

A MADANURI SRI RAMA CHANDRA MURTHY

v.

SYED JALAL

(Civil Appeal No. 5368 of 2017)

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APRIL 19, 2017

[R. K. AGRAWAL AND
MOHAN M. SHANTANAGOUDAR, JJ.]

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Code of Civil Procedure, 1908:

Or.VII, r.11 – Rejection of plaint – Held: The power u/Or.VII, r.11 can be exercised by the Court at any stage of the suit – The relevant facts which need to be looked into for deciding the application are the averments of the plaint only – If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power u/Or.VII r.11 – The said power however have to be strictly adhered to – The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law.

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Or.VII, r.11 – Averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint – Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power u/Or.VII, r.11 can be exercised – If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation end at the earlier stage.

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Or.VII, r.11 – Suit for cancellation of sale deed on the ground that the suit property was wakf property and that defendants having purchased through a private person, sale deed did not convey any

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right, title or interest in favour of defendants – Application by defendants including appellant u/Or.7, r.11 for rejection of plaint – Wakf Tribunal allowed the application – High Court set aside the order of Wakf Board – On appeal, held: The Tribunal held that property in question was not notified in Official Gazette as a Wakf property, as alleged by the plaintiff – High Court though agreed with the finding of fact arrived at by the Tribunal that the property was not notified as Wakf property in the Official Gazette, raised some doubt about the non-inclusion/inclusion of the property in the Survey Commissioner’s Report and proceeded to set aside the order of the Tribunal – Therefore, there were concurrent findings of fact that property in question was not notified in Official Gazette as a Wakf property – Under s.6, anyone aggrieved by such non-inclusion of the property in the list notified should raise the dispute within a period of one year from the date of publication of the Gazette notification – The plaintiff questioned the non-inclusion of the property in the list and the validity of the list notified in the official gazette dated 28.06.1962 after the lapse of about 50 years by filing the instant suit – Moreover, as per s.27 of 1954 Act (s.40 of 1995 Act), the Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not the Board after making such enquiry as it deems fit, decide the question – The Board did not exercise jurisdiction u/s.27 of 1954 Act and s.40 of 1995 Act, though 50 years elapsed from the date of the gazette notification – The suit is manifestly meritless and vexatious – So also the suit is barred by law – Wakf Tribunal was right in allowing application u/Or.VII, r.11 – Wakf Act, 1954 – ss.6 and 27 – Wakf Act, 1995 – ss.6 and 40.

Wakf – Similarity and difference between the 1954 Act and 1995 Act – Held: The provisions found in ss.5 and 6 of Wakf Act 1995 and Act of 1954 are almost akin to each other – However, the change brought in by the Parliament under 1995 Act is that, in the case of dispute regarding Wakfs, the aggrieved party needs to approach the Wakf Tribunal constituted u/s.83 of the Wakf Act 1995 and consequently the jurisdiction of the Civil Court is taken away – The overall view of the provisions contained in Wakf Act, 1954 and Wakf Act 1995 make it evident that even under 1954 Act, as in

- A *1995 Act, the Survey Commissioners were appointed for the purpose of making survey of wakfs in State – The Survey Commissioner is duty bound to conduct the survey of wakfs in the State and after making such enquiry, submit his report in respect of Wakfs existing in the State to the State Government with necessary particulars –*
- B *Copy of the said report would be forwarded by the State to the Wakf Board which in turn would examine the report by applying its mind and thereafter would publish the notification – Whereas under 1995 Act, the Wakf Board after examining the report forwards it back to Government within a period of 6 months for publication in the Official Gazette in the State – Pursuant thereto the State publish*
- C *the Gazette notification.*

Allowing the appeal, the Court

- D **HELD: 1.** In order to prima facie satisfy his case as pleaded in plaint that the Suit property is a Wakf property, the plaintiff produced certain documents including Gazette Notification dated 28.06.1962. The averments in the plaint disclose that the property bearing Survey No. 113 situated at Pernamitta village was notified as Wakf property under Serial No. 966 in the Official Gazette published by Andhra Pradesh State Wakf Board on 28.06.1962.
- E The property in question is situated in Pernamitta village, whereas the Gazette which is relied upon shows that the survey no. 113 is situated at a different village which is stated to be far away (about 20 kms.) from village Pernamitta. List of wakf properties pertaining to Pernamitta village does not contain the property in question. The Tribunal, on facts, thus had concluded that property in question does not find place in the Official Gazette of the Wakf Board. The High Court also concurred with the Wakf Tribunal in that regard. Thus, there are concurrent findings of fact that property in question was not notified in Official Gazette as a Wakf property, as alleged by the plaintiff/respondent. The High Court though having agreed with the finding of fact arrived at by the Tribunal that the property was not notified as Wakf property in the Official Gazette, raised some doubt about the non-inclusion/
- G inclusion of the property in the Survey Commissioner's Report, erroneously has proceeded to set aside the order of the Tribunal. [Paras 9, 10] [302-C-H]

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2. Notification containing the list of Wakf properties relied upon by the plaintiff was published in Gazette as back as on 28.06.1962 as per the provisions of Section 5 of Wakf Act, 1954 which is subsequently replaced by the Waqf Act, 1995. A bare reading of the provisions contained in 1954 Act and 1995 Act, makes it manifestly clear that the provisions, which are relevant for this case are almost para materia with each other. The provisions found in Sections 5 and 6 of Wakf Act 1995 and Act of 1954 are almost akin to each other. However the change brought in by the Parliament under 1995 Act is that, in the case of dispute regarding Wakfs, the aggrieved party needs to approach the Wakf Tribunal constituted under Section 83 of the Wakf Act 1995 and consequently the jurisdiction of the Civil Court is taken away. Except this change, no other substantial modification is found in those provisions. [Paras 11, 12 and 14] [303-A; 308-G-H; 309-A, E-F]

3. The overall view of the provisions contained in Wakf Act, 1954 and Wakf Act 1995 make it evident that even under 1954 Act, as in 1995 Act, the Survey Commissioners were appointed for the purpose of making survey of wakfs in State. The conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the official gazette by the State under 1995 Act, (it was by the Board under 1954 Act). The list would be prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a Wakf Property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of it's mind and only thereafter the same will be sent to Government for notifying the same in the Gazette. Since the list is prepared and published in the official Gazette by following aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's report. Since the surveyor's report was required to be considered by the State Government as well as Wakf Board (as the case may be), prior to finalisation

A of the list of properties to be published in the Official Gazette, it was not open for the High Court to conclude that the Surveyor's report will have to be reconsidered. On the contrary Surveyor's report merges with the Gazette Notification published under Section 5 of the Wakf Act. [Paras 16, 17] [310-B, E-H; 311-A]

B 4. As held by the Tribunal as well as the High Court, the property in question does not find place in the Gazette notification published under Section 5 of the Wakf Act. In other words, the property in question is not notified in the official Gazette as Wakf property. If anybody including the Wakf Board or the plaintiff was aggrieved by such non-inclusion of the property in the list notified, the aggrieved person should have raised the dispute under Section 6 within a period of one year from the date of publication of the Gazette notification in the matter. The plaintiff has practically questioned the non-inclusion of the property in the list and the validity of the list notified in the official gazette dated 28.06.1962 after the lapse of about 50 years, i.e. in the year 2013 by filing the present suit. [Para 18] [311-B-C]

E 5. As per Section 27 of 1954 Act (Section 40 of 1995 Act), the Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not the Board after making such enquiry as it deems fit, decide the question. The decision of the Board on any question under sub-section (1) of Section 27 of 1954 Act (or under Section 40(1) of 1995 Act) shall, unless revoked or modified by the Civil Court, be final. The effect of Section 27 of 1954 Act or Section 40 of 1995 Act is that, if any property had been omitted to be included in the list of auqaf by inadvertence or otherwise, then it was/is for the Wakf Board to take action, as per said provision. In the matter on hand, the said provision also will not come to the aid of the plaintiff inasmuch as the said sub-section can be employed only if survey of auqaf was not done before the commencement of Wakf (Amendment) Act, 2013. Admittedly in the matter on hand, the survey was conducted prior to 1962 and based on such Surveyor's report only, the list was prepared and the same was submitted to State Government, which in turn, was forwarded to

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Wakf Board, the Wakf Board after examining the report published the list in the official gazette in the year 1962. Hence, sub-section (1A) of Section 4 also will be of no avail to the plaintiff. In the matter on hand, the Tribunal and the High Court, on facts have held that the property in question is not included in the list published in the Official Gazette as a wakf property. Such non-inclusion was never questioned by any person including the Wakf Board. The Board has not exercised jurisdiction under Section 27 of 1954 Act and Section 40 of 1995 Act, though 50 years have elapsed from the date of the gazette notification. Hence, the averments in the plaint do not disclose the cause of action for filing the suit. The suit is manifestly meritless and vexatious. So also the suit is barred by law. [Paras 19, 21 and 22] [311-D-E; 312-D-H]

T.N.Wakf Board v. Hathija Ammal 2001 (8) SCC 528:
[2001] 2 Suppl. SCR 428 – relied on.

Case Law Reference

[2001] 2 Suppl. SCR 428 relied on Para 19

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5368 of 2017.

From the Judgment and Order dated 07.09.2016 of the High Court of Judicature at Hyderabad for the State of Telangana & The State of Andhra Pradesh in Civil Revision Petition No. 2472 of 2016.

G. V. R. Choudary, K. Shivraj Choudhuri, A. Chandra Sekhar, S. M. Subhani, Advs. for the Appellant.

Anis Ahmed Khan, Shoaib Ahmad Khan, Mohd. Naved Mian, Sandeep Garausa, Advs. for the Respondent.

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J. 1. Leave granted.

2. The order dated 07.09.2016 passed in Civil Revision Petition No.2472/2016 by the High Court of Judicature at Hyderabad allowing

A the Revision Petition and setting aside the order dated 08.03.2016 on I.A.No.458/2015 in OS No.59/2013 passed by the Andhra Pradesh State Wakf Tribunal at Hyderabad is called in this Appeal. The brief facts leading to this appeal are as under:

3. The respondent herein filed suit No.59/2013 before Andhra Pradesh State Wakf Tribunal at Hyderabad seeking cancellation of the sale deed dated 12.1.2013 in respect of the land bearing Survey No.113 admeasuring 4 acres 72 cents situated at Pernamitta village, Prakasam District, State of Andhra Pradesh. Certain consequential reliefs are also sought for. It is the case of plaintiff that Survey Nos.112 and 113 to an extent of 18 acres 88 cents situated at Pernamitta village were notified in the Official Gazette of Wakf Board dated 28.6.1962 at serial No.966 and were also surveyed by the Survey Commissioner appointed under the provisions of the Wakf Act. The part of Survey No.113 to an extent of 4 acres 72 cents was purchased by the defendant through the sale deed dated 12.1.2013 executed by Mr. Alluri Koteswar Rao (Defendant No.6) in whose name property was standing. Plaintiff claims to be Mutwalli of the Wakf. The sum and substance of the plaintiff's case is that the defendant Nos.1 to 5 have purchased the suit property from a private person though the said property is the Wakf property and therefore the sale deed dated 12.1.2013 does not convey any right, title or interest in favour of the defendants 1 to 5.

4. It is the case of the appellant/defendant No.1 that the property was and is not a Wakf property inasmuch as it was never notified as a Wakf property; though official gazette was published as back as on 28.6.1962, the property does not find place in the gazette notifying the same as Wakf property; it is a private property and that he had purchased the same through a valid sale deed.

5. During the pendency of suit, an application was filed by the defendant Nos. 1 to 5 including the appellant herein under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') for rejection of plaint. The said application was allowed by the Wakf Tribunal on 8th March, 2016. On revision by the plaintiff, the order of rejection of plaint passed by the Wakf Tribunal is set aside by the High Court.

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6. Learned counsel for the appellant taking us through the impugned judgment of the High Court submitted that this is a fit case wherein the complaint ought to be rejected at the threshold inasmuch as the complaint does not disclose any cause of action and the suit is barred by law. The property in question is not notified in the Gazette as a Wakf Property at any point of time till this date and hence it is not open for the respondent to file this suit on the presumption that the property in question is a Wakf property. Since the property is not a Wakf property, the Wakf Tribunal has no jurisdiction to entertain the suit. That though the notification issued containing the list of certain Wakf properties was gazetted by the Wakf Board as early as in the year 1962, the High Court is not justified in raising doubt in the year 2013 about such notification which had been remained unchallenged for more than 50 years. It is not open for the respondent to generate the litigation only to harass the appellant.

7. Per contra, advocate for the respondent submitted that though the gazette notification did not contain the property in question as a Wakf property, the Survey Report disclosed the property in question as a Wakf property and therefore the defect while publishing the Gazette notification needs to be rectified. He submitted that the High Court is justified in passing the impugned judgment after verifying the records and therefore, it is not a fit case for rejecting of complaint at the threshold.

8. The complaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the complaint only. If on an entire and meaningful reading of the complaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of complaint have to be strictly adhered to. The averments of the complaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the

A written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

9. In order to prima facie satisfy his case as pleaded in plaint that the Suit property is a Wakf property, the plaintiff produced certain documents including Gazette Notification dated 28.06.1962. The averments in the plaint disclose that the property bearing Survey No. 113 situated at Pernamitta village was notified as Wakf property under Serial No. 966 in the Official Gazette published by Andhra Pradesh State Wakf Board on 28.06.1962. On verification of the Gazette Notification, the Wakf Tribunal has concluded that under Serial No. 966 (Page No.742) the property attached to Ashoorkhana situated at Kolachanakota village was shown and not the property belonging to Pernamitta village. The name of the plaintiff was also not shown as Mutwalli. The property in question is situated in Pernamitta village, whereas the Gazette which is relied upon shows that the survey no. 113 is situated at a different village which is stated to be far away (about 20 kms.) from village Pernamitta. There is one more Ashoorkhana situated at Pernamitta village which is not the subject matter of this litigation. List of wakf properties pertaining to Pernamitta village does not contain the property in question. The Tribunal, on facts, thus has concluded that property in question does not find place in the Official Gazette of the Wakf Board. The High Court also concurs with the Wakf Tribunal in that regard. Thus, there are concurrent findings of fact that property in question was not notified in Official Gazette as a Wakf property, as alleged by the plaintiff/respondent.

10. The High Court though has agreed with the finding of fact arrived at by the Tribunal that the property was not notified as Wakf property in the Official Gazette, raising some doubt about the non-inclusion/inclusion of the property in the Survey Commissioner's Report, erroneously has proceeded to set aside the order of the Tribunal.

11. As mentioned supra, notification containing the list of Wakf properties relied upon by the plaintiff was published in Gazette as back as on 28.06.1962 as per the provisions of Section 5 of Wakf Act, 1954 (hereinafter, in short, called as 1954 Act) which is subsequently replaced by the Waqf Act, 1995 (hereinafter, in short, called as 1995 Act). Before proceeding further, it would be beneficial to note the certain relevant provisions contained under the 1954 Act as well as 1995 Act for the purpose of deciding this matter.

The WAQF ACT, 1995	The WAKF ACT, 1954 (Old)
<p>4. Preliminary survey of [auqaf].-</p> <p>(1) The State Government may, by notification in the Official Gazette, appoint for the state a Survey Commissioner of [Auqaf] and as many Additional or Assistant Survey Commissioners of [Auqaf] as may be necessary for the purpose of making a survey of [auqaf in the state].</p> <p>[(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:</p> <p>Provided that where no Survey Commissioner of Waqf has been appointed a Survey Commissioner for aquaf shall be appointed within three months from the date of such commencement.]</p>	<p>4. Preliminary survey of wakfs.-</p> <p>(1) The State Government may, by notification in the Official Gazette, appoint for the state a [Survey Commissioner] of Wakfs and as many Additional or Assistant [Survey Commissioners] of Wakfs as may be necessary for the purpose of making a survey of Wakf properties existing in the State at the date of the commencement of this Act.</p>

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(2) All Additional and Assistant Survey Commissioners of [Auqaf] shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of [Auqaf].

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of [auqaf] existing at the date of commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:-

(a)

(b)

(c)

(d)

(e) and

(f)

(4).....

(5)

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of [waqf] properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

(2) All Additional and Assistant [Survey Commissioners] of Wakfs shall perform their functions under this Act under the general supervision and control of the [Survey Commissioner] of Wakfs.

(3)The [Survey Commissioner] shall, after making such inquiry as he may consider necessary, submit his report, [in respect of Wakfs existing at the date of commencement of this Act in the State or any part thereof,] to the State Government containing the following particulars, namely:-

(a)

(b)

(c)

(d)

(e) and

(f)

(4).....

(5).....

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf: properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

<p>Provided that no such second or subsequent survey shall be made until the expiry of a period of [ten years] from the date on which the report in relation to the immediately previous survey was submitted under sub-section(3): [Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the previous of any law.]</p>	<p>Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).]</p>
<p>5. Publication of list of [auqaf]. – (1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board. (2) The Board shall examine the report forwarded to it under sub-section (1) and [forward it back to the Government within a period of six months for publication in the Official Gazette] a list of Sunni [auqaf] or Shia [auqaf] in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed. [(3)The revenue authorities shall– (i) include the list of auqaf referred to in sub-section (2), while updating the land records: and ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.] [(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.]</p>	<p>5. Publication of list of wakfs. – (1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board. (2) The Board shall examine the report forwarded to it under sub-section (1) and publish, in the Official Gazette, a list of wakfs [[in the State, or as the case may be, the part of the State, whether in existence at the commencement of this Act or coming into existence thereafter] to which the report relates, and] containing such particulars as may be prescribed.</p>

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6. Disputes regarding [auqaf].—

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(1) If any question arises whether a particular properly specified a [waqf] property in the list of [auqaf] is [waqf] properly or not or whether a [waqf] specified in such list is a Shia [waqf] or Sunni [waqf], the Board or the mutawalli of the [waqf] of [any person aggrieved] 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:

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 [auqaf]:

[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.]

(2).....

(3)

6. Disputes regarding wakfs. —

(1) If any question arises [whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of Section 5 is wakf property or not whether a wakf specified in such list is a Shia wakf or sunni wakf] the Board of the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of Section 5:

[Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969 (38 of 1969, such suit may be entertained by the Civil Court within the period of one year from such commencement.]

(2).....

(3)

<p>(4) The list of [auqaf] shall, unless it is modified in pursuance of a decision or the Tribunal under sub-section (1), be final and conclusive.</p> <p>(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).</p>	<p>(4) The list of wakfs published under sub-section (2) of Section 5 shall, unless it is modified in pursuance of a decision of the Civil Court under sub-section (1), be final and conclusive.</p> <p>(5) On and from the commencement of the Wakf (Amendment) Act, 1984 in a State, no suit or other legal proceeding shall be instituted or commenced in a Civil Court in that State in relation to any question referred in sub-section (1).]</p>
<p><u>7. Power of Tribunal to determine disputes regarding [auqaf]</u></p> <p>(1) If, after the commencement of this Act, [any question or dispute] arises, whether a particular property specified as [waqf] property in a list of [auqaf] is [waqf] property or not, or whether a [waqf] specified in such list is a Shia [waqf] or a Sunni [waqf], the Board or the mutawalli of the [waqf], or [or any person aggrieved by the publication of the list of auqaf under section 5] 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: Provided that –</p>	<p><u>6-A. Power of Tribunal to determine disputes regarding wakfs</u></p> <p>(1) If, after the commencement of the Wakf (Amendment) Act, 1984, any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of the Section 5 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 in respect of such matter shall be final: Provided that –</p>

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(a) in the case of the list of [auqaf] 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 [auqaf]; and

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(b) in the case of the list [auqaf] relating 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.

(a) in the case of the list of wakfs relating to any part of the State and published or purporting to have been published after the commencement of the Wakf (Amendment) Act, 1984, no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs under sub-section (2) and Section 5; and

(b) in the case of the list of wakfs relating to any part of the State and published or purporting to have been published at any time within a period of one year immediately preceding the commencement of the Wakf (Amendment) Act, 1984, such an application may be entertained by the 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.

12. A bare reading of the afore-quoted provisions (relevant provisions for the purpose of this matter) contained in 1954 Act and

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1995 Act, makes it manifestly clear that the provisions, which are relevant for this case are almost parimateria with each other. A

13. Section 4 of 1954 Act, empowered the State Government to appoint a State Commissioner, and as many Additional and Assistant Survey Commissioners of Wakf as may be necessary, by a notification in the Official Gazette for the purpose of making survey of wakf properties existing within the State. The Survey Commissioner after making a survey of wakf properties would submit his report to the State Government containing various particulars as mentioned in sub-sections (3) and (4) of Section 4 of the Act. Section 5 of 1954 Act mandated that on receipt of such report from Survey Commissioner made under sub-section (3) of Section 4, the State Government should forward a copy of the same to the Wakf Board. The Wakf Board would examine the report forwarded to it and publish in Official Gazette, the list of Wakfs in the State. For resolving the disputes regarding Wakfs, Section 6 of 1954 Act, provided jurisdictional Civil Court as a forum and decision of Civil Court in respect of such matters should be final. It was also clarified that no such suit should be entertained by the Civil Court, after the expiry of one year from the date of publication of the list of Wakfs as per sub-section (2) of Section 5. Sub-section (4) of Section 6 stated that the list of Wakfs published under sub-section (2) of Section 5 shall be final and conclusive unless such list is modified on the direction of the Civil Court. B
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14. The provisions found in Sections 5 and 6 of Wakf Act 1995 and Act of 1954 are almost akin to each other. However the change brought in by the Parliament under 1995 Act is that, in the case of dispute regarding Wakfs, the aggrieved party needs to approach the Wakf Tribunal constituted under Section 83 of the Waqf Act 1995 and consequently the jurisdiction of the Civil Court is taken away. Except the aforesaid change, no other substantial modification is found in those provisions. Section 7 of 1995 Act empowers the Tribunal to determine the disputes, regarding Auqaf/Wakfs, the particulars of which are specified therein. F
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15. Section 6 and Section 7 of Waqf Act 1995 bars jurisdiction of the Civil Court to try the civil suit in respect of questions specifically enumerated under those provisions. Section 85 of Waqf Act, 1995 further clarifies that no suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question H

A 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.

16. The overall view of the aforementioned provisions contained in Wakf Act, 1954 and Waqf Act 1995 make it evident that even under 1954 Act, as in 1995 Act, the Survey Commissioners were appointed for the purpose of making survey of wakfs in State. The Survey Commissioner was duty bound to conduct the survey of wakfs in the State and after making such enquiry, as he might consider necessary, would submit his report in respect of Wakfs existing in the State to the State Government with necessary particulars. Copy of the said report would be forwarded by the State to the Wakf Board which in turn would examine the report by applying its mind and thereafter would publish the notification. Whereas under 1995 Act, the Wakf Board after examining the report forwards it back to Government within a period of 6 months for publication in the Official Gazette in the State. Pursuant thereto the State will publish the Gazette notification. The revenue authorities will consequently include the list of Auqaf properties while updating the revenue records under sub-section (3) of Section 5 of 1995 Act.

17. Thus it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the official gazette by the State under 1995 Act, (it was by the Board under 1954 Act). As mentioned supra, the list would be prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a Wakf Property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of its mind and only thereafter the same will be sent to Government for notifying the same in the Gazette. Since the list is prepared and published in the official Gazette by following aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's report. Since the surveyor's report was required to be considered by the State Government as well as Wakf Board (as the case may be), prior to finalisation of the list of properties to be published in the Official Gazette, it was not open for the High

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Court to conclude that the Surveyor's report will have to be reconsidered. A
On the contrary Surveyor's report merges with the Gazette Notification
published under Section 5 of the Wakf Act.

18. As held by the Tribunal as well as the High Court, the property B
in question does not find place in the Gazette notification published under
Section 5 of the Wakf Act. In other words, the property in question is
not notified in the official Gazette as Wakf property. If anybody including
the Wakf Board or the plaintiff was aggrieved by such non-inclusion of
the property in the list notified, the aggrieved person should have raised
the dispute under Section 6 within a period of one year from the date of
publication of the Gazette notification in the matter. The plaintiff has C
practically questioned the non-inclusion of the property in the list and the
validity of the list notified in the official gazette dated 28.06.1962 after
the lapse of about 50 years, i.e. in the year 2013 by filing the present
suit.

19. As per Section 27 of 1954 Act (Section 40 of 1995 Act), the D
Board may itself collect information regarding any property which it has
reason to believe to be wakf property and if any question arises whether
a particular property is wakf property or not the Board after making
such enquiry as it deems fit, decide the question. The decision of the
Board on any question under sub-section (1) of Section 27 of 1954 Act E
(or under Section 40(1) of 1995 Act) shall, unless revoked or modified
by the Civil Court, be final. The effect of Section 27 of 1954 Act or
Section 40 of 1995 Act is that, if any property had been omitted to be
included in the list of auqaf by inadvertence or otherwise, then it was/is
for the Wakf Board to take action, as per said provision. In this context,
it is relevant to note the observations by this Court in the case of F
T.N.Wakf Board vs. Hathija Ammal¹ which read thus:

“In the event, any property has been omitted by
inadvertence or otherwise, then it is for the Wakf Board to take
action as provided under Section 27 of the Act. If the Wakf Board
has reason to believe that a particular property is a wakf property G
then it can itself collect information and if any question arises
whether a particular property is a wakf property or not, it may,
after making such enquiry as it may deem fit decide the question

¹(2001) 8 SCC 528

A and such decision of the Wakf Board shall be final unless revoked or modified by a civil court. Such action has not been taken by the Wakf Board in this case.”

20. Sub-section (1A) of Section 4 is inserted by Act 27 of 2013 w.e.f. 1.11.2013 and the same reads thus:

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“(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

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Provided that where no Survey Commissioner of Waqf has been appointed a Survey Commissioner for auqaf shall be appointed within three months from the date of such commencement.”

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21. In the matter on hand, the said provision also will not come to the aid of the plaintiff inasmuch as the said sub-section can be employed only if survey of auqaf was not done before the commencement of Wakf (Amendment) Act, 2013. Admittedly in the matter on hand, the survey was conducted prior to 1962 and based on such Surveyor’s report only, the list was prepared and the same was submitted to State Government, which in turn, was forwarded to Wakf Board, the Wakf Board after examining the report published the list in the official gazette in the year 1962. Hence, sub-section (1A) of Section 4 also will be of no avail to the plaintiff.

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22. In the matter on hand, as mentioned supra, the Tribunal and the High Court, on facts have held that the property in question is not included in the list published in the Official Gazette as a wakf property. Such non-inclusion was never questioned by any person including the Wakf Board. The Board has not exercised jurisdiction under Section 27 of 1954 Act and Section 40 of 1995 Act, though 50 years have elapsed from the date of the gazette notification. Hence, in our considered opinion, the averments in the plaint do not disclose the cause of action for filing the suit. The suit is manifestly meritless and vexatious. So also the suit is barred by law for the reasons mentioned supra.

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23. In view of the above, the Order of the High Court is liable to be set aside. Accordingly, the same stands set aside. Appeal is allowed. The order of the Wakf Tribunal is restored. No costs. A

Devika Gujral

Appeal allowed.