

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12320 OF 2019**

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M/s. Shree Durga Trading Co. ...Petitioner

V/s.

Ateeq Anwar Agboatwala & Ors. ...Respondents

Mr. R. A. Thorat, Senior Counsel a/w Himanshu V. Kode
& Ms. Pratibha Shelke, for the Petitioner.

Mr. Kevic Setalvad, Senior Counsel a/w Mr. Anupam
Surve, Mr. Nimish Kothare, Mr. Nikhil Mutha & Ms.
Ashwini Sonawane i/b Nanu Hormasjee & Co., for
Respondent Nos. 1 to 5.

Ms. V. S. Nimbalkar, AGP, for Respondent No.7-State.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 5th JANUARY, 2023**

P.C.:

1. Heard Mr. R. A. Thorat, learned Senior Counsel
appearing for the Petitioner, Mr. Kevic Setalvad, learned
Senior Counsel appearing for the Respondent Nos.1 to 5 and
Ms. V. N. Nimbalkar, learned AGP for Respondent No.7-State.

Details of the impugned order :-

2. The Petitioner is the original Defendant No.1/Tenant.
The Respondent Nos.1 to 5 are the Plaintiffs/Landlords. By
way of the present Writ Petition filed under Article 227 of the

Constitution of India, the Petitioner is challenging the legality and validity of the order dated 6th February 2019 passed by the learned Judge, Small Causes Court, Mumbai below Exh.-264 in R.A.E. Suit No.1043/1806 of 2001 by which said Application was rejected. The said Application Exh.-264 was taken out by the Petitioner-Defendant No.1 to refer the issue of bonafide requirement and hardship to the Tribunal established under the Waqf Act, 1995 (hereinafter referred to as “**the Waqf Act**”) for its decision as the suit property is registered under the Waqf Act.

Factual aspects :-

3. Before setting out the rival contentions and consideration of the same, it is necessary to set out certain factual aspects :

- (i) The suit bearing R.A.E. Suit No.1043/1806 of 2001 was filed on 23rd October 2001 by the Respondent Nos.1 to 5-Trustees of “Noor Hospital” claiming to be a Public Charitable Trust registered under the provisions of the Bombay Public Trusts Act, 1950. The suit was filed *inter alia* against the Petitioner i.e. Defendant No.1 and other Defendants i.e.

Tenants for eviction on the grounds contemplated under Sections 16(1)(e) and 16(1)(g) of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as “**the Rent Act**”).

(ii) By the Judgment and Decree dated 30th September 2014, the said suit was decreed by the learned Trial Court. The Appeal filed by the Petitioner bearing Appeal No.487 of 2014 was dismissed by the learned Appellate Court by the Judgment and Decree dated 31st October 2017.

(iii) The Petitioner filed Revision bearing Civil Revision Application (St) No.2691 of 2018 i.e. Civil Revision Application No.564 of 2019 in this Court. A learned Single Judge, by order dated 4th April 2018 by exercising power under Order XLI Rule 25 of the Code of Civil Procedure, 1908 (“**C.P.C.**”) by keeping said Civil Revision Application pending, permitted the parties to lead evidence only with respect to the ground under Section (16) (1)(g) as also on the question of comparative hardship. By said order, a learned Single Judge

directed the Appellate Court to either refer the said issues for trial to the Trial Court or Appellate Court to itself consider recording evidence and deciding the said issues.

(iv) The learned Appellate Court referred the said issues to the learned Trial Court for recording evidence and deciding the said issues.

(v) Before the learned Trial Court, on 24th January 2018 the Petitioner/Defendant No.1 i.e. Tenant filed Application bearing Exh.264 in RAE Suit No.1043/1806 of 2001 and contended that, in view of Section 85 of the Waqf Act, the Trial Court has no jurisdiction to decide the issues of reasonable and bonafide requirement and comparative hardship, and that the Tribunals constituted under the Waqf Act will have exclusive jurisdiction to decide the said issues and as there is bar of jurisdiction of Civil Court, prayer was made to refer the said two issues to the Tribunal. The Petitioner relied on registration certificate dated 27th December 2018 issued by the Maharashtra

State Board of Waqfs to establish registration of the said Trust as "Waqf" under the provisions of the Waqf Act. By the impugned order dated 6th February 2019, said Exh.-264 Application was rejected.

(vi) In the meanwhile, on 22nd February 2019, the learned Trial Court recorded findings on the issues remanded by a learned Single Judge and the learned Appellate Court by order dated 2nd March 2019 confirmed the said findings and forwarded the same to this Court in Civil Revision Application No.564 of 2019.

Submissions of the Petitioner :-

4. Mr. R. A. Thorat, learned Senior Counsel appearing for the Petitioner raised the following contentions :-

[i] The scheme of unamended Waqf Act particularly from Sections 43, 83, 85 and 90 shows that, no suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Waqf or Waqf property or other matter which is required by or under the Waqf Act to

be determined by a Tribunal constituted under the Waqf Act. Section 85 is wide enough to include the suit or proceedings of eviction filed against the Tenant.

- [ii] Section 43 of the Waqf Act clearly contemplates that, where any Waqf has been registered before the commencement of the Waqf Act under any law for the time being in force, it shall not be necessary to register the Waqf under the provisions of the Waqf Act and any such registration made before such commencement shall be deemed to be a registration made under the Waqf Act. The Respondent-Trust i.e. “Noor Hospital” is registered under the provisions of the Bombay Public Trusts Act, 1950 on 12th April 1953. The City Civil Court finally approved the scheme with respect to the “said Trust” on 12th October 1977. Thus, Respondent-Trust is deemed to have been registered as Waqf w.e.f. 1st January 1996 when the Waqf Act came into force.
- [iii] The suit which has been filed in 2001 i.e. after enactment of the Waqf Act should have been filed

before the Tribunal constituted under Section 83 of the Waqf Act and the Civil Court or the Court exercising power under Section 33 of the Rent Act will have no jurisdiction.

[iv] Mr. R. A. Thorat, learned Senior Counsel of the Petitioner to substantiate his contentions relied on the reported Judgment of the Supreme Court in the matter between *Lal Shah Baba Dargah Trust Vs. Mr. Magnum Developers & Ors.*¹ He relied on paragraphs 22 to 26 of the said Judgment and submitted that, what has been done by 2013 amendment, is to clarify the legal position that is existing since enactment of the Waqf Act. He submitted that, the 2013 amendment is to clarify the position of law which was in existence since enactment of the Waqf Act. Thus, the dispute, question or other matter relating to any Waqf or Waqf property or other matter which is required by or under the Waqf Act to be determined by a Tribunal shall lie only before the Tribunal and no suit or other legal proceedings shall lie before any Civil Court.

¹ (2015) 17 SCC 65

[v] The 2013 amendment to Section 83 of the Waqf Act, by which, it is provided that a Tribunal be constituted for determination of any dispute regarding eviction of a Tenant or determination of rights and obligations of the lessor and the lessee of waqf property also clarifies the legal position existing before 2013 that, all disputes, questions or other matters relating to Waqf or Waqf property should be decided by the Tribunal.

[vi] Whether a tenant who is occupying a Waqf property be evicted or not is a dispute relating to Waqf or Waqf property and, therefore, the Tribunal constituted under Section 83 of the Waqf Act will have exclusive jurisdiction to decide the same irrespective of whether such a dispute has arisen before or after the 2013 amendment.

[vii] Mr. Thorat, learned Senior Counsel fairly pointed out the Judgment of the Supreme Court in the matter between *Ramesh Gobindram (Dead) Through LRS. Vs. Sugra Humayun Mirza Wakf*². He submitted that, Section 43 of the Waqf Act and the

2 (2010) 8 SCC 726

effect of the same is not considered by the Supreme Court.

Submissions of Respondent Nos.1 to 5 :-

5. On the other hand, Mr. Kevic Setalvad, learned Senior Counsel appearing for the Respondent Nos. 1 to 5 raised following contentions :-

- [i] Section 85 of the Waqf Act by which, jurisdiction of Civil Court is barred, has to be read with Sections 6 and 7 of the Waqf Act. He relied on the Judgment of the Supreme Court in *Ramesh Gobindram (supra)*. He also pointed out Judgment of the Supreme Court in *Rashid Wali Beg Vs. Farid Pindari & Ors*³. Similarly, he pointed out various Judgments which are considered by the Supreme Court in paragraph 35 in *Rashid Wali Beg (supra)*. He particularly pointed out, clause no.3 of the paragraph 35, where the Supreme Court considered the Judgment in *Ramesh Gobindram (supra)* as well as the Judgment referred in clause no.9 of the paragraph 35 in the matter between *Faseela M. Vs. Munnerul Islam Madrasa Committee & Anr*⁴.

3 (2022) 4 SCC 414

4 (2014) 16 SCC 38

[ii] He submitted that, the 2013 amendment was brought in force to remove the basis of the decision in ***Ramesh Gobindram (supra)***. He submitted that, as per settled legal position, the amendments are always prospective in nature, unless it has been clarified that, amendment will operate retrospectively.

[iii] He also relied on the Judgment of a learned Single Judge of this Court in the matter between ***Mr. Manzoor Ali Shah Vs. Ateeq Anwar Agboatwala & Ors***⁵. In the said Judgment, the learned Single Judge has relied on Judgment of the Supreme Court in ***Rashid Wali Beg (supra)*** and held that, the 2013 amendment will not apply to the suits which have been filed prior to the said amendment.

[iv] Mr. Setalvad, learned Senior Counsel also relied on the Judgment of the Supreme Court in ***Ramesh Gobindram (supra)*** and submitted that, the suit or proceedings concerning the eviction of a Tenant in occupation of the Waqf property filed prior to the 2013 amendment, will not lie before the Tribunal

5 Writ Petition No.1957 of 2022 decided on 20th July 2022

constituted under the Waqf Act but the same will lie before the Court constituted under the provisions of the Rent Act.

[v] He further submitted that, the Respondent-Trust is a charitable Trust registered under the provisions of the Bombay Public Trusts Act, 1950. He submitted that, the registration of Waqf dated 27th December 2018 has been challenged by the Trust.

Questions for consideration :-

6. In the light of the factual position and rival contentions raised by both the sides, following two questions arise before this Court for consideration :

(a) Whether 2013 amendment of the Waqf Act by which, Section 83 was amended, giving power to the Tribunals constituted under Section 83 to decide dispute *inter alia* regarding the eviction of a Tenant of waqf property, will be applicable to the present suit which has been filed in 2001?

(b) Whether even in accordance with the un-amended provisions of the Waqf Act, the suit for eviction of a Tenant will lie before the Tribunal

constituted under Section 83 of the Waqf Act?

7. Position before 2013 amendment of the Waqf Act :-

7.1. For deciding the above questions, Sections 6 and 7 of the Waqf Act *inter alia* are very important. Section 6 of the Waqf Act contemplates that, if any question arises whether a particular property specified as waqf property in the list of auqaf is waqf property or not or whether a waqf specified is a Shia waqf or a Sunni waqf, *inter alia* any aggrieved person may institute a suit in a Tribunal and the decision of Tribunal shall be final. Proviso to Section 6 clarifies that, no such suit shall be entertained by the Tribunal after the expiry of one year from the date of publication of list of Waqfs. Sub-Section (5) of Section 6 provides that on and from the commencement of the Waqf 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) of Section 6. Section 7 provides that, if after the commencement of the Waqf 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 is a Shia waqf or a Sunni waqf *inter alia* the aggrieved

person may apply to the Tribunal having jurisdiction in relation to such property and decision of Tribunal thereon shall be final. Proviso to Section 7 clarifies that, where any such question has been heard and finally decided by a Civil Court in a suit instituted before commencement of the Waqf Act then, Tribunal shall not re-open such question. Thus, the suits contemplated under Sections 6 and 7 are very specific.

7.2. By considering the provisions of Sections 6 and 7 of the Waqf Act, a learned Single Judge of this Court in the case of *Abdul Kadar @ Babbu Tailor S/o Ismail & Ors. Vs. Masjid Juma Darwaja, Nagpur*⁶ held that, Section 6 contemplates only aforesaid two disputes, as disputes regarding Waqf and Section 7(1) gives powers to Tribunal to determine these two questions as disputes as mentioned in Section 83(1). The reliance is also placed on Section 85 of the Waqf Act and it has been specifically held that, the disputes between Landlord and Tenant are not the disputes arising under the Waqf Act and, therefore, are not cognizable either under Section 7(1) or under Section 83(1) of the Waqf Act. However, it is to be noted that said decision of this Court in *Abdul Kadar @ Babbu Tailor S/o Ismail & Ors. (supra)* was

⁶ (2009) 2 Mh.L.J. 454

delivered on 5th January 2009 i.e. prior to the 2013 amendment to the Waqf Act. In any case, said decision is relevant as it is the contention of Mr. Thorat, learned Senior Counsel appearing for the Petitioner that even before 2013 amendment case for eviction of Tenant of waqf property will have to be filed before the Tribunal.

7.3. For appreciating submissions of both the learned Senior Counsel, unamended as well as amended Section 83 as well as Section 85 is relevant. The said unamended Sub-Section (1) of Section 83 and Section 85 read as under:

“83 (1). Constitution of Tribunals, etc - The State Government shall, by notification in the Official Gazette, **constitute as many Tribunals as it may 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.”

“85. Bar of jurisdiction of civil courts.—No suit or other legal proceeding 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.”

7.4. The unamended Sub-Section (1) of Section 83 clearly contemplates that, the State Government shall constitute Tribunals for the determination of any **dispute, question or other matter relating to a waqf or waqf property under the Waqf Act**. Any dispute, question or other matter relating to waqf or waqf property under the Waqf Act is the dispute which has been contemplated under Sections 6 and 7 of the Waqf Act and under certain other Sections but the same do not contemplate dispute concerning eviction of the Tenant of the waqf property. Therefore, it is very clear that, under the unamended provisions of the Waqf Act, the dispute between Landlord and Tenant is not arising under the Waqf Act and, therefore, the same will not lie before the Tribunal constituted under Section 83 of the unamended Waqf Act. Section 85 of the Waqf Act by which, jurisdiction of the Civil Courts is barred before amendment, is also very specific. The same contemplates **bar of jurisdiction of Civil Courts in respect of any dispute, question or other matter relating to waqf or waqf property or other matter which is required by or under the Waqf Act to be determined by a Tribunal**. The questions which are required to be determined by the

Tribunal are specifically set out in Sections 6 and 7 and certain other Sections of the Waqf Act, however, the same do not contemplate dispute concerning eviction of Tenant of the waqf property. Therefore, it is clear that, **as far as the un-amended provisions of the Waqf Act, 1995 are concerned, the dispute concerning eviction of Tenant is not arising out of or under the Waqf Act, 1995** and, therefore, provisions of Section 83 r/w Section 85 of the Waqf Act are not applicable to such dispute. Therefore, bar created under Section 85 is not applicable to the dispute between Landlord and Tenant, assuming that the Tenant is occupying property which is a waqf property. The said legal position is clarified by the learned Single Judge of this Court in *Abdul Kadar Babbu Tailor s/o Ismail & Ors. (supra)*. The said decision of a learned Single Judge of this Court has been approved by the Supreme Court in *Ramesh Gobindram (supra)*.

7.5. The Supreme Court in *Ramesh Gobindram (supra)* was considering the question whether or not the Waqf Tribunal can entertain and adjudicate upon the dispute regarding eviction of a Tenant holding waqf property under the Waqf Board. It is very important to note that *Ramesh Gobindram*

(supra) is the decision of the Supreme Court prior to 2013 amendment. The Supreme Court after analysing the scheme of the Waqf Act held that, the Waqf Act does not provide for any proceedings before the Tribunal for determination of dispute concerning the eviction of a Tenant in occupation of a waqf property or the rights and obligations of the lessor and the lessees of such property. It has been further held that, the suit seeking eviction of a Tenant in occupation of a waqf property could, therefore, be filed only before the Civil Court and not before the Tribunal constituted under the Waqf Act. In the said decision of *Ramesh Gobindram (supra)*, the Supreme Court took into consideration the well settled rule 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 the 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 the jurisdiction of the Civil Courts

and shift the onus of proof to the party which asserts that the Civil Court's jurisdiction is ousted. By considering the scheme of the Waqf Act and more particularly by considering Sections 6, 7, 85 and certain other Sections, it has been held that, the Civil Courts jurisdiction is excluded only in cases where the matter in dispute is required, by or under the Waqf Act, to be determined by the Tribunal. It has been held that, the words **"which is required by or under this Act to be determined by a Tribunal"** are very relevant to decide whether or not all disputes concerning waqf or waqf property stand excluded from the jurisdiction of the Civil Court. It has been observed that, the bar of jurisdiction contained in Section 85 is much wider than that contained in Section 6(5) read with Section 7 of the Waqf Act. Section 85 would exclude the jurisdiction of the Civil Courts not only in relation to matters that are specifically covered in Sections 6 and 7 but also in other matters required to be determined by a Tribunal under the Act. It has been held that, there are many matters which are required to be determined by the Tribunal in exercise of its original or appellate jurisdiction. In that light of the matter, the Supreme Court considered

various Sections wherein the Tribunal deals with various aspects of waqf namely Sections 33, 35, 47, 48, 51, 54, 61, 64, 67, 72 and 73 of the Waqf Act. It has been further held that, although Section 85 is much wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of the Civil Courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. It has been further held that, as the dispute or question raised before the Civil Court does not fall within the four corners of 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. After considering Section 83 regarding constitution of Tribunals, the Supreme Court has held that, the Waqf Act does not provide for any proceedings before the Tribunal for the determination of any dispute concerning the eviction of a Tenant in occupation of the waqf property or the rights and obligations of the lessor and the lessees of such property. The relevant discussions on this aspect is to be found in paragraphs 32 to 36 of *Ramesh Gobindram (supra)* which read as under:

“32. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the civil courts extends (sic) 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.

33. 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.

34. 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.

35. 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.

36. 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, 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.**”

(Emphasis added)

Thus, it is clear that, as per the unamended Waqf Act, the Tribunals constituted under Section 83 will have no jurisdiction to decide a suit between Landlord and Tenant. As set out in paragraph 36 of *Ramesh Gobindram (supra)*,

decision of the learned Single Judge in the case of ***Abdul Kadar @ Babbu Tailor S/o Ismail & Ors. (supra)*** holding that dispute between the landlord and tenant are not the dispute arising under the Waqf Act is expressly approved by the Supreme Court.

7.6. Mr. Thorat, learned Senior Counsel of the Petitioner raised the contention that the Supreme Court in ***Ramesh Gobindram (supra)*** has not taken into consideration Section 43 of the Waqf Act and the effect of the same on the aspect of jurisdiction. For appreciating the said contention, it is necessary to set out said Section 43 of the Waqf Act which reads as under :

“43. Auqaf registered before the commencement of this Act deemed to be registered.—Notwithstanding anything contained in this Chapter, where any waqf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the waqf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.”

(Emphasis added)

Thus, what is provided by Section 43 is that if, a Waqf as contemplated under Section 3(r) of the Waqf Act is

registered under the provisions of any other Act before the commencement of the Waqf Act then the same will be deemed to be registered under the provisions of the Waqf Act. It is the submission of Mr. Thorat, learned Senior Counsel appearing for the Petitioner that the Landlord-Trust is registered Trust under the provisions of the Bombay Public Trust Act, 1950. The said registration is dated 12th April 1953. Therefore, in view of Section 43 of the Waqf Act, the same is deemed to be registered as Waqf under the Waqf Act. However, assuming that on the basis of Section 43 of the Waqf Act, the Respondent-Trust is registered as Waqf when the Waqf Act has come into force then also the said aspect is not relevant. What has been held by the learned Single Judge in ***Abdul Kadar @ Babbu Tailor S/o Ismail & Ors. (supra)*** and by the Supreme Court in ***Ramesh Gobindram (supra)*** by analysing the provisions of the Waqf Act (Pre - 2013 amendment) that the Waqf 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 waqf 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 waqf property could, therefore, be filed only before the civil court and not before the Tribunal. Thus, the dispute between Landlord and Tenant with respect to the waqf property will not come within the purview of the Waqf Act before 2013 amendment in view of detailed discussion hereinabove.

8. Position after 2013 amendment of the waqf Act and whether the said Amendment is retrospective :-

8.1. Various provisions of the Waqf Act were amended by 2013 amending Act. As far as the present petition is concerned, the important amendment is amendment of Section 83. The Sub-Section (1) of Section 83 after 2013 amendment reads as under:

“83. Constitution of Tribunals, etc.— (1) - The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.”

(Emphasis added)

Thus, it is very clear that, as far as the waqf property is concerned, after 2013 amendment, suits for eviction of a Tenant are required to be filed before the Tribunal constituted under Section 83 of the Waqf Act in terms of Section 83 r/w Section 85 of the Waqf Act. Section 85 of the Waqf Act *inter alia* bars jurisdiction of the Civil Court in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under the Waqf Act to be determined by a Tribunal.

8.2. In the commentary of Principles of Statutory Interpretation by Justice G. P. Singh (Fifteenth Edition, 2022) in para 6.2.1.2 prospective and retrospective operation of any statute is discussed. The same principles will apply to the amendment of statute. The said discussion is set out hereinbelow :

“6.2.1.2 Statutes Dealing with Substantive Rights

It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. There is a presumption of prospectivity articulated in the legal maxim “*nova constitutio futuris formam imponere debet non praeteritis*”, i.e. “a new law ought to regulate what is to follow, not the past”, and this presumption operates unless shown to the contrary by express provision in the statute or is otherwise discernible

by necessary implication. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. **Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is “deemed to be prospective only - “*nova constitutio futuris formam imponere debet non praeteritis*” [2 c. Int. 392]**”. In the words of Lord Blanesburg, “provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment”. **“Every statute, it has been said”, observed Lopes LJ, “which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect”.**”

(Emphasis added)

8.3. It is significant to note Section 1 of the Waqf (Amendment) Act, 2013 [Act 27 of 2013], Sub-Section (2) of Section 1 of the said Amendment Act provides that the same shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. Accordingly, the Central Government issued following Notification dated 29th October 2013 published on 31st October 2013 :

“MINISTRY OF MINORITY AFFAIRS

(WAKF DIVISION)
NOTIFICATION

New Delhi, the 29th October, 2013

S.O. 3292(E).— In exercise of the powers conferred by sub-section (2) of Section 1 of the Wakf (Amendment) Act, 2013 (No.27 of 2013), the Central Government hereby appoints the 1st day of November, 2013 as the date on which the provisions of the said Act shall come into force.

[F. No. 12/1/2012-Wakf (Vol. IV)]
RAKESH MOHAN, Jt. Secy.”

(Emphasis added)

8.4. Thus, the Gazette Notification dated 29th October 2013 specifies that the said amendment will come into force w.e.f. 1st November 2013. Thus, it is very clear that the said amendment will come into force only w.e.f. 1st November 2013 and, therefore, will not apply to the suit filed in the Small Causes Court in 2001.

8.5. It is the contention of Mr. Thorat, learned counsel appearing for the Petitioner that the said 2013 amendment will apply retrospectively. It is settled legal position that, all amendments are prospective except the amendment which is specifically made retrospective by an express provision or by implication. The Supreme Court in the case of *Hitendra*

*Vishnu Thakur & Ors. Vs. State of Maharashtra*⁷ has after analysing the law on the subject whether amendment to the statute are retrospective or prospective, held as follows :

“26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

7 (1994) 4 SCC 602

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.”

(Emphasis added)

Thus, what has been held by the Supreme Court in *Hitendra Vishnu Thakur & Ors. (supra)* is that, the law relating to forum and limitation is procedural in nature whereas law relating to right of action and right of Appeal even though, remedial is substantive in nature. Although, a procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished. A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

8.6. In the present case, the suit has been filed in 2001 under the provisions of the Rent Act. As per Section 33 of the Rent Act, the jurisdiction is with the Court of Small Causes, Mumbai in Brihan Mumbai and in other areas for which the

Court of Small Causes is established under the Provincial Small Causes Courts Act, 1897 then, such Court and, elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction shall have jurisdiction to entertain and try any suit or proceeding between the landlord and the tenant relating to the recovery of rent or possession of any premises. An Appeal shall lie under Section 34(1) of the Rent Act from a decree or order passed by the Court of Small Causes, Mumbai exercising jurisdiction under Section 33 to a Bench of two Judges of the Court of Small Causes, Mumbai and, elsewhere, an Appeal shall lie from any decree or order to the District Court. Under Section 34(4) of the Rent Act, where no Appeal lies under this Section from a decree or order in any suit or proceeding in Brihan Mumbai, the Bench of two Judges specified in clause (a) of Section 1 and elsewhere, the District Court is empowered for the purpose of satisfying itself that the decree or order passed was in accordance with the law, call for the case in which such decree or order was passed

and the Court shall pass such order with respect thereto as it thinks fit. The Full Bench judgment of this Court in the case of *Bhartiben Shah & Anr. Vs. Smt. Gracy Thomas & Ors.*⁸ has held that, for an order to be revisable under Section 34(4) of the Rent Act, the order must affect the very existence of the suit or the foundation of the party's case in their pleading and not merely a procedural order, not affecting the substantive rights of parties. Section 34(3) provides that no further Appeal shall lie against any decision in Appeal under Sub-Section (1). However, a revision under Section 115 of the CPC can be filed challenging any decision in Appeal under Sub-Section (1) of Section 34.

8.7 As far as the Waqf Act is concerned, the decision of the Tribunal constituted under Section 83 of the Waqf Act is final and binding upon the parties to the Application and it shall have the force of the decree made by the Civil Court [Section 83(7)]. Sub-Section (9) of Section 83 provides that, no Appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal. However, proviso to Sub-Section (9) provides that, the High Court may on its own motion or on the Application *inter alia*

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of any person, 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.

8.8. In *Hitendra Vishnu Thakur (supra)*, it has been specifically held that law relating to right of action and right of Appeal even though remedial is substantive in nature. As soon as the said R.A.E. Suit No.1043/1806 of 2001 is filed in the Small Causes Court, the parties to the suit have got right of Appeal under Section 33 of the Rent Act if they are aggrieved by any order or decree as provided in Section 33. As far as the Waqf Act is concerned, the decision of the Tribunal is final. Therefore even by applying the criterias of *Hitendra Vishnu Thakur & Ors. (supra)*, it is clear that 2013 amendment cannot be held to be retrospective and it is prospective.

8.9. Sub-Section (2) of Section 1 of the Waqf (Amendment) Act, 2013 provides that the amending Act shall come into force on such date as the Central Government may, by

notification in the Official Gazette appoints. Accordingly, by notification dated 29th October 2013 published in Official Gazette on 31st October 2013, the Central Government has appointed the 1st day of November, 2023 as the date on which the provisions of the Amendment Act shall come into force. Thus, accordingly, the said 2013 amendment will come into force w.e.f. 1st November 2013. Resultantly the same will not apply to the suits which are filed prior to the said date.

8.10. There is nothing to show that, the amendment of Section 83 applies retrospectively. It has been held by the Supreme Court that, provision by which jurisdiction of Civil Court is ousted in respect of pending cases cannot be held to be retrospective. In this behalf, it is necessary to set out relevant discussion with respect to 2013 amendment in the decision of *Rashid Wali Beg (supra)* which is in paragraphs 22 to 24 which read as under :

“22. It is relevant to note at this stage that the words “eviction of tenant or determination of rights and obligations of the lessor and the lessee of such property” were inserted in subsection (1) of Section 83, after the words “waqf property”, by Amendment Act 27 of 2013.

23. Similarly, the words, “civil court” were substituted by the words “civil court, Revenue Court and other authority”, in Section 85, by Amendment Act 27 of 2013.

24. Thus, **Act 27 of 2013 did two things. First it expanded the jurisdiction of Waqf Tribunal even to cover landlord-tenant disputes and the rights and obligations of lessor and lessee. Second, the Amendment Act enlarged the bar of jurisdiction, to cover even revenue courts and other authorities.”**

(Emphasis added)

8.11. In *Rashid Wali Beg (supra)*, the Supreme Court considered the question whether a suit for permanent injunction in respect of a waqf property is maintainable before a Civil Court or not. The said decision of the Supreme Court is dated 28th October 2021. The said decision takes into consideration the 2013 amendment. In the said decision, it has been held by the Supreme Court that, the suit for injunction will lie before the Waqf Tribunal. While considering the said aspect the Supreme Court in paragraph No.54 has held that, the Waqf Act makes reference to 3 types of remedies, namely a suit, application or appeal before the Tribunal. The said paragraph 54 reads as under :

“54. In sum and substance, the Act makes a reference, to 3 types of remedies, namely, that of a **suit**,

application or appeal before the Tribunal, in respect of the following matters:

54.1. Any question or dispute whether a property specified as waqf property in the list of waqfs is a waqf property or not [Section 6(1) & 7(1)].

54.2. A question or dispute whether a waqf specified in the list of waqfs is a Shia Waqf or Sunni Waqf [Sections 6(1) & 7(1)].

54.3. Challenge to the settlement of a scheme for management of the waqf or any direction issued in relation to such management [Section 32 (3)].

54.4. Challenge to an order for restitution/restoration of the property of the waqf or an order for payment to the waqf of any amount misappropriated or fraudulently retained by the mutawalli [Section 33(4)].

54.5. Conditional attachment of the property of a mutawalli or any other person [Section 35(1)].

54.6. Challenge to the removal or dismissal of an Executive Officer or member of the staff [Section 38(7)].

54.7. Application by the Board, seeking an order for recovery of possession of a property earlier used for religious purpose but later ceased to be used as such [Section 39(3)].

54.8. Challenge to a direction issued by the Board to any Trust or Society to get it registered [Section 40(4)].

54.9. Challenge to an order for recovery of money

from the mutawalli, as certified by the Auditor [Section 48(2)].

54.10. Challenge to an order for delivery of possession of a property issued by the Collector [Section 52(4)].

54.11. Application by the Chief Executive Officer for the removal of encroachment and for delivery of possession of a waqf property[Section 54(3)].

54.12. Challenge to the removal of mutawalli from office [Section 64(4)].

54.13. Challenge to an order superseding the Committee of Management [Section 67(4)].

54.14. Challenge to the removal of a member of the Committee of Management [Section 67(4)].

54.15. Challenge to any scheme framed by the Board for the administration of waqf, containing a provision for the removal of the mutawalli and the appointment of the person next in hereditary succession [Section 69(3)].

54.16. Challenge to an order for recovery of contribution payable by the waqf to the Board, from out of the monies lying in a bank [Section 73(3)].

54.17. Any dispute, question or other matter relating to a waqf [Section 83 (1)].

54.18. Any dispute, question or other matter relating to a waqf property [Section 83(1)].

54.19. **Eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf**

property [Section 83(1) after its amendment under Act 27 of 2013]

54.20. Whenever a mutawalli fails to perform an act or duty which he is liable to perform [Section 94].”

(Emphasis added)

Eviction of a Tenant or determination of the rights and obligations of a lessor or lessee of the waqf property is included in clause 54.19 of paragraph 54 in the Judgment of *Rashid Wali Beg (supra)*. However, it is significant to note that, a specific reference is made to 2013 amendment of Section 83(1) and specifically stated that “Section 83(1) after its amendment under Act 27 of 2013”.

8.12. The said question was considered by the Allahabad High Court in the matter between *Mohd. Sageer Ahmad Vs. Wakf Masjid Mohalla-Kazipura Wakf No.9 and another*⁹. In the said Judgment, the Court was considering the question whether the Waqf Act as amended by Act No.27 of 2013 will be applicable to the suit or proceedings for eviction of a Tenant (pending or filed) prior to the commencement of Amendment Act. It has been held that, by virtue of amendment, specific jurisdiction has been conferred on the Tribunal and,

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therefore, the same will be prospective and will not apply retrospectively. There is nothing in the amendment to show that, the same will apply retrospectively.

9. Conclusions :-

9.1. Position before 2013 amendment of the Waqf Act :-

In the light of law laid down by the Supreme Court in *Ramesh Gobindram (supra)* and by a learned Single Judge of this Court in *Abdul Kadar @ Babbu Tailor S/o Ismail & Ors. (supra)* it is clear that, bar created under Section 85 of the Waqf Act is not applicable to the dispute between landlord and tenant. The questions which are required to be determined by the Tribunal are specifically set out in Sections 6 and 7 and certain other Sections of the Waqf Act, however, the same do not contemplate dispute concerning eviction of Tenant of the waqf property.

9.2. Whether 2013 amendment of the Waqf Act is prospective or retrospective :-

A) In the light of the law laid down by the Supreme Court in *Hitendra Vishnu Thakur & Ors. (supra)*, the law relating to forum and limitation is procedural in nature whereas law relating to right of action and right of Appeal even though,

remedial is substantive in nature. The Rent Act provides for a right of Appeal under Section 33 whereas an order of Tribunal is final and binding in view of Section 83(7) of the Waqf Act.

B) The 2013 amendment has come into force w.e.f. 1st November 2013.

C) In the light of the law laid down by the Supreme Court in *Rashid Wali Beg (supra)* and for the reasons set out in paragraph 8 hereinabove, it is clear that the 2013 amendment is prospective in nature.

10. In view of above discussion, the 2013 amendment will not apply to the suit in the present case i.e. R.A.E. Suit No.1043/1806 of 2001 and further proceedings in the said suit.

11. For the above reasons, there is no substance in the contentions raised by Mr. R. A. Thorat, learned Senior Counsel appearing for the Petitioner.

12. The Writ Petition is dismissed in above terms with no order as costs.

[MADHAV J. JAMDAR, J.]