

RAMESH GOBINDRAM (DEAD) THROUGH LRS. A

v.

SUGRA HUMAYUN MIRZA WAKF
(Civil Appeal No. 1182 of 2006)

SEPTEMBER 1, 2010 B

[MARKANDEY KATJU AND T.S. THAKUR, JJ.]

Wakf Act, 1995 – s. 6(5), 7, 83 and 85 – Wakf Tribunal – Jurisdiction of – To decide eviction suit in respect of wakf property – Held: The Act does not provide that the Wakf Tribunal should decide the dispute regarding eviction of tenant in possession of wakf property – Therefore, Eviction suit is maintainable before civil court and not before Wakf Tribunal. C

Jurisdiction – Jurisdiction of civil court vis-à-vis Wakf Tribunal constituted under Wakf Act – Determination of – Discussed. D

Respondent filed suits seeking eviction of the appellant-tenant, who was occupying a wakf property. Wakf Tribunal holding that it had the jurisdiction to decide the issue, decreed the eviction suits. In revision petitions, the High Court affirmed the decree. E

In the instant appeals, the question for consideration was whether the Wakf Tribunal constituted u/s. 83 of the Wakf Act, 1995 was competent to entertain and adjudicate upon disputes regarding eviction of the appellants who were occupying the wakf property. F

Allowing the appeals, the Court

HELD: 1. The well-settled rule is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of civil courts to try suits of civil G

A nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that civil court's jurisdiction is ousted. Even in cases where the statute accords finality to the orders passed by the tribunals, the court will have to see whether the tribunal has the power to grant the reliefs which the civil courts would normally grant in suits filed before them. If the answer is in negative exclusion of the civil courts jurisdiction would not be ordinarily inferred. [Paras 5 and 6] [954-H; 955-A-D]

D *Rajasthan SRTC v. Bal Mukund Bairwa (2)*, (2009) 4 SCC 299; *Pabbojan Tea Co. Ltd. v. Dy. Commr* (1968) 1 SCR 260; *Ramesh Chand Ardawatiya v. Anil Panjwani* AIR 2003 SC 2508; *Dhulabhai v. State of M.P.* (1968) 3 SCR 662; *Mafatlal Industries Ltd. v. Union of India* (1997) 5 SCC 536; *State of A.P. v. Manjeti Laxmi Kantha Rao* (2000) 3 SCC 689; *Dhruv Green Field Ltd. v. Hukam Singh and Ors.* (2002) 6 SCC 416; *Dwarka Prasad Agarwal v. Ramesh Chandra Agarwala* AIR 2003 SC 2696; *State of Tamil Nadu v. RamalingaSamigal Madam* AIR 1986 SC 794 – relied on.

F 2. In the instant case, the respondent-Wakf Board who claims exclusion of jurisdiction of civil court has not discharged the onus that lay upon it. From a conjoint reading of the provisions of Sections 6 and 7 of the Wakf Act, 1995, it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf, rests entirely with the tribunal and no suit or other proceeding can be instituted or commenced in a civil court in relation to any such question after the commencement of the Act. Under

H

Section 6 r/w Section 7, the institution of the civil court is barred only in regard to questions that are specifically enumerated therein. The bar is not complete so as to extend to other questions that may arise in relation to the wakf property. [Paras 8 and 12] [956-A-B; 959-F-H; 960-A]

Board of Muslim Wakfs Rajasthan v. Radha Kishan and Ors. (1979) 2SCC 468; Punjab Wakf Board v. Gram Panchayat alias Gram Sabha (2000) 2 SCC 121 – relied on.

3. A plain reading of s. 85 would show that the civil court's jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the tribunal. The words "which is required by or under this Act to be determined by tribunal" holds the key to the question whether or not all disputes concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court. Whenever a question arises whether "any dispute, question or other matter" relating to "any wakf or wakf property or other matter" falls within the jurisdiction of a civil court, the answer would depend upon whether any such dispute, question or other matter is required under the Act to be determined by the tribunal constituted under the Act. If the answer be in the affirmative the jurisdiction of the civil court would be excluded qua such a question, for in that case the tribunal alone can entertain and determine any such question. The bar of jurisdiction contained in Section 85 is in that sense much wider than that contained in Section 6(5) r/w Section 7 of the Wakf Act. While the latter bars the jurisdiction of the civil court only in relation of questions specified in Sections 6(1) and 7(1), the bar of jurisdiction contained in Section 85 would exclude the jurisdiction of the civil courts not only in relation to matters that specifically fall in Sections 6 and 7 but also other matters required to be determined by a tribunal under the Act. [Para 16] [962-D-H; 963-A-B]

A 4. Section 85 of the Act clearly bars jurisdiction of the
 civil courts to entertain any suit or proceedings in relation
 to orders passed by or proceedings that may be
 commenced before the tribunal. It follows that although
 Section 85 is wider than what is contained in Sections 6
 B and 7 of the Act, the exclusion of jurisdiction of civil
 courts even u/s. 85 is not absolute. It is limited only to
 matters that are required by the Act to be determined by
 a tribunal. So long as the dispute or question raised
 before the civil court does not fall within four corners of
 C the powers vested in the tribunal, the jurisdiction of the
 former to entertain a suit or proceedings in relation to any
 such question cannot be said to be barred. [Para 18] [963-
 H; 964-A-C]

D 5. Section 83 of the Act, does not deal with the
 exclusion of the jurisdiction of the civil courts to entertain
 civil suits generally or suit of any particular class or
 category. The exclusion of civil court's jurisdiction is dealt
 with by Section 6(5) and Section 85 of the Act. To
 interpret Section 83 as a provision that excludes the
 E jurisdiction of the civil courts is not, therefore, legally
 correct, for that provision deals with constitution of
 tribunals, the procedure which the tribunals would follow
 and matters relating thereto. There is nothing in Section
 83 to suggest that it pushes the exclusion of the
 F jurisdiction of the civil courts beyond what has been
 provided for in Section 6(5), Section 7 and Section 85 of
 the Act. It simply empowers the Government to constitute
 a tribunal or tribunals for determination of any dispute,
 question of other matter relating to a wakf or wakf
 G property which does not *ipso facto* mean that the
 jurisdiction of the civil courts stands completely excluded
 by reasons of such establishment. The expression "for
 the determination of any dispute, question or other matter
 relating to a wakf or wakf property" appearing in Section
 H 83(1) also appears in Section 85 of the Act. [Paras 19 and

21] [964-E-G; 967-D-G]

6. Section 85 does not, however, exclude the jurisdiction of the civil courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the civil court shall stand excluded in relation to only such matters as are required by or under the Act to be determined by the tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the tribunal is, under the Act or the Rules, required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the tribunal is required to decide the matter, the jurisdiction of the civil court would stand excluded. [Para 21] [967-G-H; 968-A-B]

7. In the instant cases, the Act does not provide for any proceedings before the Wakf Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the tribunal. [Para 22] [968-B-C]

T. Shivalingam v. A.P. Wakf Tribunal, Hyderabad and Ors. 1999 (3) ALT 602; *P. Rama Rao and Ors. v. High Court of Andhra Pradesh, rep. by Registrar (Vigilance) and Ors.* 2000 (1) ALT 210; *Jai Bharat Co-operative Housing Society Ltd. v. A.P. State Wakf Board Hyderabad* 2000 (5) ALD 743; *Syed Muneer v. Chief Executive Officer and 5 Ors.* 2001 (4) ALD 430; *Anjuman A. Burhani v. Daudi Bohra Jamaet, Registered Society and Anr.* AIR 2009 Raj. 150; *Wakf Imambara Imlipura v. Smt. Khursheeda Bi and Ors.* AIR 2009

A **MP238**; *Aliyathammada Beethathabiyyapura Pookoya Haji v. Pattakkal Cheriyaakoya and Ors.* **AIR 2003 Ker. 366**; *Surinder Singh v. Punjab Wakf Board and Ors.* **CR No.32 of 2009(1) – disapproved.**

B *St. Gregorious Orthodox Cathedral, Bangalore v. Aga Ali Asgar Wakf, Bangalore and Anr.* **2008 (6) Kar LJ 358**; *Saleem v. PA Kareem and Ors.* **2008 (2) CTC 492 (Mad)**; *Suresh Kumar v. Managing Committee* **2009 INDLAW All 1770**; *Abdul Kadar @ Babbu s/o Ismail v. Masjid Juma Darwaja a registered Public Trust through its Secretary*
 C *Manzoor Mohammad z/o Zahoor Mohammad* **2009 (1) BomCR 498 – affirmed.**

Case Law Reference:

D	1999 (3) ALT 602	Disapproved	Para 2
	2000 (1) ALT 210	Disapproved	Para 2
	2000 (5) ALD 743	Disapproved	Para 2
	2001 (4) ALD 430	Disapproved	Para 2
E	AIR 2009 Raj.150	Disapproved	Para 2
	AIR 2009 MP 238	Disapproved	Para 2
	AIR 2003 Ker. 366	Disapproved	Para 2
F	CR No.32 of 2009(1)	Disapproved	Para 3
	2008 (6) Kar LJ 358	Affirmed	Para 3
	2008 (2) CTC 492 (Mad)	Affirmed	Para 3
G	2009 INDLAW All 1770	Affirmed	Para 3
	2009 (1) BomCR 498	Affirmed	Para 3
	(2009) 4 SCC 299	Relied on	Para 6
H	(1968) 1 SCR 260	Relied on	Para 7

RAMESH GOBINDRAM (DEAD) THROUGH LRS. v. 951
SUGRA HUMAYUN MIRZA WAKF

AIR 2003 SC 2508	Relied on	Para 7	A
(1968) 3 SCR 662	Relied on	Para 7	
(1997) 5 SCC 536	Relied on	Para 7	
(2000) 3 SCC 689	Relied on	Para 7	B
(2002) 6 SCC 416	Relied on	Para 7	
AIR 2003 SC 2696	Relied on	Para 7	
AIR 1986 SC 794	Relied on	Para 7	C
(1979) 2 SCC 468	Relied on	Para 13	
(2000) 2 SCC 121	Relied on	Para 14	

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
1182 of 2006.

From the Judgment & Order dated 03.02.2005 and
04.03.2005 of the High Court of Andhra Pradesh at Hyderabad
in Civil Revision No. 3932 of 2004 and Civil Misc. Petition No.
1022 of 2005.

WITH

C.A. Nos. 1183 of 2006 and 3605 of 2008.

P.S. Narasimha, Yogesh Jagia, Hetu Arora, Amit Sood,
Parmeshwar, Nikhil Mehra, Shishir Deshpande, Amit Yadav (for
Sujata Kurdukar), R.B. Masodkar, Sanjay Hegde, A. Rasheed
Qureshi, Dharmendra Kumar Sinha, Anis Ahmed Khan, Shoaib
Ahmad Khan, Pratap Venugopal, Surekha Raman, Dileep P.
for the appearing parties.

The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. These three appeals by special leave
arise out of three different orders passed by the High Court of

A Andhra Pradesh whereby revision petitions filed by the appellants against the orders of A.P. Wakf Tribunal have been dismissed and the orders of eviction passed by the Tribunal affirmed. Since the appeals raise a common question of law for our determination the same were heard together and shall stand disposed of by this common order. The question is whether the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 was competent to entertain and adjudicate upon disputes regarding eviction of the appellants who are occupying different items of what are admittedly Wakf properties. The Wakf Tribunal before whom the suits for eviction of the tenants were filed answered the question regarding its jurisdiction in the affirmative and decreed the suit filed against the appellant. Aggrieved by the said orders the appellants filed revision petitions before the High Court of Andhra Pradesh, inter alia, contending that the Tribunal was in error in assuming jurisdiction and directing their eviction. Dismissal of the Revision Petitions by the High Court has led to the filing of the present appeals as already noticed above.

2. Whether or not the Wakf Tribunal can entertain and adjudicate upon a dispute regarding eviction of a tenant holding wakf property under the Wakf Board, would depend upon the scheme of the Wakf Act, 1995 and express or implied exclusion of the jurisdiction of the Civil Courts to entertain any such dispute. If the Act excludes the jurisdiction of the Civil Courts whether such exclusion is absolute and all pervasive or limited only to a particular class of disputes is also an incidental question that may have to be addressed. There is a cleavage in the judicial opinion expressed on these questions by different High Courts in the country. The High Court of Andhra Pradesh has in *T. Shivalingam v. A.P. Wakf Tribunal, Hyderabad & Ors.* 1999 (3) ALT 602, *P. Rama Rao & Ors. v. High Court of Andhra Pradesh, rep. by Registrar (Vigilance) and Ors.* 2000 (1) ALT 210, *Jai Bharat Co-operative Housing Society Ltd. v. A.P. State Wakf Board, Hyderabad* 2000 (5) ALD 743 and *Syed Muneer v. Chief Executive Officer and 5 Ors.* 2001 (4)

RAMESH GOBINDRAM (DEAD) THROUGH LRS. v. 953
SUGRA HUMAYUN MIRZA WAKF [T.S. THAKUR, J.]

ALD 430 taken the view that the Tribunal established under Section 83 of the Wakf Act is competent to entertain and adjudicate upon all kinds of disputes so long as the same relate to any wakf property. So also the High Court of Rajasthan in *Anjuman A. Burhani v. Daudi Bohra Jamaet, Registered Society and Anr.* AIR 2009 Raj. 150 has taken the view that, the very purpose of creating a Tribunal under the Wakf Act would be defeated if the jurisdiction of the Tribunal is construed in a narrow sense. A similar view has been expressed by the High Court of Madhya Pradesh in *Wakf Imambara Imlipura v. Smt. Khursheeda Bi & Ors.* AIR 2009 MP 238. The High Court of Kerala in *Aliyathammada Beethathabiyyapura Pookoya Haji v. Pattakkal Cheriya Koya & Ors.* AIR 2003 Ker. 366 and the High Court of Punjab & Haryana in *Surinder Singh v. Punjab Wakf Board & Ors.*, CR No.32 of 2009(1) have also taken a similar view.

3. A contrary view has been expressed by the High Court of Karnataka in *St. Gregorious Orthodox Cathedral, Bangalore v. Aga Ali Asgar Wakf, Bangalore and Anr.* 2008 (6) KarLJ 358 and by the High Court of Madras in *Saleem v. PA Kareem & Ors.* 2008 (2) CTC 492 (Mad). The High Court of Allahabad in *Suresh Kumar v. Managing Committee* 2009 INDLAW All 1770 has concurred with that line of reasoning. The High Court of Bombay in *Abdul Kadar @ Babbu s/o Ismail v. Masjid Juma Darwaja a registered Public Trust through its Secretary Manzoor Mohammad z/o Zahoor Mohammad* 2009 (1) BomCR 498 has also taken the view that in cases where the dispute is not regarding the nature of the property, it is a civil dispute which can be determined only by the competent Civil Court and not by the Tribunal constituted under Section 83 of the Act. We shall presently advert to the reasoning and the views taken by the High Courts in the decisions mentioned above. But before we do so, we need to briefly refer to the scheme of the Wakf Act, 1995 and the historical background in which the same was enacted.

A 4. Wakfs and matters relating thereto were for a long time
 governed by the Wakf Act, 1954. The need for a fresh
 legislation on the subject was, however, felt because of the
 deficiencies noticed in the working of the said earlier
 enactment especially those governing the Wakf Boards, their
 B power of superintendence and control over the management
 of individual wakfs. Repeated amendments to the 1954 Act,
 having failed to provide effective answers to the questions that
 kept arising for consideration, the Parliament had to bring a
 comprehensive legislation in the form of Wakf Act 1995 for
 C better administration of wakfs and matters connected therewith
 or incidental thereto. Chapter I of the 1995 Act deals with
 Preliminaries like definitions, title, extent and commencement
 and application of this Act. Chapter II provides for preliminary
 survey of wakfs, publication of list of wakfs, disputes regarding
 D wakfs and also the powers of the Tribunal to determine such
 disputes. Chapter III deals with Central Wakf Council while
 Chapter IV deals with establishment of Boards and their
 functions. Chapter V, VI and VII regulate the registration of
 Wakfs and maintenance of accounts thereof and the finances
 of the Wakf Board. Chapter VIII, with which the controversy at
 E hand is more intimately connected deals with judicial
 proceedings and, inter alia, provides for constitution of tribunals
 and adjudication of disputes by them as well as exclusion of
 jurisdiction of Civil Courts. Chapter IX is a miscellaneous
 chapter that confers power on the Central Government to
 F regulate the secular activities of wakfs and empowers the State
 Government to issue directions apart from other provisions like
 establishment and reorganization and establishment of boards.

G 5. Before we take up the core issue whether the
 jurisdiction of Civil Court to entertain and adjudicate upon
 disputes regarding eviction of wakf property stands excluded
 under the Wakf Act we may briefly outline the approach that the
 Courts have to adopt while dealing with such questions. The
 well-settled rule in this regard is that the Civil Courts have the
 H jurisdiction to try all suits of civil nature except those

RAMESH GOBINDRAM (DEAD) THROUGH LRS. v. 955
SUGRA HUMAYUN MIRZA WAKF [T.S. THAKUR, J.]

entertainment whereof is expressly or impliedly barred. The jurisdiction of Civil Courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a Civil Court. Any such exception cannot be readily inferred by the Courts. The Court would, lean in favour of a construction that would uphold the retention of jurisdiction of the Civil Courts and shift the onus of proof to the party that asserts that Civil Court's jurisdiction is ousted.

6. Even in cases where the statute accords finality to the orders passed by the Tribunals, the Court will have to see whether the Tribunal has the power to grant the reliefs which the Civil Courts would normally grant in suits filed before them. If the answer is in negative exclusion of the Civil Courts jurisdiction would not be ordinarily inferred. In *Rajasthan SRTC v. Bal Mukund Bairwa (2)*, (2009) 4 SCC 299, a three-Judge Bench of this Court observed:

“There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.”

7. To the same effect are the decisions of this Court in *Pabbojan Tea Co. Ltd. v. Dy. Commr* (1968) 1 SCR 260, *Ramesh Chand Ardawatiya v. Anil Panjwani* AIR 2003 SC 2508, *Dhulabhai v. State of M.P.* (1968) 3 SCR 662, *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536, *State of A.P. v. Manjeti Laxmi Kantha Rao* (2000) 3 SCC 689, *Dhruv Green Field Ltd. v. Hukam Singh and Ors.* (2002) 6 SCC 416, *Dwarka Prasad Agarwal v. Ramesh Chandra Agarwala*, AIR 2003 SC 2696 and *State of Tamil Nadu v. Ramalinga Samigal Madam* AIR 1986 SC 794.

A 8. Let us now see whether the respondent-Wakf Board who claims exclusion of jurisdiction of Civil Court has discharged the onus that lay upon it: Section 6 of the Act which bears direct relevance to that question may at this stage be extracted:

B **"Section 6. Disputes regarding wakfs.-**

C (1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

D Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

E Explanation-For the purposes of this section and Section 7, the expression "any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been/ afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under Section 4.

F (2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason, only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

H

RAMESH GOBINDRAM (DEAD) THROUGH LRS. v. 957
SUGRA HUMAYUN MIRZA WAKF [T.S. THAKUR, J.]

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

A

B

(4) The list of wakfs shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a Court in that State in relation to any question referred to in sub-section (1)."

C

9. A plain reading of sub-section (5) of Section 6 (supra) would show that the Civil Court's jurisdiction to entertain any suit or other proceedings stands specifically excluded in relation to any question referred to in sub-section (1). The exclusion it is evident from the language employed is not absolute or all pervasive. It is limited to the adjudication of the question (a) whether a particular property specified as wakf property in the list of wakfs is or is not a wakf property, and (b) whether a wakf specified in such list is a Shia wakf or a Sunni wakf. The Board or the mutawalli of the wakf or any person interested in the wakf is competent to institute a suit in a Tribunal for a decision on the above question or questions, which decision shall then be final provided that no such suit can be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

D

E

F

10. We may at this stage refer to Section 7 of the Act which provides for the forum for determination of questions referred to therein and arising after the commencement of this Act. What is important is that the questions referred to in Section 7(1) are the very same questions that are referred to in Section 6(1) with the only difference that Section 7(1) refer to the said questions

G

H

A arising after the commencement of the Act. Section 7 is extracted below:

“Section 7. Power of Tribunal to determine disputes regarding wakfs.-

B (1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

D Provided that -

(a) in a case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs; and

(b) in the case of the list of wakfs to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement;

Provided further that where any such question has been heard and finally decided by a Civil Court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any Court. Tribunal or other authority by reason only of the

RAMESH GOBINDRAM (DEAD) THROUGH LRS. v. 959
SUGRA HUMAYUN MIRZA WAKF [T.S. THAKUR, J.]

pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding. A

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1). B

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a Civil Court under sub-section (1) of Section 6, before the commencement of this Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be." C D

11. Second proviso to Section 7(1) accords finality to the judgments of the Civil Court in suits instituted before such commencement. Sub-section (5) to Section 7 excludes from the jurisdiction of the Tribunal any dispute which is the subject matter of a suit in a Civil Court instituted before the commencement of the Act. E

12. From a conjoint reading of the provisions of Sections 6 and 7 (supra) it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf rests entirely with the Tribunal and no suit or other proceeding can be instituted or commenced in a Civil Court in relation to any such question after the commencement of the Act. What is noteworthy is that under Section 6 read with Section 7 (supra) the institution of the Civil Court is barred only in regard to questions that are specifically enumerated therein. The bar is not complete so as to extend F G H

A to other questions that may arise in relation to the wakf property.

13. We may at this stage usefully digress from the core issue only to highlight the fact that Sections 6(1) and the proviso thereto has fallen for interpretation of this Court on a few occasions. In *Board of Muslim Wakfs Rajasthan v. Radha Kishan and Ors.* (1979) 2 SCC 468 one of the questions that fell for determination was, who are the parties that could be taken to be concerned in a proceeding under sub-section(1) of Section 6 of the Act. This Court held that under Section 6(1) the Board or the mutawalli of the wakf or any person interested therein is entitled to file a suit but the word "therein" following the expression "any person interested" must necessarily refer to the word "wakf" which immediately precedes it. The object underlying the proviso observed, this Court was to confine the power to file a suit to the mutawalli and persons interested in the Wakf. It did not extend to persons who are not persons interested in the wakf. Consequently the right, title and interest of a stranger, (a non-Muslim), to the wakf in a property cannot be put in jeopardy merely because that property is included in the list of wakfs. The special rule of limitation prescribed by the proviso to Section 6(1) was itself held inapplicable to him and a suit for declaration of title to any property included in the list of wakfs held maintainable even after the expiry of the period of one year. The following passage from the decision is in this regard apposite:

F "The question that arises for consideration, therefore, is as to who are the parties that could be taken to be concerned in a proceeding under sub-section (1) of Section 6 of the Act, and whether the list published under sub-section (2) of Section 5 declaring certain property to be wakf property, would bind a person who is neither a mutawalli nor a person interested in the wakf.

H The answer to these questions must turn on the true meaning and construction of the word 'therein' in the expression 'any person interested therein' appearing in

A a wakf specified in list is a Shia wakf or a Sunni wakf is clear and presents no difficulty whatsoever. The difficulty, however, arises on account of the fact that apart from Section 6(5) which bars the jurisdiction of the Civil Courts to determine matters referred to in Section 6(1), Section 85 of the Act also bars the
 B jurisdiction of the Civil Courts to entertain any legal proceedings in respect of any dispute, question or matter relating to a wakf property. Section 85 of the Act reads:

C “85. **Bar of jurisdiction of Civil Courts** – No suit or other legal proceedings shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.”

D 16. A plain reading of the above would show that the Civil Court’s jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words “which is required by or under this Act to be determined by Tribunal” holds the key to the question whether or not all disputes concerning the wakf or wakf property
 E stand excluded from the jurisdiction of the Civil Court. Whenever a question arises whether “any dispute, question or other matter” relating to “any wakf or wakf property or other matter” falls within the jurisdiction of a Civil Court the answer would depend upon whether any such dispute, question or other
 F matter is required under the Act to be determined by the Tribunal constituted under the Act. If the answer be in the affirmative, the jurisdiction of Civil Court would be excluded qua such a question, for in that case the Tribunal alone can entertain and determine any such question. The bar of jurisdiction contained in Section 85 is in that sense much wider than that
 G contained in Section 6(5) read with Section 7 of the Wakf Act. While the latter bars the jurisdiction of the Civil Court only in relation of questions specified in Sections 6(1) and 7(1), the bar of jurisdiction contained in Section 85 would exclude the
 H jurisdiction of the Civil Courts not only in relation to matters that

specifically fall in Sections 6 and 7 but also other matters A
required to be determined by a Tribunal under the Act. There
are a host of such matters in which the Tribunal exercises
original or appellate jurisdiction. To illustrate the point we may
usefully refer to some of the provisions of the Act where the bar
contained in the said section would get attracted. Section 33 B
of the Act deals with the power of inspection by a Chief
Executive Officer or person authorized by him. In the event of
any failure or negligence on the part of a mutawalli in the
performance of his duties leading to any loss or damage, the
Chief Executive Officer can with the prior approval of the Board C
pass an order for the recovery of the amount or property which
has been misappropriated, misapplied or fraudulently retained.
Sub-section (4) of Section 33 then entitles the aggrieved person
to file an appeal to the Tribunal and empowers the Tribunal to
deal with and adjudicate upon the validity of the orders passed D
by the Chief Executive Officer.

17. Similarly under Section 35 the Tribunal may direct the
mutawalli or any other person concerned to furnish security or
direct conditional attachment of the whole or any portion of the
property so specified. E

18. Section 47 of the Act requires the accounts of the
wakfs to be audited whereas Section 48 empowers the Board
to examine the audit report, and to call for an explanation of
any person in regard to any matter and pass such orders as it F
may think fit including an order for recovery of the amount
certified by the auditor under Section 47(2) of the Act. The
mutawalli or any other person aggrieved by any such direction
has the right to appeal to the Tribunal under Section 48. Similar
provisions giving powers to the Wakf Board to pass orders in G
respect of matters stipulated therein are found in Sections 51,
54, 61, 64, 67, 72 and 73 of the Act. Suffice it to say that there
are a host of questions and matters that have to be determined
by the Tribunal under the Act, in relation to the wakf or wakf
property or other matters. Section 85 of the Act clearly bars H

- A jurisdiction of the Civil Courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of Civil Courts even
- B under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the Civil Court does not fall within four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or
- C proceedings in relation to any such question cannot be said to be barred.

19. The High Courts of Andhra Pradesh, Rajasthan, Madhya Pradesh, Punjab and Haryana have in the decisions to which we have made reference in the earlier part of this
- D judgment taken the view that the jurisdiction of the Civil Courts is barred in respect of disputes that concerns with any wakf or wakf property. The decisions rendered by these High Courts draw support for that conclusion from Section 83 of the Wakf Act, 1995. The language employed in Section 83 of the Act has
- E been understood to be so wide as to include any dispute, question or other matter relating to a wakf or wakf property. Section 83 of the Act, however, does not deal with the exclusion of the jurisdiction of the Civil Courts to entertain civil suits generally or suit of any particular class or category. The
- F exclusion of Civil Court's jurisdiction is dealt with by Section 6(5) and Section 85 of the Act. To interpret Section 83 as a provision that excludes the jurisdiction of the Civil Courts is not, therefore, legally correct, for that provision deals with constitution of Tribunals, the procedure which the Tribunals
- G would follow and matters relating thereto. It reads:

"83. Constitution of Tribunals, etc.

- (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals, as it may
- H think fit, for the determination of any dispute, question or

other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals. A

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf. B

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter: C
D
E

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh. F
G
H

A (4) Every Tribunal shall consist, of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

B (5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 , (5 of 1908 .) while trying a suit, or executing a decree or order.

C (6) Notwithstanding anything contained in the Code of Civil Procedure, 1908, (5 of 1908), the Tribunal shall follow such procedure as, may be prescribed.

D (7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a, civil court.

E (8) The Execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall be against any decision or order whether interim or otherwise, given or made by the Tribunal:

F Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.”

G

H 20. It is clear from sub-section(1) above that the State Government is empowered to establish as many Tribunals as it may deem fit for the determination of any dispute, question

or other matter relating to a wakf or wakf property under the Act and define the local limits of their jurisdiction. Sub-section (2) of Section 83 permits any mutawalli or other person interested in a wakf or any person aggrieved of an order made under the Act or the rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to the wakf. What is important is that the Tribunal can be approached only if the person doing so is a mutawalli or a person interested in a wakf or aggrieved by an order made under the Act or the rules. The remaining provisions of Section 83 provide for the procedure that the Tribunal shall follow and the manner in which the decision of a Tribunal shall be executed. No appeal is, however, maintainable against any such order although the High Court may call for the records and decide about the correctness, legality or propriety of any determination made by the Tribunal.

21. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not *ipso facto* mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is

A raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

B 22. In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, D Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed.

E 23. In the result these appeals succeed and are hereby allowed. The impugned orders passed by the High Court and those passed by the Wakf Tribunal shall stand set aside and the suit filed by the respondent-Wakf Board for the eviction of the appellants dismissed leaving the parties to bear their own costs. We make it clear that this order shall not prevent the Wakf Board from instituting, if so advised, appropriate civil action before the competent Civil Court for redress in accordance with law. No costs.

K.K.T

Appeals allowed.