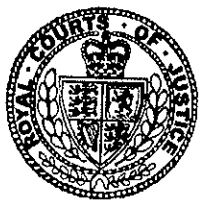

Neutral Citation Number: [2010] EWCA Civ 59

Case No: C1/2009/1261

COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION (ADMINISTRATIVE COURT)
MR JUSTICE CRANSTON
[2009]EWHC 978 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2010

Before :

MASTER OF THE ROLLS
LORD JUSTICE MOORE-BICK
and
LORD JUSTICE ETHERTON

Between :

THE QUEEN ON THE APPLICATION OF GHAI	**Appellant**
- and -	
NEWCASTLE CITY COUNCIL & OTHERS	**Respondent**
-and-	
SECRETARY OF STATE FOR JUSTICE	**Interested Party**
-and-	
(1) RAMGHARIA GURDWARA, HITCHIN	**First Intervener**
-and-	
(2) ALICE BARKER WELFARE AND WILDLIFE TRUST	**Second Intervener**
-and-	
(3) THE EQUALITY AND HUMAN RIGHTS COMMISSION	**Third Intervener**
-and-	
(4) THE HINDU MERCHANTS ASSOCIATION	**Fourth Intervener**

Mr Ramby de Mello and Mr Tony Muman (instructed by **J M Wilson Solicitors**) for the **Appellant**

Mr John McGuinness QC (instructed by **Newcastle City Council Legal Services**) for the **Respondent**
Mr Jonathan Swift and Ms Joanne Clement (instructed by **Treasury Solicitors)** for the **Interested Party**
Mr Satvinder Juss (Pro Bono) for the **First Intervener**
Mr Richard Drabble QC, Mr Eric Fripp and Mr Ellis Wilford (instructed by **Simons Muirhead & Burton)** for the **Second Intervener**
Ms Helen Mountfield (instructed by **The Equality & Human Rights Commission)** for the **Third Intervener**
Mr Adrian Berry (instructed by **Wilson Barca Solicitors**) (Pro Bono) for the **Fourth Intervener** (by written submissions only)

Hearing date: 18 January 2009

Judgment Approved by the court for handing down (subject to editorial corrections)

If this Judgment has been emailed to you it is to be treated as 'read-only'. You should send any suggested amendments as a separate Word document.

The Master of the Rolls:

1. After he dies, Mr Davender Ghai wishes his body to be cremated in accordance with his religious beliefs as a Hindu. On 30 January 2006, he wrote to Councillor Arnold, the leader of Newcastle City Council ("the Council"), asking for "out-of-town land, some 10-12 miles from the city" to be "dedicated ... for traditional open air funeral pyres". Some two weeks later, Councillor Arnold replied, explaining that it was impossible for the Council to accede to the request in the light of the provisions of regulation 3 of the Cremation Regulations 1930 SR & O 1930/1016 ("the 1930 Regulations"), a view he reinforced with counsel's opinion which he subsequently sent to Mr Ghai. Mr Ghai then issued the instant proceedings for judicial review of the Council's refusal to give effect to his request.

2. The hearing before the Judge, Cranston J, proceeded (unsurprisingly in the light of the correspondence referred to above) on the assumption that the cremation desired by Mr Ghai would be in the open air, i.e. not within any structure. Subject to one argument (which was, realistically, not pursued on this appeal), it was accepted by Mr Ghai that such an open air cremation would have been precluded by the legislation relating to cremation, at least if interpreted without reference to section 3 of the Human Rights Act 1998. Mr Ghai's primary case before the Judge was that, if this was the right interpretation of the legislation, there would be an impermissible interference with his right to manifest his religion or belief under Article 9 of the European Convention. Although the Judge accepted that Article 9 was engaged, he went on to hold that the interference was justified – [2009] EWHC 978 (Admin). (Mr Ghai also relied on Article 8 and Article 14 of the Convention, but the Judge held that they were not engaged.)

3. That was not only the primary basis upon which the case proceeded below: it was also the primary basis upon which the skeleton arguments for this appeal were prepared. However, examination of the evidence, including further documents put in on behalf of Mr Ghai for the purpose of this appeal, suggested that his religious belief does not in fact require him to be cremated, after his death, on a pyre in the open air. As was confirmed by his counsel on the hearing of this appeal, Mr Ghai's religious belief would be satisfied if the cremation process took place within a structure, provided that the cremation was by traditional fire, rather than by using electricity, and sunlight could shine directly on his body while it was being cremated. An example of the type of structure which would be acceptable to him was shown to us in the form of photographs of premises in Ceuta in Spanish Morocco ("the Ceuta premises"). That example was proffered by the Fourth Intervener for the first time on this appeal, but there were photographs of other examples in the evidence below.

4. In these circumstance, it appeared that there was an issue, which was logically anterior to those which have been debated and decided at first instance, namely whether, as had apparently been assumed on all sides until the hearing before us, the accommodation of Mr Ghai's wishes would in fact necessarily infringe the legislation relating to cremation. Accordingly, we decided to hear argument on that issue, on the basis that its resolution might render irrelevant all the other issues, interesting and important as they may be, which had been raised, and indeed decided, below.

5. Having heard oral submissions, we decided to rule on that issue, as it raised a relatively short point, whose resolution might avoid the need for any further argument. The burden of the submissions on the issue was taken on by Mr de Mello on behalf of Mr Ghai (supported by two of the interveners, the Equality and Human Rights Commission, through Ms Mountfield, and the Ramgharia Gurdwara Hitchin, through Mr Juss), on the one hand, and, on the other hand, Mr Swift, on behalf of the Secretary of State, who joins the proceedings as an interested party (supported by Mr McGuinness QC for the Council). Mr Drabble QC, who is instructed by another intervener, understandably took no part in the argument.

6. Cremations in England and Wales are governed by the Cremation Act 1902 ("the Act"). The long title to the Act states that it is "[a]n Act for the regulation of the burning of Human Remains and to enable Burial authorities to establish crematoria".

7. Section 2 of the Act provides that in that Act:

> "The expression "crematorium" shall mean any building fitted with appliances for the purpose of burning human remains, and shall include everything incidental or ancillary thereto".

Section 4 extends the powers of a burial authority to provide and maintain burial grounds or cemeteries to "the provision and maintenance of crematoria". Section 5 prohibits "the construction of a crematorium" within 200 yards of a dwelling house "except with the consent, in writing, of the owner", and within 50 yards of any public highway. Section 6 enables burial authorities to accept land "for the purpose of a crematorium", or "a donation … for enabling them to acquire, construct or maintain a crematorium".

8. Section 7 of the Act provides that:

> "The Secretary of State shall make regulations as to the maintenance and inspection of crematoria, and prescribing in what cases and in what conditions the burning of any human remains may take place, and directing the disposition or interment of the ashes, and prescribing the forms of the notices, certificates… to be given or made before any such burning is permitted to take place…".

Section 8 renders it an offence to "contravene any such regulation" or "knowingly [to] carry out or procure or take part in the burning of any human remains except in accordance with such regulations and the provisions of this Act". Section 14 provided that "any provisions of any local and personal Act for the like purposes as this Act" should "cease to have effect" from the date on which regulations made under section 7 came into force.

9. The 1930 Regulations were the regulations made under section 7 of the Act in force until they were replaced with effect from 1 January 2009 by the current regulations, the Cremation (England and Wales) Regulations 2008, SI 2008/2841 ("the Regulations"). As the note to the Regulations records, there is little difference between the two sets of regulations, and there is no relevant difference, I think, for present purposes. Regulation 2(1) of the Regulations contains definitions including that of cremation, which is defined as "the burning of human remains". The

centrally important provision for present purposes is regulation 13 which is headed "Place where cremation may take place", and is in these terms:

> "No cremation may take place except in a crematorium the opening of which has been notified to the Secretary of State".

10. The combined effect of the Act and the Regulations is, therefore, that a cremation can only lawfully take place in a structure (i) which is a "building", reading regulation 13 together with section 2, (ii) which has been constructed in a location which satisfies section 5, (iii) which is "fitted with appliances for the purpose of burning human remains", pursuant to section 2, and (iv) whose "opening has been notified to the Secretary of State", under regulation 13. (Whether the Act, on its own, excludes cremation outside a "crematorium" does not call for decision in this case, at any rate at this stage: on a strictly literal reading, there may be a case for saying that it does not, but a more purposive reading could well justify a different result).

11. Difficulties which may be thrown up by planning and public health legislation do not fall for consideration at this stage. Accordingly, it is necessary to consider whether any of the four requirements which I have extracted from the Act and the Regulations, construed in accordance with normal principles of interpretation, would prevent Mr Ghai's wishes as to the cremation of his remains after his death being in due course accommodated.

12. As already indicated, whatever may have been assumed or stated to be the position below, Mr Ghai's beliefs would not require his body to be cremated in the open air, in the sense of requiring his remains not to be enclosed within a structure when they are burnt. There is no suggestion that he would have any difficulty in finding a site for his cremation which is more than 200 yards from any dwelling house and more than 50 yards from any highway. Further, Mr de Mello's answers to questions from Moore-Bick LJ established that Mr Ghai's beliefs would not prevent his remains being cremated on a grate, with a tray underneath to collect the ashes. There would obviously be no difficulty in notifying the Secretary of State once an appropriately located and fitted out building was constructed. Accordingly, it seems clear that giving effect to Mr Ghai's beliefs would not infringe three of the four requirements identified above. The only outstanding question on this issue is, therefore, whether a cremation which accords with Mr Ghai's beliefs could reasonably be achieved in a structure which is a "building" within the meaning of the Act.

13. The evidence before the Judge, as supplemented before us, enables one to identify the sort of structure within which Mr Ghai would be prepared to have his body cremated after his death. As already explained, any structure within which his cremation occurs will need to have a substantial aperture, or substantial apertures, which enable sunlight to fall directly on his body while it is being cremated by fire. It does not matter whether the sunlight shines more or less vertically (e.g. as in the case of a structure which, while wholly enclosed by walls, has no roof) or more laterally (e.g. as would apply to structure with a roof, which is supported by columns, rather than walls).

14. Hindu cremations are performed in the Ceuta premises, which are shown in seven photographs, which were produced by way of further evidence a few weeks before this appeal was due to start. The structure is rectangular, nearly square, and is wholly

enclosed (apart from some solid gates) by four perimeter walls, which are some 2 metres high. Within this enclosure, there are a number of rectangular covered areas (some of which abut a perimeter wall), and some uncovered space. Each of the covered areas has a floor raised slightly above the adjoining uncovered areas, and a roof supported by columns on two opposite sides; the columns, and hence the roofs, of the covered areas extend somewhat higher than the perimeter walls. With the exception of two areas, the roof of each of the covered areas is a simple solid flat roof slab, which rests on the top of the columns.

15. Apart from having more sophisticated roofs, the two different areas both appear to be almost square, and both have columns, and hence roof slabs, which are a little higher than those of the other covered areas. One of those two areas is over the main entrance to the structure: on top of the roof slab, it has a cupola, which has a base which is four-coloured on top and white above. The other area ("the cremation area") is where the cremations occur. Its roof slab is thicker because it has a superstructure, which is four-coloured at its base, and white above; in the centre of this roof slab is a substantial rectangular hole, which accounts for about half the area of the slab; the columns and floor of this area are somewhat more ornate than those of the other areas. All walls, columns, and roofs of the Ceuta premises appear to have been constructed of concrete, cement or bricks, with the walls and columns being rendered with plaster or the like.

16. The evidence before Cranston J included photographs or drawings of other structures in India within which Hindu cremations are performed. These were Devikund Sagar (Bikaner), Gaitor (Jaipur), Kota, Jaswant Thara, Jodhpur, Thiruvananthapuram (Kerala), Kancheepuram (Amritsar), and Patan. This evidence was far less detailed, as there was only one, relatively small, photograph of each structure. (There were also three other structures in evidence, each of which was shown in one tiny photograph.)

17. Almost all these structures in India appeared to be constructed of substantial material (stone, brick, rubble, breeze blocks or the like) and, in some cases, rendered. At least judging by their appearance, all these structures seem to be substantial in size, capable of holding twenty people or more, and very likely to have foundations of some sort. Most of these structures are sophisticated in their design, and impressive, even imposing, in style. Many of them are works of art, with much of the structure being expertly and intricately carved, while others are more workmanlike in their design.

18. While it could be dangerous to draw any conclusions for present purposes from any one of these photographs, I consider that, taken together, they provide a pretty clear indication of the sort of structure within which Hindu cremations can and do take place in India. They demonstrate that such cremations occur within a structure which is substantial in its extent, solid in its structure, and relatively permanent in nature. The structures all have a solid roof, supported on columns and without walls, although in many of the structures shown in the photographs the columns rest on plinths or low walls, and are connected by a low surrounding balustrade.

19. Before turning to the central question, it is right to mention that the reference to Hindu cremations in the above discussion may involve something of an over-simplification. As is clear from Cranston J's judgment, there may well be several

different beliefs among Hindus as to what their religion requires when it comes to bodily cremation. What we are concerned with in this case is, of course, what Mr Ghai's belief involves when it comes to cremation, and it matters not for present purposes whether it is a universal, orthodox or unusual belief for a Hindu. It would accord with his belief if, after his death, he was cremated in any of the structures shown in the photographs to which I have referred, including the cremation area in the Ceuta premises.

20. The reason I have referred in some detail to the structures shown in the photographs is that, as Mr Swift pointed out, Mr Ghai has not provided a drawing, plan, or model of a structure which he would wish to erect in which his remains can be cremated after he dies. Accordingly, in order to resolve the issue of whether his belief could be accommodated by a structure which is a "building" within the meaning of the Act, one has to refer to structures, such as the crematorium area in the Ceuta premises and the structures in India shown in the other photographs which I have mentioned, any of which he says would accommodate his beliefs. I now turn to consider that issue.

21. On behalf of the Secretary of State, Mr Swift contended that a structure could only be a "building" within the Act if it was "an inclosure of brick or stonework, covered in by a roof". This contention was supported by three arguments, namely (i) the view of Lord Esher MR in *Moir v Williams* [1892] 1 QB 264, 270 that this was "what is ordinarily called a building", (ii) the desirability of having a clear and simple meaning for the word, as breach of the Act would be a criminal offence, and (iii) the need to ensure that cremations could not be seen by the general public. I turn to consider those three arguments in turn.

22. The first argument is based on the normal meaning of the word "building". The meaning of the word "building", or, to put the point another way, determining whether a particular structure is a "building", must depend on the context in which the word is used. Interpreting a word in a statute or a contract, or indeed in any other document, can, of course, only be sensibly done by considering the context in which it is being used. However, where, as is the case here, the word is one which is used in ordinary language and has no established special legal or technical meaning, and is not defined in the document in question (in this case, the Act), one can usefully take as a starting point the word's ordinary meaning. In *Moir* [1892] 1 QB 264, 270, 271, and 273, Lord Esher MR, Fry LJ, and Lopes LJ approached the question of the interpretation of the word "building" in the Metropolitan Building Act 1855 by starting with its "ordinar[y]" meaning, its meaning in its "ordinary sense" and "popular usage", or its "ordinary and usual sense", and then considering its context.

23. In my view, Lord Esher's *obiter* statement in *Moir* [1892] 1 QB 264,270 that the "ordinar[y]" meaning of the noun "building" is "an inclosure of brick or stonework, covered in by a roof" can only be justified if it was intended to refer to the ordinary meaning of the word "building" in the context of the statute in which it fell to be construed in the case before him. It is not without significance that there is nothing in the reasoned judgments of Fry LJ or Lopes LJ in *Moir* [1892] 1 QB 264 to support Lord Esher's statement.

24. Particularly as it appears that Lord Esher's statement as to the "ordinar[y]" meaning of the word "building" may be treated as some sort of authoritative guidance as to the normal meaning of the word, I take this opportunity to say that it would be

wrong to see it as having any such effect. In my opinion, the word "building" in normal parlance is naturally used to describe a significantly wider range of structures than would be included within Lord Esher's "inclosure of brick or stonework, covered in by a roof".

25. There are many wooden or other structures not made of "brick or stonework", such as chalets, stables, or industrial sheds, and there are many structures which are not "inclosures", such as wood-drying stores, bandstands, or Dutch barns, all of which, on the basis of the normal use of the word, are "buildings". Other structures come easily to mind, such the Pyramids or the Colosseum, which are buildings in normal parlance, but do not fall within Lord Esher's "ordinar[y]" meaning. So, too, at least some prefabricated structures, particularly if attached to a concrete, or similar, base, are naturally described as buildings.

26. Deciding what a word means in a particular context can often be an iterative process, and the ultimate decision should not be affected by whether one starts with a prima facie assumption as to the meaning of the word and then looks at the context, or one starts by looking at the context and then turns to the word. However, if one approaches the issue by making a preliminary assumption as to the meaning of a word such as "building", then, in agreement with what Etherton LJ said in argument, I do not think that it would be right to take a somewhat artificially narrow meaning of the word, and then see whether the context justifies a more expansive meaning. It is more appropriate to take its more natural, wider, meaning, and then consider whether, and if so to what extent, that meaning is cut down by the context in which the word is used.

27. As to Mr Swift's second argument, the fact that breach of the Act can lead to prosecution, if relevant at all for present purposes, would seem to me to support a wide, rather than a narrow, meaning for the word "building". After all, the traditional approach is that, where a statute creates an offence, the court should lean in favour of an interpretation which absolves the alleged offender. Having said that, I do not think that this is a case where any assistance is to be derived from the fact that breach of the Act is an offence: the definition of "crematorium" is scarcely central to the nature of the offence, and the offence itself is relatively minor.

28. I turn to Mr Swift's third argument, namely that the purpose of the Act was to prevent the public seeing the cremation. I accept that the passing of that Act may well have been triggered by the direction given by Stephen J to the jury in *R v Price* (1884) 12 QBD 247. In that case, a jury was directed to acquit the defendant, who was accused of burning the body of his son (who had died of natural causes) in a field, on the ground that burning a body did not constitute an offence, unless it amounted to a public nuisance in common law. In the course of his learned and interesting discussion, at (1884) 12 QBD 247, 254, Stephen J, referring impliedly to cremations, said that not "every practice which startles and jars upon the religious sentiments of the majority of the population is for that reason a misdemeanour at common law". This appears to have led to the Disposal of the Dead (Regulations) Bill 1884, which, although it received a second reading in the House of Commons, was never enacted. One of the 1884 Bill's two purposes was to prohibit public cremations, on the ground that they were contrary to "public decorum and decency"; (the other purpose was to prevent the concealment of crimes of violence). After further attempts to introduce such a Bill, the Act was successfully passed into law.

29. I do not consider that the decision in *Price* (1884) 12 QBD 247 and the purpose of the 1884 Bill are enough to establish that one of the purposes of the Act was to ensure that cremations were performed so as to be invisible to the public. If prohibiting publicly visible cremations was intended by the legislature, one would have expected to find some statement or provision to that effect, and it would have been only too easy to say so, either in the long title to the Act or by so providing in one of its provisions, especially as that aspect, or a point close to it, had been raised by the 1884 Bill. Section 5 directly addresses the issue of the proximity of cremations to dwellings and highways, and, if it was intended to address the issue of the privacy of a cremation (rather than public health or privacy of residents and risk of congestion), it represents the limit of the protection the legislature thought it right to provide.

30. The only material produced to the court which directly demonstrates the purpose of the Act is in the speech of Lord Monkswell when introducing the Bill, which in due course became the Act, in the House of Lords in 1902 (HL Deb 27 January 1902, v 101, c 904). Assuming that that speech can be referred to for the purpose of identifying the purpose of the Act, or "the mischief" which it was directed to curing, it does not contain anything to support Mr Swift's third point. On the second reading of the Bill, having said that its purpose was as set out in its long title, Lord Monkswell explained that "there ha[d] been many private Acts passed for this purpose", and that "the time ha[d] now come when the question of cremation ought to be under the general law and under uniform rules". He then summarised briefly the various clauses of the Bill, and explained that it was similar to one introduced the previous year, with the addition of new provisions (including what is now section 9). Lord Monkswell said much the same thing on the second reading of that earlier Bill (HL Deb 7 March 1901, v 90, c 768).

31. Even if one of the Act's purposes was to ensure that cremations were performed away from public view, I do not consider that that would be enough to justify giving the word "building" the narrow meaning for which Mr Swift contends. It would be perfectly possible to carry out a cremation away from public gaze in a building with substantial openings in the walls. Further, rather than intending to give the word "building" an artificially narrow meaning, it seems to me that it is much more likely that the legislature would have anticipated the visibility of a cremation being dealt with in regulations made pursuant to section 7 of the Act. In any event, I am very doubtful about the legal propriety of the court implying a specific requirement, such as precluding public visibility, into the Act, when it is not expressed, and Parliament could easily have spelt it out if it had thought it right to do so. In some cases, such a course may be appropriate, but only when the implication is obvious or (which may be a subset of obviousness) when the statute concerned cannot achieve its stated aim, or will not work effectively, without the implication. This is plainly not such a case.

32. I turn now to what appears to me to be the proper approach to the issue of whether the sort of structure, in which Mr Ghai wishes his remains to be cremated in due course, would be a "building" within the meaning of section 2 of the Act.

33. In that connection, I consider that the proper characterisation of the issue is not so much the somewhat abstract question as to what is meant by a "building" in the section; rather it is the more specific question whether a structure acceptable to Mr Ghai would be a "building" within the section. At least in general, it appears to me

that, both in principle and in practice, it is inappropriate for the court to seek to define a word or expression used in a statute, where the legislature has not done so. It would virtually be a judicial encroachment onto the legislative function. Judicial guidance on such an issue, through the court's reasoning in a case where the meaning of a word is in issue, is inevitable, and, it is to be hoped, helpful. But a conscious and unneccessary definition of the word by the court is another matter. Judicial observations are made in the context of the facts of the particular case, and any attempt by the judge to provide a general definition of such a word in a statute will often lead to problems, as cases may well arise in the future with facts which are very different or unanticipated in nature, where the earlier definition would lead to difficulties.

34. In order to answer the issue to be determined on this appeal, it is right to consider what assistance can be got from the Act. At least for present purposes, the relevant aims of the Act, which can be gathered from its provisions, were to ensure that cremations were subject to uniform rules throughout the country, to enable the Secretary of State to regulate the manner and places in which cremations were carried out, to require a crematorium to be a building which was appropriately equipped, and to ensure that a crematorium was not located near homes or roads. The Act also envisaged that crematoria would be "constructed". These facets of the Act suggest to me that, provided it is relatively permanent and substantial, so that it can properly be said to have been "constructed", and provided it could normally be so described, a structure will be a "building" within the Act.

35. In the light of these factors, I consider that there is no reason not to give the word "building" its natural and relatively wide meaning in section 2 of the Act, as discussed in paragraphs 21 to 26 above. The fact that the noun which one might primarily use, in ordinary conversation, to describe some of the structures mentioned in paragraph 25 above would not be a "building" is nothing to the point. The primary way most people would describe the structure in which they live would be a house or a block of flats, but that does not mean that a house or a block of flats is not, in ordinary language, a building.

36. There have, predictably, been many cases which have required the courts to consider the meaning of the noun "building", but the outcome has inevitably been governed by the context. Nonetheless, it is not without interest to note that in this court a reasonably substantial barbeque has been held to be a "building" in the context of a restrictive covenant: see *Windsor Hotel (Newquay) Ltd v Allan* (The Times, 2 July 1980). It is also perhaps worth mentioning that the contention that the noun "building" in section 10 of the Open Spaces Act 1906 should be restricted in the way that Mr Swift suggests was rejected in *In re St Luke's Chelsea* [1976] Fam 295, 312D.

37. Accordingly, the wording of the Act does not detract from adopting the natural and relatively broad meaning of "building" in section 2. The references to crematoria being "constructed" in sections 5 and 6, and the reference to a donation of land in section 6, tend to suggest that to be a "building" within section 2, a structure must be (at the risk of an oxymoron) relatively permanent and substantial. This may remove some structures from the ambit of the word as used in the Act, but I doubt those aspects take the matter any further: if a structure is not relatively permanent and

cannot be described as "constructed", it would not, I think, ordinarily be described as a "building".

38. This conclusion is supported by other factors. Thus, in the light of the wide regulatory powers given to the Secretary of State by section 7, there is no need to give a restricted meaning to the word "building" in the Act: if it was considered that, for one reason or another, the type of structure in which cremations could occur should be restricted, that could be achieved by regulations made pursuant to section 7. Further, where Parliament wanted to impose restrictions on crematoria (as it did in sections 2 and 5, with regard to fitting out and location), it spelt them out. Additionally, given that cremating bodies was known to be lawful as at 1902, it appears to me that one should lean in favour of a construction which gives a statute, introduced primarily to regularise, and ensure uniformity in, cremations, a generous, rather than a restricted, effect. (Quite apart from this, if, as I prefer to leave open, the Act does not preclude open air cremations, there would be a further reason for adopting a natural and wide definition of "building" for present purposes.)

39. In these circumstances, I have come to the conclusion that Mr Ghai's wishes as to how, after his death, his remains are to be cremated can be accommodated under the Act and the Regulations. This is because the various structures I have described in paragraphs 14 to 18 above, namely the cremation area in the Ceuta premises and the various structures in India, are "building[s]" within section 2 of the Act. They are buildings in the ordinary sense of the word, and they are substantial and effectively permanent structures. There is nothing in the Act, or in any external material which can be taken into account when construing the Act, to support the notion that the word is not to be given its ordinary meaning in section 2.

40. The consequences of this conclusion may well be that it is unnecessary to consider any further substantive issues in this case, including any of the issues decided by Cranston J. However, as indicated at the end of the hearing, the parties should now have an opportunity to agree as to the future conduct of this appeal, or, if they cannot agree, to make submissions on that matter, initially, at any rate, in writing.

Lord Justice Moore-Bick:

41. I agree.

Lord Justice Etherton:

42. I also agree.