relevant period.

I accept the affidavit of Muhammad Ahmad Tariq, except for paragraph 7 thereof. I believe that the unincorporated Jamaat held several meetings with members of Government during the period 1972 to 1983, but I do not believe the rest of paragraph 7.

With regard to the affidavit of Vincent Harding, I would make the following observations. Paragraphs 5 and 6 thereof have been challenged by Mr. Thorne as to the inference(s) which might be drawn from them. In addition, the Court has been asked by Mr. Thorne to find that the unincorporated Jamaat was not spread over the entire 8 acre parcel of land at Mucurapo, but was concentrated on the Corporation's land - an obvious answer to paragraph 2 of the said affidavit. Quite apart, there was no complaint by Mr. Thorne about the rest of Harding's affidavit. I accept paragraphs (2)-[save that the Jamaat was not spread over the 8 acre parcel],(3),(4),(5),(6) and (7) of Harding's affidavit.

But for the first two sentences in paragraph 6 of the affidavit of Abdul Barr, the remainder of his affidavit has remained unchallenged by the Respondents.

Paragraph 4 of the affidavit of Anisa Abu Bakr sworn on the 18th day of May 1991 is rejected in light of the letter of T. Malcolm Milne & Co. (a Law Firm) to Col. Ralph Brown dated 17th May 1991, which is annexed to the affidavit of Christopher Grant filed on the 10th May 1991 - the contents of which letter I accept.

In relation to the affidavit of Messrs Yasin Abu Bakr, Bilaal Abdullah and ors. sworn to on the 11th June 1991, I would say this. It seems to me that paragraphs 3 and 4 of the affidavit are irrelevant to the case before me.

The affidavits of Zainab Abdal Karim and Ameena Abdul Wahid both deal with the question of alleged abandonment ventilated by Mr. Thorne, which said issue the Applicant Company strongly disputes and denies.

The allegation against the army contained in paragraph 9 of Abdul Barr's affidavit and paragraph 6 of the affidavit of Jamilah Askari does not constitute a ground of relief in the Amended Notice of Originating Motion.

I disbelieve the contents of paragraph 4 of the affidavit of Abdul Hafeez Ali sworn to on the 24th day of April 1990, and same is

rejected as being untrue. On this particular score, I prefer the facts deposed to by Hilda Goodial at paragraph 7 of her affidavit sworn to on the 25th June 1990, as being more plausible and more realistic.

I firmly disbelieve paragraphs 3 and 4 of the affidavit of Massahoud Ali Aziz, having regard to what was said by Ministers Brinsley Samaroo, Carson Charles and Hilda Goodial in their affidavits, whose depositions appear to me to be credible, well reasoned, plausible and without motive or reason for untruth.

As regards the second affidavit of Sadiq Al Razi sworn on the 8th day of January 1991, paragraphs 3(2),4,5, and 6 are disputed by the Respondents.

The affidavit of Riza Khan sworn on the 6th February 1985 is rejected, as being untenable.

The letter written by the Law Firm of T. Malcolm Milne and Company dated 22nd April 1991 on behalf of Anisa Abu Bakr (which I accept) reads as follows:

"22nd April, 1991.

Colonel Ralph Brown
Regimental Headquarters
Chaguaramas.

Dear Sir,

Re: Claim of Ms Anisa Abu Bakr

We act on behalf of Mrs. Abu Bakr who lawfully constructed a two storied building on the premises situate and known as No. 1 Mucurapo Road, Mucurapo the ground floor of which she occupied and used as a boutique and a garment factory and the first floor of which she used as a dwelling until the recent disturbances on the 27th of July, 1990. The cost of the construction was \$900,000.00 paid out of our client's own funds. As well she conducted a car park and incidental facilities.

We are further instructed there was substantial stock in trade and a complete infra structure in the boutique and machines, materials for the manufacture of garments and incomplete and completed garments in the factory.

We are also instructed that our client had on her premises a stock of finished school uniforms manufactured under contract for the Mucurapo Junior and Senior Secondary Schools.

We are instructed that the army and the police took possession of our client's premises and unlawfully destroyed them after removing all our client's belongings as adumbrated above and detailed in the enclosed list.

We are also instructed that our client attended on you when you delegated Sargeant Tracey to receive her complaint to no avail that she also attended on the Commissioner of Police who delegated his personal assistant to receive her complaint, as well she called over the phone on two occasions she spoke to someone at the Commissioner's Office to no avail save to the extent of the return of some of the uniforms in a damaged and filthy condition some bearing the signs of being used as rags in the cleaning of foot-wear.

We are in the circumstances to claim damages in wrongful conversion and/or detinue and/or trespass to include the value of the building with its facilities and of the other items detailed in the enclosed list. As well, we are to include in the claim one for exemplary and/or punitive damages because of wanton manner in which the several acts of trespass were perpetrated.

Please let us know at your earliest convenience what you propose to do as we are instructed to institute proceedings in the High Court of Justice against you, the Commissioner of Police and the Honourable Attorney General.

In your attention to the claim you will no doubt give due consideration to the statutory restraints in time imposed on all claimants against the State.

Yours faithfully,

Sgd: T. Malcolm Milne

TERENCE MALCOLM MILNE
T. MALCOLM MILNE & CO."

I find as a fact that -

- (1) the buildings erected by the members of the unincorporated Jamaat all lay on the Corporation's parcel of land at Mucurapo;
- (2) there was no acquiescence (or concurrence) by the Government or by the Corporation in the occupation by the unincorporated Jamaat or by the Applicant Company of lands belonging to the State or the Corporation situate at No. 1 Mucurapo Road, St. James;
- (3) there was no 'actual treating and/or negotiating' by the Gov't with the Applicant Company or with the unincorporated Jamaat as respects the entire parcel of land situate at No. 1 Mucurapo Road, St. James;
- (4) there was temporary abandonment only of the Corporation's land at Mucurapo by the Applicant Company on the 28th day of July 1990; The Applicant Company intended to return to the Corporation's land if and when it could do so, but it was prevented from so doing by the events following the 'attempted coup';
- (5) the Applicant Company, and the unincorporated Jamaat's occupation and possession of land at No. 1 Mucurapo Road was limited to and confined to the Corporation's parcel of land there;
- (6) the two storey building referred to as 'Exhibit A' in the affidavit of Christopher Grant sworn on the 10th day of May 1991 (which included a boutique, a garment

factory, and a dwelling house on the first floor thereof) was owned and occupied by Anisa Abu Bakr, and not by the Applicant Company, as contended;

- (7) no planning permission was obtained by the unincorporated Jamaat or by the Applicant Company to carry out any development of lands at No. 1 Mucurapo Road, St. James. See affidavit of Victoria Mendez Charles sworn to on the 25th June, 1990. Consequently, the buildings erected on the Corporation's parcel of land at No. 1 Mucurapo Road, St. James, by the unincorporated Jamaat (or by the Applicant Company) were erected without planning permission from the Director, Town and Country Planning Division.

The buildings in the occupation and possession of the Applicant Company at Mucurapo which appear to have been demolished during the period 17 - 19 September 1990 are an unfinished dormitory, four housing quarters, a primary school, a secondary school, an Islamic book store.

It seems to me that certain portions of the affidavit of Ralph Brown sworn to on the 29th May 1990 offend the provisions of Order 41 Rule 5(1) of the Rules of the Supreme Court of Judicature of Trinidad and Tobago, and should be classified as hearsay evidence. The parts of Brown's affidavit which can, I think, be used are as follows -

- (a) paragraphs 1 and 5 thereof;
- (b) paragraph 3, commencing with the word "On", and ending with the words "for arms". That portion reads as follows:

"On the day after the event just described i.e on Saturday July 28, 1990, I despatched a contingent of soldiers to Mucurapo with instructions to search the premises occupied by the Jamaat Al Muslimeen for arms."

In my view, the rest of the affidavit evidence of Ralph Brown should not be acted upon, as it amounts to hearsay evidence.

I do not intend to expatiate on the undermentioned point which was argued at great length by both Attorney for the Applicant Company and by Attorney for the Respondents. It concerned the question of abandonment or non-abandonment of the Corporation's land at No. 1 Mucurapo Road, St. James, by the Applicant Company on the 28th July 1990. It is clear from the affidavit evidence of Messrs Yasin Abu Bakr and ors., Jamila Atimayu, Jamilah Askari, Zainab Abdul Karim and Ameena Abdul Wahid that the Applicant Company intended to return to the Corporation's land at No. 1 Mucurapo Road, St. James, at some stage following the tragic events of July 27, 1990. There was,

according to the affidavits of George Robinson and Ralph Brown, a desertion by the Applicant Company of the Corporation's land at Mucurapo on the 28 July 1990. But I find that that desertion was only intended to be a temporary one. In short, there was only a temporary abandonment by the Applicant Company of the Corporation's land situate at No. 1 Mucurapo Road. But to return, the Applicant Company intended, no doubt, to return if they were allowed to do so. What followed, needless to say, is irrelevant to the issues which I have to decide, and can, if the Applicant Company so desires, be aired elsewhere by them. The aftermath of the 'attempted coup' is of no concern to me in this matter. It pertains to another forum.

It was alleged by Mr. Maharaj that despite the Conservatory Order made by Mr. Justice Hosein on the 6th February 1991 the Respondents have continued to occupy the State's parcel of land at Mucurapo from the 21st April 1990 up to the present day and that they have been in contempt of Court by disobeying the order and by continuing to occupy the State's portion of the land notwithstanding the existence of the said Order.

Mr. Thorne's response to this accusation was this: That the Respondents' position to all this has always been that the Court had no jurisdiction to make that order - that the order is completely nugatory and without effect, and that there is nothing in it which imposes any obligation on the Respondents to observe it. In short, that the purported order is no order at all - that if the Respondents wish they could treat it as if it did not exist. But because the purported order is an order of the Court, the Respondents would nevertheless construe it as it seems to intend, and would pay respect to it, being an order of the Court.

The Conservatory Order of Hosein J (so far as material) reads as follows:-

"UPON HEARING Advocate Attorney for the Applicant and the Respondents.

AND UPON READING the Notice of Motion dated 6th day of December, 1990, the Summons dated 17th day of December, 1990, the affidavits of SADIQ AL RAZI sworn to on the 11th day of December, 1990, SAFIYAH ATIBA sworn on the 12th day of December, 1990, SAFIYAH ATIBA sworn to on the 18th day of December, 1990, CHRISTOPHER GRANT sworn to on the 24th day of December, 1990, and SADIQ AL RAZI sworn to on the 8th day of January, 1991, and all other affidavits filed and/or referred to by the Respondents during the hearing of the application for interim relief and the exhibits therein respectively referred to.

AND the Applicant by its Advocate Attorney undertaking to abide by any

order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the Respondents shall have sustained and by reason of this order which the Applicant ought to pay.

AND THE COURT DOITH MAKE THIS Order herein without prejudice to the rights of the respective parties on the substantive Motion or otherwise.

IT IS ORDERED AND DIRECTED that until the hearing and determination of the Motion herein or until further order that the First and Second Respondents, their servants and/or agents or any one acting through or by them or otherwise howsoever and the Third Respondent and the servants and/or agents of the State of Trinidad and Tobago or any one acting through or by it or otherwise howsoever undertake through their Advocate Attorney that no action of any kind whatsoever would be taken by them or any one of them to enforce any right of use, occupation, ownership, possession or entitlement to the parcel of land known as No. 1 Mucurapo Road, in the City of Port of Spain in the Republic of Trinidad and Tobago comprising approximately 8 acres 2 roods and 5 perches and more particularly described in Plan B exhibited to an affidavit of Andrew Bowles which is exhibited to the affidavit of SADIQ AL RAZI sworn to on the 8th day of January, 1991 and filed herein on the 9th day of January, 1991, which said land is bounded on the East by Road Reserve 13.7 metres wide, on the West partly by Bournes Road Ravine partly by the Audrey Jeffers Highway, on the North by Mucurapo Road and on the South by lands of the State which parcel of land is marked as two portions of land consisting of 1.5203 h.a. and 1.9324 h.a. on the said plan (hereinafter referred to as the said lands).

IT IS ALSO ORDERED AND DIRECTED that until the hearing and determination of the Motion herein or until further order that the Applicant its servants and/or agents or anyone acting through or by it or otherwise howsoever undertake through its Advocate Attorney that no action of any kind whatsoever would be taken by its servants and/or agents as aforesaid to enforce any right of possession, occupation, use and/or entitlement to the said lands SAVE AND EXCEPT that they are permitted to enter and/or remain upon that part of the said lands which is bounded on the North by Mucurapo Road, on the South by the Sewerage Trunk Main Reserve 23.38 metres wide, on the East by the Road Reserve 13.7 metres and West by Bournes Road Ravine marked on the said Plan "lands of Port of Spain City Council occupied by Al Jamaat Muslimeen 1.5203 h.a" (hereinafter called "that part of the said lands") for the purpose of exercising rights of worship, religious observances and conducting classes at the Mosque and Primary School which is attached to the said Mosque.

AND IT IS ORDERED that costs of this Application be certified fit for Advocate Attorney and be reserved."

It should be noted that the aforementioned complaint put forward by Mr. Maharaj for the applicant does not form the basis of any claim, or application for relief by the Applicant Company. To my mind, it is more like an observation or comment made by him on the action and/or behaviour of the army and the police with regard to the said Order. In any event, in the absence of more detailed argument on the point as to the validity or otherwise of the said order, and in the absence of any further arguments as to the ambit and extent (if any) of the Court's power in relation to this type of order, it would indeed be unwise and insensible for this Court to make any definite pronouncement in that regard.

Greaves v Barnett [1978]31 WIR 88, referred to by both Attorneys, is a case based on its own particular facts. There, H owned a parcel of land on which a wall house had been erected. The house was rebuilt

by H's son-in-law; LB, largely at his own expense and in the knowledge that the land belonged to H. H together with LB and his wife - Mrs. B (H's daughter) lived in the house during the reconstruction and they continued to live there until H died in 1973. In her will H bequeathed the land to her grandson, the defendant; but the will made express reference to the wall house in which H resided, which was stated to be the property of LB who occupied the land on which the house stood. On the question whether Mrs. B retained any interest in the wall house, it was held that an equity had arisen in favour of LB as a consequence of the reconstruction of the house at his own expense in the expectation of being allowed to continue to live there. H must be taken in the circumstances to have encouraged and approved the reconstruction and LB must be taken to have expected his widow not to be in jeopardy of dispossession in the event of his death; accordingly, equity required that Mrs. B should enjoy the protection to which LB would have been entitled, and should be allowed to remain in the house so long as she wished to use it as her house.

This case, nonetheless, is not authority for the proposition that an *Inwards v Baker* type licence is per se transferrable in the absence of some express or implied words in the licence itself to that effect. One should not lose sight of the fact, too, that the husband and wife in that case formed one unit.

No claim has been made by the Applicant Company for a vesting order under the provisions of section 49 of the Real Property Ordinance, Ch. 27 No. 11.

By Article 16 of the Articles of Association of the Applicant Company:-

"16. The Chairman shall be elected by the Board of Management from amongst themselves and shall be the person whom the Board of Management considers to be the most knowledgeable in the teachings and practice of Islam."

Article 21 of the said Articles of Association provides:

"21. The Board of Management shall have full control of the Management of the Association and its decision in all matters shall be final. It shall pay such expenses of and preliminary and incidental to, the promotion, formation, establishment and registration of the Association as it thinks fit, and may exercise all such powers of the Association, and do on behalf of the Association all such acts as may be exercised and done by the Association as are not by the Ordinance or by these presents, required to be exercised by the Association in General Meeting, subject nevertheless to the provisions of the Ordinance or these Articles and to such regulations, being not inconsistent with the aforesaid provisions,

as may be prescribed by the Association in General Meeting; but no regulation made by the Association in General Meeting shall invalidate any prior act of the Board of Management which would have been valid if the regulation had not been made."

Reverting once again to the legal arguments in the case, I find myself unable to accept Mr. Maharaj's submissions concerning -

- (a) the occupation by the Applicant Company and/or by the unincorporated Jamaat of the State's block of land at No. 1 Mucurapo Road, St. James;
- (b) the acquiescence in that occupation by the Government and by the Corporation;
- (c) the forcible entry by the State (through its Executive arm, viz the army and the police) onto the State's section of the land at Mucurapo; and
- (d) the handing over by the Guild of the entire parcel of land at No. 1 Mucurapo Road, St. James, to the unincorporated Jamaat, and eventually to the Applicant Company.

In my opinion, the aforementioned submissions made by Mr. Maharaj are unsustainable.

In my view, the following submissions made by Mr. Maharaj are also untenable and must be rejected. They are submissions numbers (as framed) 1, 6 and 11 / contained in Mr. Maharaj's Opening Address.

Furthermore, Mr. Maharaj's submission, as summarised in his Opening Address at (1) cannot be entertained - as it is founded on lawful occupation.

I uphold Mr. Maharaj's contentions though at numbers (2), (3), (4), (5), (7), (8), (9) and (12) of his Opening Speech; and also submission number (2) of his summary.

Furthermore, the principle enunciated by Ibrahim J in Nixon Mungroo (unreported), H.C.A #2386 of 1987 relating to unanswered allegations in an applicant's affidavit has merit and is applicable to the facts and circumstances surrounding the demolition and destruction of the buildings in the possession of the Applicant Company on the Corporation's land.

I agree with Mr. Thorne's contentions contained in his Opening Address to the effect that -

- (a) a clear distinction must be drawn between a statement of fact and the evidence by which those facts are to be proved;
- (b) a company has a separate legal identity and existence of its own, different and apart from that of its members, subscribers and shareholders;
- (c) there is need to bear in mind that there are two separate portions of land at Mucurapo in different ownership, and the necessity of having to show any right which is alleged to exist in relation to each separate portion, and how that right arose, and the fact that the Government could not give anybody permission to go onto the Corporation's land, as the Corporation's land did not belong to the State;
- (d) since the Applicant Company came into existence in 1984 only, it could not have occupied land(s) at Mucurapo since 1972;
- (e) the licence granted by Government to the Guild was not transferrable.

Quite apart, I consider the following submissions made by Mr. Thorne for the Respondents in his Opening Address to have been well grounded, and capable of being supported - the submissions numbered (3),(4),(5),(6),(7),(9) - (except for that portion of 9 which says that the licence is inoperative for all purposes), (10) - (except for that portion that says that the Corporation was collecting rates and taxes relating to lands and building owned by the Guild), (11) and (13). The rest of his argument consisting of points numbered (1), (2), (8),(12),(14),(15),(16) and (17) are rejected.

Paragraphs (a),(b),(c),(d),(e),(f),(h), and (i) of Mr. Thorne's resumé of his arguments in his Opening Address are upheld, as being maintainable. His points at (j),(k),(l),(m),(n) and (p) are in my view unsustainable. Point (g) cannot be accepted as framed. I express no conclusion as to paragraph (o). Also, I agree with that portion of Mr. Thorne's argument to the effect that the buildings on the Corporation's land are firmly affixed to the Corporation's land, but not with that portion that says that ownership of the buildings is in the Corporation. In any event, the buildings were in the possession of the Applicant Company at the material time.

The following paragraphs numbered (1),(4),(5),(6),(7),(8),(9), (10),(11),(14),(15),(16),(17) and (20) of Mr. Maharaj's Reply are rejected,

as being unsupportable; whereas paragraphs (2),(3),(12), (13) and (18) of his Reply are sustainable - and also that part of paragraph (19) which says that the common law principle relating to the defence of the jus Tertii applies to the facts and circumstances of this case. The other part relating to the principle in Mcphail v Persons Unknown [1973]3 WLR 71 is rejected.

The leave of the Court was obtained by Mr. Thorne (with Mr. Maharaj's concurrence) to deal specifically with certain points raised by Mr. Maharaj in Mr. Maharaj's Reply. Frankly speaking, the points canvassed by Mr. Thorne raised nothing new. They merely served to reinforce what went before. I differ, however, from Mr. Thorne as regards his argument on the question of permanent abandonment.

The following exhibits are reproduced as appendages to this judgment -

- (a) copy of Plan A&B attached to the affidavit of Andrew Bowles - Appendage A;
- (b) copy of the letter written by T. Malcolm Milne and Company to Col. Ralph Brown dated 22 April 1991 - Appendage B;
- (c) copy of the Conservatory Order made by Hosein J dated 6th February 1991 - Appendage C;
- (d) copy of the Certificate of Incorporation of the Applicant Company - Appendage D;
- (e) copy of the Injunctive Order of McMillan J dated 29 December 1984 - Appendage E;
- (f) copy of Exhibit attached to the affidavit of Sadiq Al Razi dated 11th December 1990, i.e Plan of No. 1 Mucurapo land(s) approved by G.A. Farrell, Director of Surveys dated 17 January 1969 - Appendage F;
- (g) copy of documents exhibiting rates and taxes paid by Applicant Company in the name of the Guild - Appendage G;
- (h) copy of the Committal Order of Permanand J, dated 17th day of January 1985 - Appendage H.

For the foregoing reasons, I hold that -

- (a) there has been an infringement by the State of the Applicant Company's Constitutional rights in relation to ss 4(a) and 4(b) of the Constitution as regards the Corporation's portion of land at No. 1 Mucurapo Road, St. James, Port-of-Spain, (the 1.5203 hectares) during the relevant periods;
- (b) the reliefs claimed by the Applicant Company in respect of the State's portion of land at No. 1 Mucurapo Road, St. James, Port of Spain (the 1.9324 hectares) during the relevant periods have not been established, and are accordingly refused.

Consequently, I make the following orders:-

- (1) that a declaration be granted and is hereby granted (as stated in Relief No. 2 of the Applicant's amended Notice of Originating Motion) to the effect that the entry and occupation by the State of the parcel of land at No. 1 Mucurapo Road, St. James, (the Corporation's portion of the land there measuring 1.5203 hectares as described in Plan B exhibited to the affidavit of Andrew Bowles with boundaries as demarcated therein) during the period 21st day of April 1990 to the 10th February 1991 and continuing was unconstitutional and illegal in that it contravened the Applicant's rights as guaranteed in sections 4(a) and 4(b) of the Constitution of Trinidad and Tobago;
- (2) a declaration that the demolition and destruction on or about the 18th day of September 1990, or at anytime during the State of Emergency between the 28th day of July 1990 to the 9th September 1990 by the State, its servants and/or agents of buildings occupied by and in the possession of the Applicant Company, and/or used by the Applicant Company on the Corporation's land at No. 1 Mucurapo Road, St. James, (the said 1.5203 hectares) is unconstitutional and illegal in that the said action by the State contravened the Applicant's rights as guaranteed in sections 4(a) and 4(b) of the Constitution;
- (3) a declaration that the action of the servants and/or agents of the State between the 28th day of July 1990 and the 6th day of February 1991 in causing damage to the Mosque which stands on the said land as described in Order No. (1) above contravened the Applicant's rights as guaranteed in sections 4(a) and 4(b)

of the Constitution;

- (4) a declaration as against the State that the Applicant and/or its servants and/or agents and/or licencees and/or visitors are entitled to enter upon and to remain upon the said land as described in Order No. (1) above;
- (5) costs, in relation to the successful parts of the Applicant's application - to be taxed and paid by the Respondents to the Applicant Company.

The Applicant's application in respect of relief No. (1) (as framed) of the Amended Originating Motion is hereby dismissed.

Relief No. (5) of the said Motion, to my mind, is one which requires careful consideration by the Court.

As I have intimated before, I think that a company can worship, and can hold religious observances and belief(s). However, there is no evidence here that the Board of Management of the Applicant Company has been prevented and/or hindered and/or obstructed by the actions and/or conduct of the officers of the State from conducting religious worship at the said Mosque during any of the relevant periods - as the Board of Management of the said Company is still at the present time incarcerated, and the issue as respects their incarceration has yet to be determined by a Court of Law. Finally, no claim for a breach of section 4(h) of the Constitution has been made by individual members of the Applicant Company in their personal capacity against the State during the relevant periods. So that the Applicant's claim on this aspect of the case must fail.

The Applicant's claim with respect to the State's portion of land at No. 1 Mucurapo Road, St. James, is dismissed, with costs.

Damages for the contraventions of ^{the Applicant's} Constitutional rights herein are to be assessed by a Judge in Chambers.

The Respondents will pay to the Applicant Company three-quarters (3/4) of its costs to be taxed fit for two(2) Advocate Attorneys.

Stay of execution six (6) weeks.

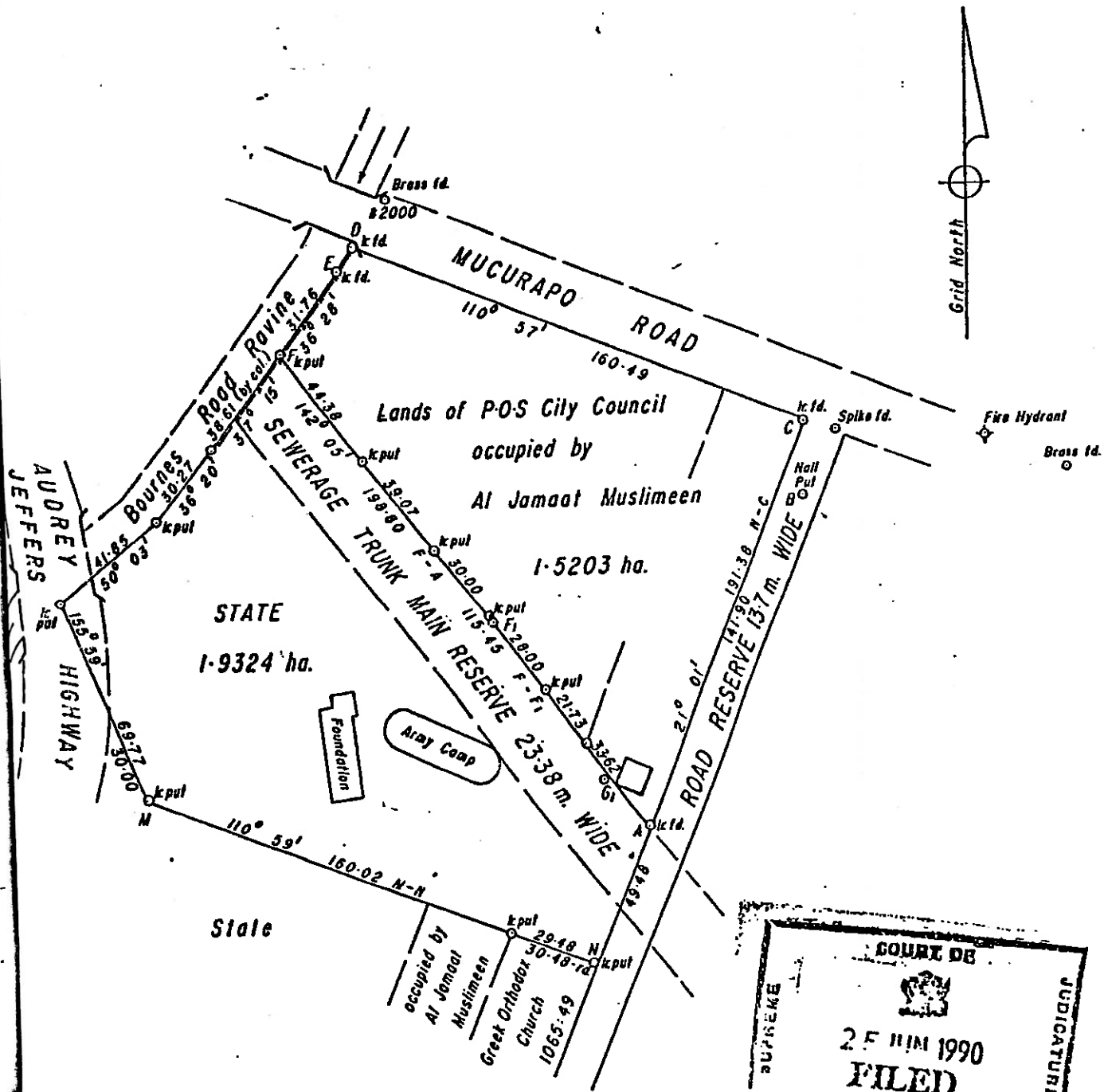
DATED THIS 13th day of February, 1992.

Clebert R. Brooks
Judge

L.&S.-54

Cadastral Sheet ¹³⁰/₃₇₈
City of Port-of-Spain
County of St. George

copy of the Plan marked "B" referred to
Affidavit of ANDREW BOWLES sworn to before me
22nd day of June 1990.
MICHAEL NICHOLAS
JUSTICE OF THE PEACE
SURVEY ORDER No. 10/69, 119/88, 72/90
L.&S. 4/1/78



COURT DE JUDICATURE
25 JUN 1990
FILED
PORT-OF-SPAIN

Vide :- Bks. 1143:117, 1180:20
1008:126, 1180:78

SCALE 1:2000

Distances are in metres.

COURT DE JUDICATURE
17 APR 1991
FILED
PORT-OF-SPAIN

Approved
[Signature]
Director of Surveys 90-06-08

Bearings are Cassini grid based on Solar Observations
Note: To obtain compass bearings add/subtract

PLAN of 2 Parcel of land coloured pink & green in the City of Port of Spain

Containing
PINK - State
GREEN - P-O-S City Council.

Compiled by me, with due authority in June 1990 from surveys by A. Bowles, M. Robertson, G. Rancharilar & L. Akum Lum.

G. Rancharilar
Checked by 7/6/90

[Signature]

Entered on

Land Surveyor, Trinidad & Tobago 7th June 1990

SURVEY ORDER No. 72/90

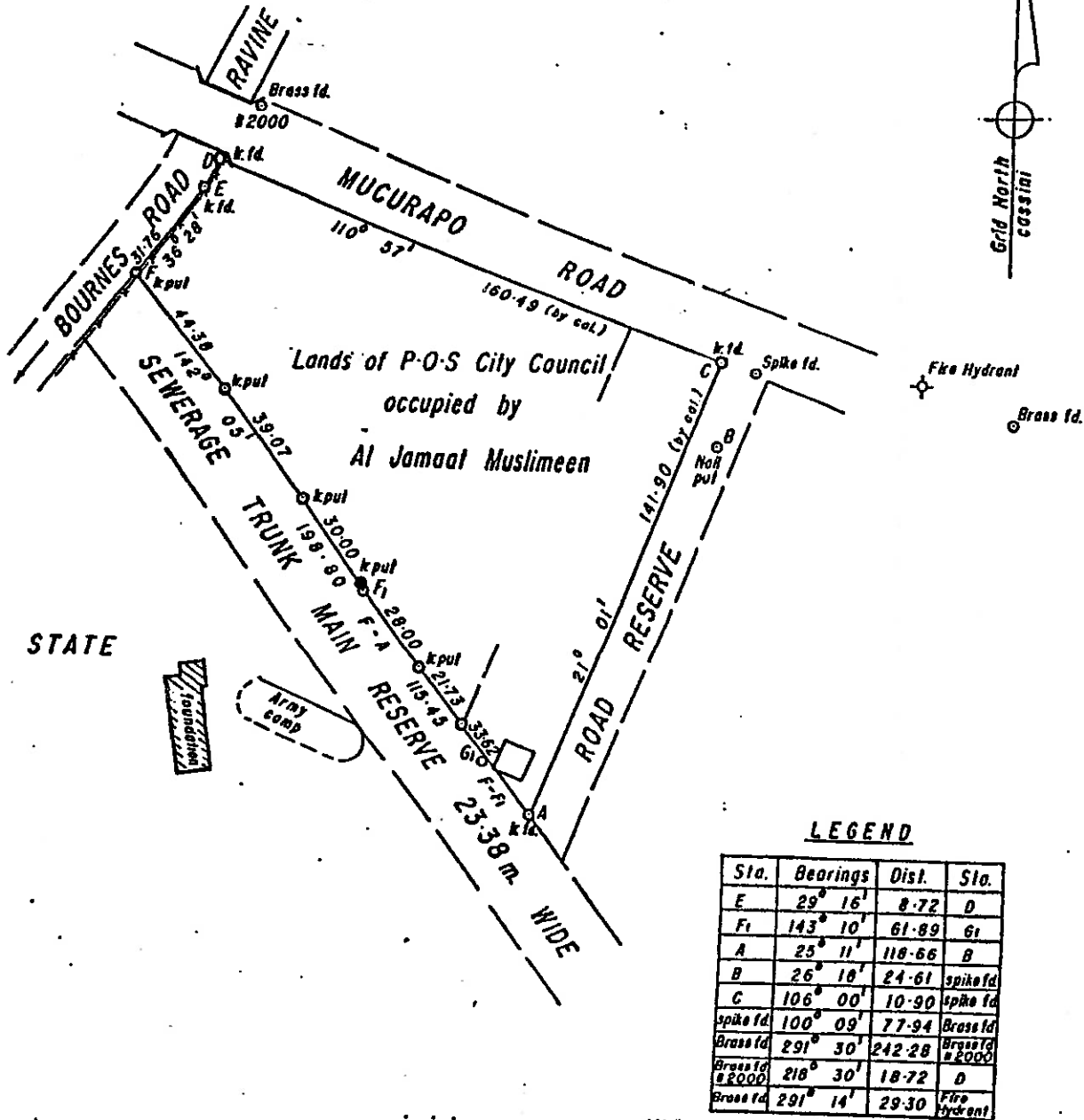
L.&S. 4/1/78

Cadastral Sheet ^{13D}/_{3/6}
City
Ward of Port-of-Spain,
County of St. George

Vide :- Bks. 1143:117 & 1180:20

A true copy of the Survey Plan marked "A"
is in the affidavit of ANDREW BOWLES
before me this 22nd day of June 1990.

MICHAEL NICHOLAS
JUSTICE OF THE PEACE



LEGEND

Sta.	Bearings	Dist.	Sta.
E	29° 16'	8.72	D
F1	143° 10'	61.89	G1
A	25° 11'	118.66	B
B	26° 10'	24.61	Spike Id.
C	106° 00'	10.90	Spike Id.
Spike Id.	100° 09'	77.94	Brass Id.
Brass Id.	291° 30'	242.28	Brass Id. #2000
Brass Id. #2000	218° 30'	18.72	D
Brass Id.	281° 14'	29.30	Fire Hydrant

Approved
[Signature]
Director of Surveys
90-05-30

Bearings are Cassini grid based on solar observations.
Note: To obtain compass bearings add/subtract

COURT OF
SUPREME JUDICATURE
25.11.1990
FILED
SCALE 1:2000

Distances are in metres

PLAN of a Parcel of land coloured in the City of Port-of-Spain

Containing
Surveyed by me, with due authority in May 23rd & 24th 1990 for a redefinition of boundary line A

Checked by *[Signature]*
90-05-29
Land Surveyor, Trinidad & Tobago

COURT OF SUPREME JUDICATURE
11 APR 1991
FILED
PORT-OF-SPAIN

29th May 1990

Appendage "B"

"A"

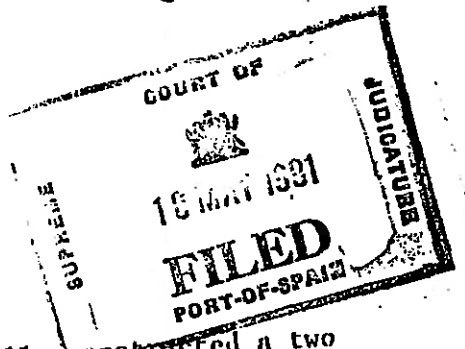
This is the Document marked "A" referred to in the affidavit of CHRISTOPHE GRANT sworn to before me this 10th day of May, 1991.

Geoffrey C. McClean
Commissioner of Affidavits.

GEORGE C. McCLEAN
Commissioner of Affidavits
Trinidad and Tobago
10th May 1991

AB-0039/TceMM/zmc
22nd April, 1991.

Colonel Ralph Brown
Regimental Headquarters
Chaguaramas.



Dear Sir,

Re: Claim of Ms. Anisa Abu Bakr

We act on behalf of Mrs. Abu Bakr who lawfully constructed a two storied building on the premises situated known as No.1 Macurapo Road, Macurapo the ground floor of which she occupied and used as a boutique and a garment factory and the first floor of which she used as a dwelling until the recent disturbances on the 27th of July, 1991. The cost of the construction was \$900,000.00 paid out of our client's own funds. As well she conducted a car park and incidental facilities.

We are further instructed there was substantial stock in trade and a complete infra structure in the boutique and machines, materials for the manufacture of garments and incomplete and completed garments in the factory.

We are also instructed that our client had on her premises a stock of finished school uniforms manufactured under contract for the Macurapo Junior and Senior secondary schools.

We are instructed that the army and the police took possession of our client's premises and unlawfully destroyed them after removing all our client's belongings as adumbrated above and detailed in the enclosed list.

We are also instructed that our client attended on you when you delegated Sergeant Tracey to receive her complaint to no avail that she also attended on the Commissioner of Police who delegated his personal assistant to receive her complaint, as well she called over the phone on two occasions she spoke to someone at the Commissioner's Office to no avail save to the extent of the return of some of the uniforms in a damaged and filthy condition some bearing the signs of being used as rags in the cleaning of footwear.

Yours faithfully,

..... and Company to Colonel Ralph

Brown.

- ✓ (4) The two storey building referred to in Exhibit A is the property of the Jamaat Al Muslimeen in that the monies I

CLEAN Affidavits Tobago 1891

22nd April, 1991.

Colonel Ralph Brown

We are in the circumstances to claim damages in wrongful conversion and/or detinue and/or trespass to include the value of the building with its facilities and of the other items detailed in the enclosed list. As well, we are to include in the claim one for exemplary and/or punitive damages because of wanton manner in which the several acts of trespass were perpetrated.

Please let us know at your earliest convenience what you propose to do as we are instructed to institute proceedings in the High Court of Justice against you, the Commissioner of Police and the Honourable Attorney General.

In your attention to the claim you will no doubt give due consideration to the statutory restraints in time imposed on all claimants against the State.

Yours faithfully,

T. Malcolm Hillie
TERENCE MALCOLM HILLIE
T. MALCOLM HILLIE & CO.

c.c. The Honourable Attorney General
The Honourable Minister of National
Security
The Commissioner of Police
Ms. Anan Abu Bakr.

Encl:

to by the Respondents during the hearing of the application for interim relief and the exhibits therein respectively referred to..

AND the Applicant by its Advocate Attorney undertake to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the Respondents shall have sustained and by reason of this order which the Applicant ought to pay.

AND THE COURT DOETH MAKE THIS Order herein without prejudice to the rights of the respective parties on the substantive Motion or otherwise.

IT IS ORDERED AND DIRECTED that until the hearing and determination of the Motion herein or until further order that the First and Second Respondents, their servants and/or agents or any one acting through or by them or otherwise howsoever and the Third Respondent and the servants and/or agents of the State of Trinidad and Tobago or any one acting through or by it or otherwise howsoever undertake through their Advocate Attorney that no action of any kind whatsoever would be taken by them or any one of them to enforce any right of use, occupation, ownership, possession or entitlement to the parcel of land known as No. 1 Mucurapo Road, in the City of Port of Spain in the Republic of Trinidad and Tobago comprising approximately 8 acres 2 roods and 5 perches and more particularly described in Plan B exhibited to an affidavit of Andrew Bowles which is exhibited to the affidavit of SADIQ AL RAZI sworn to on the 8th day of January, 1991 and filed herein on the 9th day of January, 1991, which said land is bounded on the East by Road Reserve 13.7 metres wide, on the West partly Bournes Road Ravine partly by the Audrey Jeffers Highway, on the North by Mucurapo Road and on the South by lands of the State which parcel of land is marked as two portions of land consisting of 1.5203 h.a. and 1.9324 h.a. on the said plan (hereinafter referred to as the said lands).

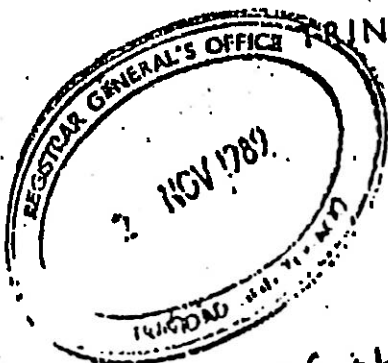
IT IS ALSO ORDERED AND DIRECTED that until the hearing and determination of the Motion herein or until further order that the Applicant its servants and/or agents or anyone acting through or by it or otherwise howsoever undertake through its Advocate Attorney that no action of any kind whatsoever would be taken by its servants and/or agents as aforesaid to enforce any right of possession, occupation, use and/or entitlement to the said lands SAVE AND EXCEPT that they are permitted to enter and/or remain upon that part of the said lands which is bounded on the North by Mucurapo Road, on the South by the Sewerage Trunk Main Reserve 23.38 metres wide, on the East by the Road Reserve 13.7 metres and West by Bournes Road Ravine marked on the said Plan "lands of Port of Spain City Council occupied by Al Jamaat Muslimeen 1.5203 h.a" (hereinafter called "that part of the said lands") for the purpose of exercising rights of worship, religious observances and conducting classes at the Mosque and Primary School which is attached to the said Mosque.

AND IT IS ORDERED that costs of this Application be certified fit for Advocate Attorney and be reserved.

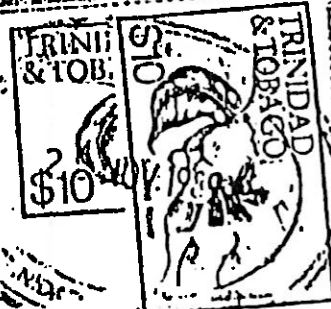
Ludyn Ann Petersen
Ag. Dep. REGISTRAR.

Approved
91.02.07
F





TRINIDAD AND TOBAGO



Certificate of the Incorporation of a Company

I hereby Certify that

JAMAAT AL MUSLIMEEN

21 APR 1990

REGISTERED

is this day incorporated under the Companies Ordinance, Ch. 31. No. 1, and that the Company is Limited, by Guarantee.

Given under my hand at Port-of-Spain this 28th day of November one thousand nine hundred and Eighty-nine.

[Signature]
Registrar of Companies

Registration Fees \$ 300.00

Stamp Duty \$ 10.00

File No. J - 455

Certificate received by.....

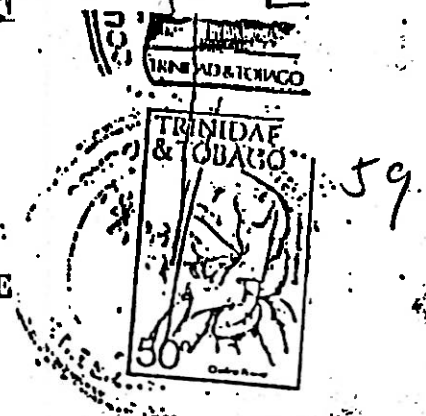
Date.....

Appendage "E"

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 5927 OF 1984



BETWEEN

THE MAYOR, ALDERMEN AND CITIZENS OF THE CITY OF PORT OF SPAIN

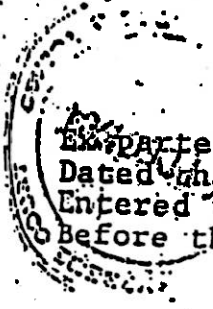
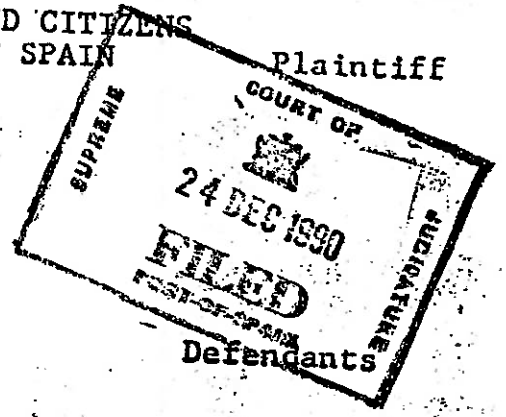
Plaintiff

AND

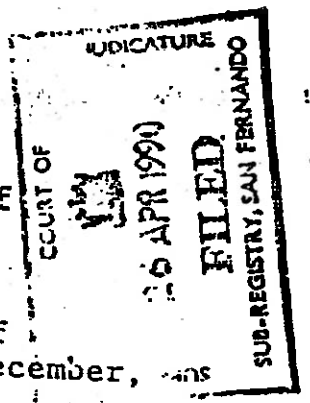
YASIN ABU BAKR

AND

JAMAAT MUSLIMOON



Ex parte
Dated this 29th day of December, 1984,
Entered this day of December, 1984,
Before the Honourable Mr. Justice McMillan.



UPON HEARING Counsel for the Plaintiff

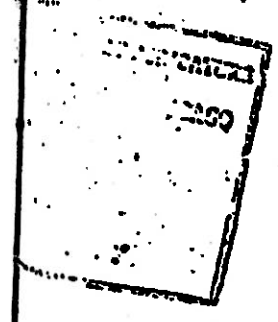
AND UPON READING the Writ of Summons and the affidavit of Oscar Blenman sworn to on behalf of the Plaintiff and both filed on the 31st day of December, 1984, having passed into the official custody of the Honourable Mr. Justice McMillan on the 29th day of December, 1984.

AND the Plaintiff by its Counsel undertaking to abide by any Order this Court may make as to damage in case this Court shall hereafter be of opinion that the Defendants shall have sustained any by reason of this Order which the plaintiff ought to pay.

IT IS ORDERED AND DIRECTED

1.

That the Defendants and each and every one of them whether by themselves their servants or agents or otherwise howsoever be restrained and an injunction is hereby granted restraining the defendants and each and every one of them whether by themselves their servants or agents or otherwise howsoever from trespassing on the plaintiff's said lands and from erecting or continuing to erect any building on the plaintiff's said lands described in the Corporation's plan annexed to the affidavit of Oscar Blenman and bounded on the North by Mucurapo Road, on the South by proposes extension of Wrightson Road as shown on the plan and which said extension is now known as Audrey Jeffers



Highway, on the East partly by lands
of Fatima College and Maraval River and
on the West by Bournes Road Ravine.

AND IT IS FURTHER ORDERED.

That the Defendants forthwith demolish
and/or remove the columns and steel beams
and construction carried out on the North-
western side of the existing illegally
completed structure painted green and
white.

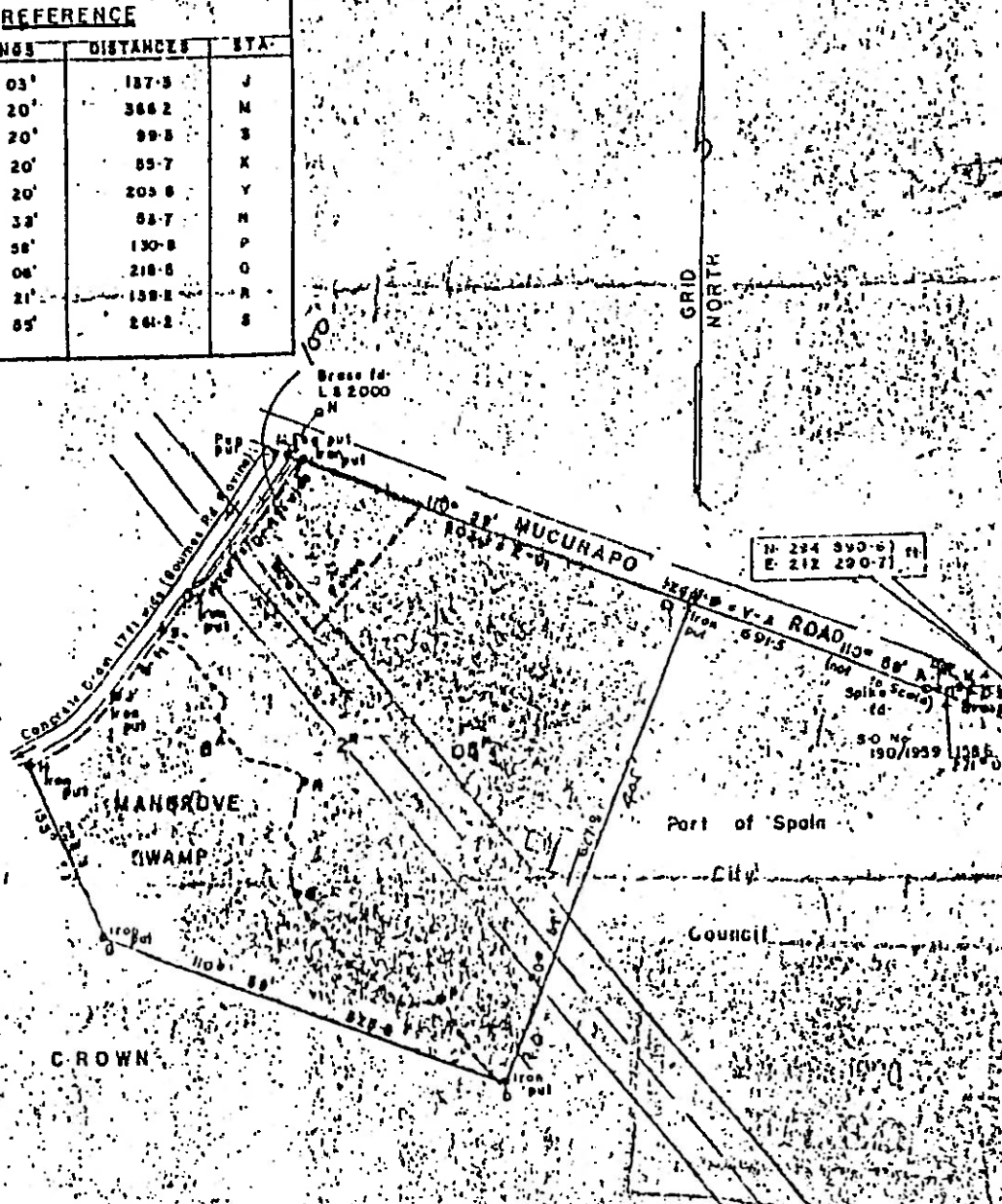
LEAVE TO THE PLAINTIFF to serve this Order without any
accompanying documents that is the writ and affidavit
sworn herein.

LEAVE TO THE PLAINTIFF to issue a summons to continue
the injunction returnable on Monday the 7th day of January,
1985.

COSTS in the cause reserved fit for Counsel.


REGISTRAR OF THE
SUPREME COURT.

REFERENCE			
STA.	BEARINGS	DISTANCES	STA.
H	90° 03'	127.9	J
J	36° 20'	366.2	M
J	36° 20'	99.8	S
S	36° 20'	85.7	X
X	36° 20'	203.8	Y
M	57° 33'	82.7	H
O	124° 58'	130.8	P
P	302° 08'	218.8	Q
Q	4° 21'	139.8	R
R	816° 85'	264.2	S



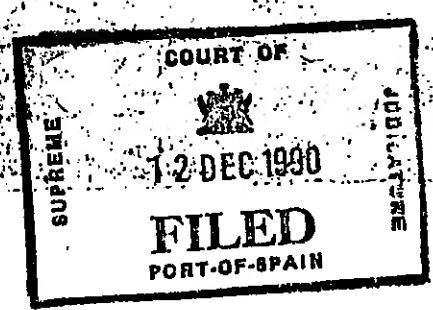
Approved
Q.A. Farrell
Director of Surveys
17.1.69

SCALE : 1 / 2500
Distances are in feet

PLAN of a Parcel of land coloured pink in the City of Port of Spain
Containing Eight Acres, Two Roads and Five Perches
Surveyed by me, with due authority, in Jan. 1969, to be leased for a Site for an Islamic Cultural Centre

Checked by *[Signature]*
Entered on *17/1/69*
Malcolm M. Robertson
17th January 1969

G.P. Ta. (To. - 337 - 1,604 - 2/00



Handwritten notes:
 1. M...
 2. ...

Accountant's Office,
 Town Hall.

paid against premises

No. 1 M... 1990 Except on 24/4/90
 (Payments subsequent to this date have not been taken into account).

DATE	STATUTORY INCREASE	TOTAL
1982 - 3 - 24	25 EC	25 00
1982 - 7 - 4	25 EC	25 00
1982 - 8 - 20	25 EC	25 00
1982 - 8 - 10	25 EC	25 00
1982 - 10 - 4	25 EC	25 00
1982 - 10 - 22	25 EC	25 00
1982 - 10 - 29	25 EC	25 00
1982 - 11 - 21	40 EC	40 00
1983 - 2 - 4	40 EC	40 00
1983 - 3 - 4	40 EC	40 00
83 - 3 - 15	40 EC	40 00
83 - 3 - 22	40 EC	40 00
1982 - 3 - 30	40 EC	40 00
1982 - 4 - 30	40 EC	40 00
1986 - 2 - 24	20 EC	20 00
1986 - 4 - 4	40 EC	40 00
1986 - 6 - 4	40 EC	40 00
1986 - 8 - 27	40 EC	40 00
1986 - 10 - 21	40 EC	40 00
1987 - 2 - 13	40 EC	40 00
1987 - 8 - 3	40 EC	40 00
1987 - 5 - 30	40 EC	40 00
1987 - 10 - 24	40 EC	40 00
TOTAL		

COURT OF
 - 9 JAN 1991
 FILED
 PORT OF SPAIN

by *Handwritten signature*

Handwritten signature
 Accountant

Information required for all Water & Sewerage Statements must be made in the Form B 50
 Authority - Head Office Valhays, St. Josephs.

Accounting Section

100

1128

Accountant's Office,
Town Hall.

No. 1 Necessity Personal Statement of House Rates and Charges paid against premises
 on 24/4/90
 (Payments subsequent to this date have not been taken into account).

DATE	STATUTORY INCREASE	TOTAL
10 22 - 3 - 24	25 CC	25 00
10 24 - 4 - 24	25 CC	25 00
10 22 - 1 - 26	25 CC	25 00
10 22 - 2 - 18	25 CC	25 00
10 22 - 10 - 4	25 CC	25 00
1972 - 10 - 22	25 CC	25 00
1982 - 10 - 29	40 CC	40 00
1982 - 4 - 21	40 00	40 00
1983 - 2 - 4	40 00	40 00
83 - 3 - 15	40 CC	40 00
83 - 3 - 22	40 CC	40 00
1982 - 3 - 30	40 00	40 00
19 87 - 4 - 30	25 CC	25 00
19 86 - 2 - 24	20 CC	40 00
19 86 - 6 - 4	40 CC	40 00
19 86 - 6 - 4	40 CC	40 00
19 86 - 8 - 27	40 00	40 00
10 86 - 5 - 21	40 00	40 00
19 81 - 8 - 13	40 00	40 00
10 82 - 8 - 3	40 00	40 00
1984 - 5 - 30	40 00	40 00
1987 - 10 - 24	40 00	40 00
TOTAL		

COURT
 - 9 JAN 1991
 FILED
 PORT OF SPAIN

by Albert Hall

L. Callender
 Accountant

Information required for all Water & Sewerage Statements must be made to the Enter & Seward
 Authority - Head Office Valhalla, St. Joseph.

1 p.p. H
24 1.25
CUB
65
"C.G. 6" referred to in the affidavit
to before me this 24th day of Dec
per of Affidavits.



of 1984.

Between

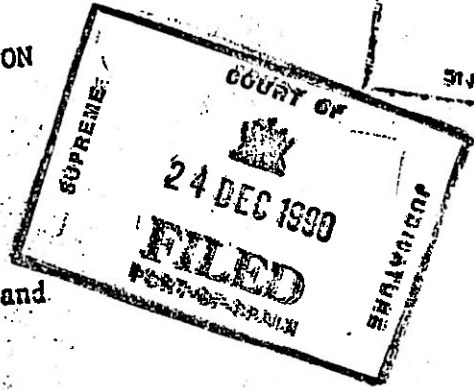
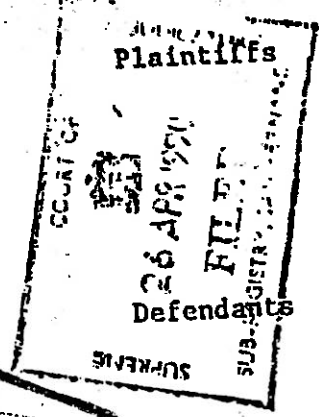
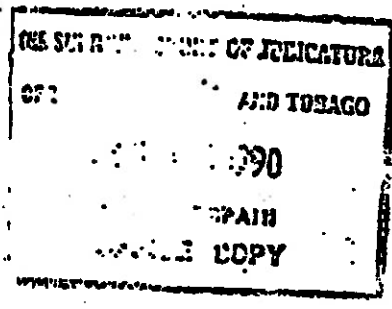
THE MAYOR ALDERMEN AND CITIZENS
OF THE CITY OF PORT OF SPAIN

And

YASIN ABU BAKR

And

JAMAAT MUSLIMOON



In Chambers
before the Honourable Mrs. Justice Permanand.
Dated the 17th day of January, 1985.
Entered the 5th day of February 1985.

UPON READING the Notice of Motion filed herein on the 14th day of
January, 1985.

AND UPON READING the affidavit of Oscar Blenman, Hugh Kerr, Maurice
Brown and Carl Newallo all filed herein on the 14th day of January, 1985, and the
supplemental affidavit of Oscar Blenman filed on the 15th day of January, 1985, and
the affidavit of service of Eric Singh filed on the 17th day of January, 1985.

IT IS ORDERED that the first defendant, Yasin Abu Bakr, be committed
to prison for twenty one (21) days for his contempt of court in failing to comply with
the order of Mr. Justice Mc Millan dated the 29th day of December, 1984, namely :-
(1) in trespassing on the plaintiffs' lands and erecting or continuing to erect any
building on the plaintiffs' said lands described in the Corporation's plan annexed to
the affidavit of Oscar Blenman filed on the 31st day of December, 1984, and bounded
on the North by Macurapo Road, on the South by proposed extension of Wrightson Road
as shown on the plan and which said extension is now known as Audrey Jeffers Highway, on
the East partly by lands of Fatima College and Maraval River and on the West by Bourne
Road Ravine. (2) forthwith demolish and/or remove the columns and steel beams and
construction carried out on the North-Western side of the existing illegally completed
structure painted green and white on the Plaintiffs' said land.

AND IT IS ALSO ORDERED that the plaintiff be empowered either by

completed structure painted green and white and more particularly described in paragraph two (2) of the affidavit of Oscar Blenman dated and sworn on the 15th of January, 1985.

AND IT IS ALSO ORDERED that the first defendant pay the costs of these proceedings certified fit for counsel.

AND LEAVE is hereby granted to the plaintiffs to draw up the

Ad *B. F. Paray*
REGISTRAR OF THE SUPREME COURT
H. F. PARAY
REGISTRAR
OF THE SUPREME COURT

Book of Deeds
1980
S. M. T. P. L. I. A.