

In the High Court of Punjab and Haryana at Chandigarh

(1) Civil Writ Petition No. 2785 of 2009 (O&M)
Reserved on: 31.1.2023
Date of Decision: 10.2.2023

Balwinder Singh Petitioner

Versus

Gram Panchayat, Kotla Masood and others Respondents

(2) Civil Revision No. 2267 of 2012 (O&M)

Gram Panchayat alias Gram Sabha Kotla Masood Petitioner

Versus

Punjab Wakf Board, Ambala Cantt and another Respondents

(3) Civil Revision No. 3780 of 2017 (O&M)

Punjab Waqf Board Petitioner

Versus

Gram Panchayat Veroke and another Respondents

(4) Civil Revision No. 190 of 2018

Punjab Waqf Board Petitioner

Versus

Gram Panchayat, Village Burj Man Kaur and another Respondents

(5) Civil Revision No. 3639 of 2016

Punjab Waqf Board Petitioner

Versus

State of Punjab and others Respondents

(6) Civil Revision No. 826 of 2014 (O&M)

Punjab Waqf Board Petitioner

Versus

Gram Panchayat Village Langrian and others Respondents

(7) Civil Revision No. 1912 of 2016 (O&M)

Punjab Waqf Board Petitioner

Versus

Gram Panchayat, Village Bajaj and others Respondents

(8) Civil Revision No. 2112 of 2016 (O&M)

Punjab Waqf Board Petitioner

Versus

Gram Panchayat, Village Bajaj and others Respondents

(9) Civil Writ Petition No. 13839 of 2015 (O&M)

Darshan Singh Petitioner

Versus

Director, Rural Development and Panchayats
Department, Punjab and others Respondents

(10) Civil Writ Petition No. 16600 of 2015 (O&M)

Punjab Wakf Board Petitioner

Versus

Director, Rural Development and Panchayats
Department, Punjab and others Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Ghulam Nabi Malik, Advocate
for the petitioner(s) (in CR-3780-2017, CR-190-2018,

CR-1912-2016, CR-2112-2016, CR-3639-2016, CR-826-2014, CWP-16600-2015) and for respondent No.4 (in CWP-13839-2015)

Mr. Vikas Mehsempuri, Advocate
for the petitioner (in CWP-13839-2015)

Ms. Priya Pandey, Advocate for
Ms. Harpreet K. Gill, Advocate
for the petitioner (in CWP-2785-2009) and
for respondent No.2 (in CR-2267-2012).

Ms. Monika Jalota, Sr. DAG, Punjab

Mr. Nakul Sharma, Advocate
for the petitioners (in CR-2267-2012) and
respondent No.1 (in CWP-2785-2009).

Mr. M.S. Manaise, Advocate
for applicant-respondent No.3 (in CR-3780-2017).

Mr. Gagandeep Singh Sirphikhi, Advocate
for respondent No.1 (in CR-3780-2017).

Mr. Jatinder Singh, Advocate
for respondents No.2 and 3 (in CR-826-2014).

Mr. Sandeep Khunger, Advocate
for respondent No.4 (in CR-826-2014)

Mr. Sandeep Pundir, Advocate
for respondent No.3 (in CWP-2785-2009).

Mr. J.S. Bhandohal, Advocate
for respondent No.3 (in CWP-16600, 13839-2015)

SURESHWAR THAKUR, J.

1. The Punjab Wakf Board concerned, one Balwinder Singh, one Darshan Singh, and, Gram Panchayat alias Gram Sabha, Kotla Masood are respectively aggrieved from the orders made against them, respectively by the statutory authorities concerned, and, by the Civil Court concerned. The above orders were made, upon a motion made by the Gram Panchayats concerned, under Section 11, and, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act'). Moreover, in Civil Revision No. 826 of 2014, Civil Revision No. 3639 of 2016, Civil

Revision No. 190 of 2018, and, in Civil Revision No. 2267 of 2012, the orders challenged before this Court, are made by the learned Wakf Tribunal concerned, whereas, in Civil Revision No. 2112 of 2016, and, in Civil Revision No. 1912 of 2016, and, in Civil Revision No. 3780 of 2017, the orders challenged before this Court, are made by the learned Civil Court concerned.

2. The Punjab Wakf Board is aggrieved from the above concurrently made orders against it, and, is led to constitute thereagainst Civil Revision No. 3780 of 2017, Civil Revision No. 190 of 2018, Civil Revision No. 1912 of 2016, Civil Revision No. 2112 of 2016, Civil Revision No. 3639 of 2016, Civil Revision No. 826 of 2014, and, Civil Writ Petition No. 16600 of 2015, before this Court. Petitioner Balwinder Singh, and, petitioner Darshan Singh being also aggrieved from the above made order(s), have also respectively instituted Civil Writ Petition No. CWP-2785-2009, and, CWP-13839-2015, before this Court. Gram Panchayat @ Gram Sabha, Kotla Masood being also aggrieved from the above made concurrent order, has also instituted Civil Revision No. 2267 of 2012.

3. Though, the properties encapsulated in the writ petitions (supra), are located in different mohals, but since the revenue entries in relation to all the writ petitions, are almost common. Moreover, when the hereinafter formulated common questions of law, arise for determination in the writ petitions (supra). Therefore, all the writ petitions are capable of being decided through a common verdict.

4. Since the hereinafter formulated questions of law, upon the Civil Writ Petitions (supra), are also common to the Civil Revision Petitions (supra), besides when they relate to almost the same revenue entries, as

occurring in the relevant revenue records. Thus, though the petition lands are located in different mohals, yet the Civil Revision Petitions (supra) are also capable of being decided along with the Civil Writ Petitions (supra), rather through a common verdict.

Facts of CWP No. 2785 of 2009

5. Gram Panchayat of village Kotla Masood, instituted a petition under Section 7 of the Act for seeking the ejectment of one Balwinder Singh from the land bearing khasra No. 89/119, khasra No. 11//21/1(5-4) 12//23(7-2), 24(7-2) 25(8-0) 15//3/1(4-17) 4(8-0) 5(8-0) 16//1(7-4) 2(8-0) situated at village Kotla Masood, Tehsil Khamano, District Fatehgarh Sahib. In the revenue records, the petition land is described as **Maqbooza Ahle Islam**. The said petition was dismissed by the competent authority concerned, vide order dated 27.3.2006. Aggrieved against the order (supra), the Gram Panchayat concerned, preferred an appeal before the learned Appellate Authority concerned. The learned Appellate Authority concerned vide order dated 7.11.2008, allowed the appeal (supra) preferred before it, and, the order passed by the learned Collector concerned, was set aside. Therefore, the instant petition has been preferred, by the petitioner, before this Court seeking quashing of the order dated 7.11.2008, passed by the learned Appellate Authority concerned.

Facts of Civil Revision No. 2267 of 2012

6. Punjab Wakf Board, Ambala Cantt, instituted a suit for declaration to the effect that it was the owner, and, in possession of the land measuring 65K-19M, comprised in khewat No. 72, khatauni No. 110, Rect. No. 12, Killa Nos. 23, 24, 25, Rect. No. 15, Killa Nos. 3/1, 4, 5, Rect. No. 16, Killa Nos. 1, 2, 29 min, as per jamabandi for the year 1983-84, situated

within the revenue limits of village Kotla Masood, Tehsil Samrala, District Ludhiana. In the revenue records, the petition land is described as **Maqbooza Ahle Islam**. The suit of the plaintiff-Wakf Board, was decreed vide order dated 12.8.2011, passed by the learned Wakf Tribunal, Fatehgarh Sahib, and, it was declared to be owner, and, in possession of the suit land through defendant No. 2-Balwinder Singh. Therefore, the instant petition has been preferred, by the petitioner-Gram Panchayat, before this Court seeking quashing of the order dated 12.8.2011, passed by the learned Tribunal concerned.

Facts of Civil Revision No. 3780 of 2017

7. Punjab Wakf Board, Chandigarh, instituted a suit for declaration to the effect that it was the owner, and, in possession through its tenant plaintiff No. 2, and, defendants No. 2 and 3, of land measuring 55 kanals, 18 marlas comprised in 131/120, khatauni No. 211, khasra No. 422, situated in the area of village Veroke, H.B. No. 470, Tehsil Dera Baba Nanak, District Gurdaspur, as per jamabandi for the year 2012-13, and, that the entries showing the suit land, to be the ownership of the Gram Panchayat concerned, being wrong. In the revenue records, the petition land is described as **Maqbooza Ahle Islam**. Vide order dated 27.2.2017, made by the learned Additional District Judge, Gurdaspur, the suit of the plaintiff-Wakf Board, was partly decreed, and, it was held that the plaintiff Board has no right to seek declaration. However, the defendants were restrained from illegally dispossessing the plaintiff from the suit land. Therefore, the instant petition has been preferred, by the petitioner-Punjab Wakf Board, before this Court seeking modification of the impugned judgment, and, decree dated 27.2.2017.

Facts of Civil Revision No. 190 of 2018

8. Punjab Wakf Board, Chandigarh, instituted a suit for permanent injunction restraining the defendants concerned, from interfering in the peaceful possession of the plaintiff Board over the land measuring 8 kanals 16 marlas. In the revenue records, the petition land is described as **Gair Mumkin Kabaristan Maqbooza Ahle Islam**. However, the said suit was dismissed by the Tribunal, Wakf Act, Ludhiana, vide judgment, and, decree dated 6.9.2017. Therefore, the instant petition has been instituted thereagainst, by the petitioner-Punjab Wakf Board, before this Court seeking relief therein, that the impugned judgment, and, decree dated 6.9.2017, be set aside.

Facts of Civil Revision No. 3639 of 2016

9. Punjab Wakf Board, Chandigarh, instituted a suit for declaration to the effect that the plaintiff-Board is the owner of the land bearing Khasra No. 104(7-0), 105(11-16), 106(5-12), 107(56-0), 108(0-19) measuring 81 kanals 7 marlas, situated at village Arno, Tehsil Patran, District Patiala, as per jamabandi for the year 2006-2007, and, further for restraining the defendants from interfering in the ownership, and, possession of the plaintiff through its Pattedars, and, also restraining them from alienating or changing the nature of the suit property in any manner. In the revenue records, the petition land is described as **Kabaristan Maqbooza Ahle Islam**. However, the above suit was dismissed by the learned Additional District Judge, Patiala, vide judgment, and, decree dated 2.3.2016. Therefore, the instant petition has been instituted thereagainst, by the petitioner-Punjab Wakf Board, before this Court seeking relief therein, that the impugned judgment, and, decree dated 2.3.2016, be set aside.

Facts of Civil Revision No. 826 of 2014

10. Punjab Wakf Board, Chandigarh, instituted a suit for declaration and possession to the effect that the plaintiff-Board is the owner of the land measuring 3 Bighas 6 Biswas comprised in khasra No. 458(3-6), situated in the revenue estate of village Langrian, and, that the order dated 27.10.2009 passed by the Divisional Deputy Director, Rural Development, and, Panchayat Patiala is wrong, and, is liable to be set aside. In the revenue records, the petition land is described as **Gair Mumkin Kabaristan Maqbooza Ahle Islam**. However, the above suit was dismissed by the Wakf Tribunal, Sangrur, vide judgment, and, decree dated 9.12.2013. Therefore, the instant petition has been instituted thereagainst, by the petitioner-Punjab Wakf Board, before this Court seeking relief therein, that the impugned judgment, and, decree dated 9.12.2013, be set aside.

Facts of Civil Revision No. 1912 of 2016

11. Gram Panchayat, village Bajaj preferred an application under Order 9 Rule 13 of the CPC for setting aside the ex parte judgment and decree dated 6.9.2006, passed by the then learned Additional Civil Judge (Sr. Division), Kapurthala. In the revenue records, the petition land is described as **Maqbooza Ahle Islam**. The above application was allowed vide order dated 27.8.2015, passed by the learned Additional Civil Judge (Sr. Division), Kapurthala. Aggrieved from the afore order, the petitioner-Punjab Wakf Board, has instituted thereagainst the instant petition, before this Court for setting aside the impugned order dated 27.8.2015.

Facts of Civil Revision No. 2112 of 2016

12. Gram Panchayat, village Bajaj preferred an application under Order 7 Rule 11 of the CPC for rejection of the plaint, on the ground that

the suit land is shamlat land, in which the plaintiff has no concerned, and, the jurisdiction regarding title of such property only vests in the Collector concerned, under Section 11 of the Act. The above application was allowed vide order dated 2.11.2015, passed by the learned Additional Civil Judge (Sr. Division), Kapurthala. Aggrieved from the afore order, the petitioner-Punjab Wakf Board, has instituted thereagainst the instant petition, before this Court for setting aside the impugned order dated 2.11.2015.

Facts of Civil Writ Petition No. 16600 of 2015

13. Gram Panchayat Agriculture Muslmania, instituted a petition under Section 11 of the Act seeking declaration to the effect, that the petitioner is the owner of the land comprised in khewat/khatauni No. 339/539, khasra No. 62(37-12) measuring 37 kanals 12 marlas, situated at village Kheri Musalmania, Block and District Patiala, and, that the respondents have no right, title or concerned over the land in question. It is averred in the application, that at the time of consolidation, the land in question was Shamlat Deh reserved for kabaristan, and, its ownership was vested in the Gram Panchayat concerned. In the revenue records, the petition land is described as **Maqbooza Ahle Islam**. The said petition was allowed by the competent authority concerned, vide order dated 19.11.2013. Aggrieved against the order (supra), the Punjab Wakf Board preferred an appeal before the learned Appellate Authority concerned. However, the same was dismissed by the learned Appellate Authority concerned vide order dated 12.3.2015. Therefore, the instant petition before this Court. Aggrieved from the afore orders, the petitioner-Punjab Wakf Board, has instituted thereagainst the instant petition, claiming relief therein, that the

impugned orders dated 19.11.2013, and, dated 12.3.2015, be quashed, and, set aside.

Facts of Civil Writ Petition No. 13839 of 2015

14. Gram Panchayat Agriculture Muslmania, instituted a petition under Section 11 of the Act seeking declaration to the effect, that the petitioner is the owner of the land comprised in khewat/khatauni No. 339/539, khasra No. 62(37-12) measuring 37 kanals 12 marlas, situated at village Kheri Musalmania, Block and District Patiala, and, that the respondents have no right, title or concern over the land in question. It is averred in the application, that at the time of consolidation, the land in question was Shamlat Deh reserved for kabaristan, and, its ownership was vested in the Gram Panchayat concerned. In the revenue records, the petition land is described as **Maqbooza Ahle Islam Gair Mumkin Kabaristan**. The said petition was allowed by the competent authority concerned, vide order dated 19.11.2013. Aggrieved against the order (supra), petitioner Darshan Singh preferred an appeal before the learned Appellate Authority concerned. However, the same was dismissed by the learned Appellate Authority concerned vide order dated 12.3.2015. Aggrieved from the afore orders, petitioner-Darshan Singh, has instituted thereagainst the instant petition, claiming relief therein qua the impugned orders dated 19.11.2013, and, dated 12.3.2015, being quashed, and, set aside.

15. Since, as above stated, all the petitions involve, common questions of law, therefore, it is but necessary to not only formulate, the requisite questions of law, hence common to all petitions (supra), but also to render answers thereto, besides also obviously, as stated above, a common

verdict is also required to be made thereons.

- (1) Whether in the face of the petition lands, being described in the classification column(s) concerned, to be Gair Mumkin Kabaristan, whether yet the panchayats concerned were capacitated to lease the petition lands?
- (2) Whether the above reason, as meted by the authorities concerned, to uphold the leases, inasmuch as, when rather for a prolonged duration of time, no burials taking place on the petition lands, thus, the entry of Gair Mumkin Kabaristan occurring in the apposite classification column hence losing its relevance, rather conspicuously is a validly made reason ?
- (3) Whether in the face of the revenue entries of Gair Mumkin Kabaristan, as, appertaining to the petition land(s), and, as were initially recorded, did also validly permit the authority concerned, to, through Gazette Notifications dated 19.9.1970, 29.5.1971, 30.9.1972, and, 28.9.2007 hence declare the disputed land, as Wakf property. Moreover, whether the makings of the said notifications makes them unchallengeable, given the notification(s), as issued under Section 5 of the Wakf Act of 1954 (for short 'the Act of 1954'), as was applicable at the time of issuance of the apposite notifications respectively in the year 1970, in the year 1971, in the year 1972, and,

in the year 2007, becoming pronounced by the Hon'ble Apex Court in a verdict made in case titled as ***Punjab Wakf Board versus Raj Rani (died) through LRs***, and, to which ***Civil Appeal No. 295 of 2005***, becomes assigned, rather to carry a presumption of truth. Or in other words, when in paragraph 14 of the said verdict, the hereinafter extracted expostulation has been cast, and, whereby the inclusion or declaration of any property, as a wakf property, as made through exercise of powers vested in Section 5 of the Act of 1954, has been held to attract thereons hence a presumption of truth, in respect of its genuineness, especially when it remained unchallenged, besides concomitantly whether the notification(s) barred the exercise of jurisdiction by the competent authorities, as contemplated under the Punjab Act 1953?

14. Admittedly, no one challenged the genuineness of the Notification whereby the suit property was declared as Wakf property at any stage of the proceeding. In the absence of such challenge, the Court shall have to draw presumption with regard to the genuineness of the Notification, as provided under Section 81 of the Evidence Act. Moreover, neither the first Appellate Court nor the High Court has considered and noticed the provisions of Section 5 of the Wakf Act, 1995 (Section 5 of the Old Wakf Act, 1954).

- (4) Whether in the face of the verdict, as became pronounced by the Hon'ble Apex Court in case titled as ***Syed Mohd. Salie Labbai (dead) by LRs and others versus Mohd. Hanifa (dead) by LRs and***

others, and, to which Civil Appeal Nos. 1223-1224, and, Civil Appeal No. 2026 of 1968 becomes assigned, wherein, the hereinafter extracted expostulation, does candidly assign conclusivity, to the revenue entries, as occurring in the relevant revenue record, especially with the said revenue entries making forthright echoings about the public character of the graveyard, besides qua further whether the said entries completely barred the application thereons of the Punjab Act of 1953 ?

“We are of the view that once a Kabarstan has been held to be a public graveyard then it vests in the public and constitutes a wakf and it cannot be divested by non-user but will always continue to be so whether it is used or not.

The following rules in order to determine whether a graveyard is a public or a private one may be stated:

(1) that even though there may be no direct evidence of dedication to the public, it may be presumed to be a public graveyard by immemorial user i.e. where corpses of the members of the Mahomedan community have been buried in a particular graveyard for a large number of years without any objection from the owner. The fact that the owner permits such burials will not make any difference at all;

(2) that if the grave-yard is a private a family grave-yard then it should contain the graves of only the founder, the members of his family or his descendants and no others. Once even in a family grave-yard members of the public are allowed to bury their dead, the private graveyard sheds its character and becomes a public grave-yard;

(3) that in order to prove that a graveyard is public by dedication it must be shown by multiplying instances of the character, nature and extent of the burials from time to time. In other words, there should be evidence to show that a large number of members of the Mahomedan community had buried their corpses from time to

time in the graveyard. Once this is proved, the Court will presume that the graveyard is a public one; and

(4) that where a burial ground is mentioned as a public graveyard in either a revenue or historical papers that would be a conclusive proof to show the public character of the graveyard.”

- (5) In addition, whether the said conclusivity of proof qua the existence of a graveyard on the petition lands, did curtail, and, fetter the rights, if any, of the panchayat(s) concerned, to yet lawfully permit its user for some other purpose, given in the relevant column of ownership, the land(s) being described as Shamilat Deh ?
- (6) Whether in the face of the apposite notifications declaring the petition property, as Wakf property(ies), thus there was a complete ouster of jurisdiction of the Collector concerned, under the Punjab Act, and/or concomitantly whether the Wakf Tribunal concerned, alone held the jurisdictional competence to decide the controversy inter se the litigants concerned, even with respect to **Kabaristan** ?
- (7) Whether in the face of the Hon'ble Apex Court in case titled as ***Gram Panchayat of village Jamalpur versus Malwinder Singh***, to which ***Civil Appeal No. 1401(N) of 1973***, is assigned, hence settling the law in respect of the competing exercises of jurisdiction, respectively by the custodian of the evacuee property, qua the petition lands, and, of the statutory authorities, as

contemplated in the Punjab Act concerned, qua whether the same does have even the consequent effect of the competing claims for exercisings of jurisdiction, upon the petition claims, respectively by the Punjab Wakf Board, and, the Gram Panchayat concerned, also becoming completely settled? The necessity of determining, the applicability of the judgment (supra), as rendered by the Hon'ble Apex Court, does arise as thereins, it has been held that since the Punjab Village Common Lands (Regulation) Act, 1953 extinguishes in the shamlat deh, the interest of all persons whether Hindu, Sikh or Muslim, especially when prior thereto, the custodian concerned, rather not conspicuously allotting the shamlat lands, to the migrants from Pakistan to India, whether hence the extinguishment of rights of any person belonging to any community, in those lands described, as shamilat deh, rather was a valid extinguishment for all purposes ?

- (8) Whether in the face of the Punjab Village Common Lands (Regulation) Act, 1953 being declared to become enacted as a measure of agrarian reforms, whereby it enjoys the protection of Article 31-A of the Constitution of India. Moreover, necessarily when even Entry No. 18, as carried in the apposite List (State List) of the Seventh Schedule to the

Constitution, entry whereof stands extracted hereinafter, has also been declared by the Hon'ble Apex Court in case titled ***Ranjit Singh versus State of Punjab 1965(1) SCR 82***, to empower the State Legislatures to exclusively enact laws in respect thereof, whereby any law passed by the Parliament, purportedly in respect of the matters falling under Entry No. 18 of the concurrent List, may not become amenable to become assigned any prevalence or precedence over a law enacted by the State Legislature in respect of Entry No. 18 of the State List. ?

“Entry No. 18- Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation.”

- (9) Since the said power of the State Legislature to enact laws qua matters enumerated in the State List, is exclusive thereto, obviously by reason of the provision contained in Article 246(3) of the Constitution. Conspicuously also when it has been categorically spelt by the Hon'ble Apex Court in judgment (supra) qua when the makings of law by the State Legislature, in respect of a matter which falls under Entry No. 18 of the State List, is rather a measure of agrarian reforms, and, is also conducive to the welfare of the community, whether thereby, the said enacted State law has to be given the fullest effect, and, prevalence

over the Central Law. The relevant paragraph of the judgment (supra) is extracted hereinafter.

“Since, the [Punjab Act](#) of 1953 is a measure of agrarian reform it would receive the protection of [Article 31-A](#). It may be recalled that the Act had received the assent of the President as required by the first proviso to that Article. The power of the State Legislature to pass law on matters enumerated in the State List is exclusive by reason of the provision contained in [Article 246\(3\)](#). In a nutshell, the position is that the Parliament has passed a law on a matter which falls under Entry No. 41 of the Concurrent List, while the State Legislature has passed a law which falls under Entry No. 18 of the State List. The law passed by the State Legislature being a measure of agrarian reform, is conducive to the welfare of the community and there is no reason why that law should not have effect in its full amplitude. By this process, the village panchayats will be able to meet the needs of the village community and secure its welfare. Accordingly, the [Punjab Act](#) of 1953 would prevail in the State of Punjab over the [Central Act](#) of 1950, even in so far as Shamlat-deh lands are concerned.

- (10) Therefore, whether the said Central Law, inasmuch as, the Act of 1954, in pursuance whereof, the above notification(s) become issued, does or does not hold any prevalence over the Punjab Village Common Lands (Regulation) Act, 1953, and, whether the jurisdiction to decide the controversy entered into amongst the litigants concerned, was amenable to become exercisable respectively by the Wakf Tribunal concerned, or by the Collector concerned, constituted under Section 11 of the Act.
- (11) Whether, in the face of Section 85 of the Wakf Act, 1995, barring the institution of a suit or other

proceedings in a Civil Court, in respect of any dispute, question or other matter relating to any wakf property or other matter which is required by or under this Act to be determined by a Tribunal, hence the verdicts rendered by the Civil Court(s) concerned, are to be assigned any validity or force ?

(12) Whether the Wakf Tribunal concerned, was notified to exercise jurisdiction in respect of the subject matters, carried in the relevant motions, as cast before it ?

16. In assigning answers to the above formulated questions of law, the submissions of the learned counsels for the contesting litigants, are also required to be referred.

Submissions of the learned State counsel and the learned counsel for the Gram Panchayat concerned.

17. The learned State counsel, as also the learned counsel appearing for the Gram Panchayats concerned, have submitted with much vigour before this Court;

(i) That the verdict, as made by the Hon'ble Apex Court in *Ranjit Singh's case(supra)*, when carries an expostulation of law, qua with the Punjab Act, 1953, becoming enacted as a measure of agrarian reform, and, thus, receiving the protection of Article 31(a) of the Constitution. Moreover, when it also becomes expostulated therein, that when consequently, it is made in pursuance to the Legislative powers, as ably exercised by the competent State Legislative Assembly, in respect of Entry No. 18 of the State List, thereupon the said enacted State law, is required to be given the fullest effect, as thus, it would cater to the needs of the village community,

and, would also secure its welfare, besides hence the said enacted State law, inasmuch as, the Punjab Act, 1953 would hold precedence, and, prevalence over the Administration of Evacuee Property Act, 1950, and/or over the Wakf Act of 1954.

(ii) Therefore, they make a consequent argument, that the Collector concerned, alone held the empowered jurisdiction to make a decision in respect of the lis at hand, and, that the exercise of jurisdiction by the Wakf Tribunal concerned, rather being untenable. Consequently, they have argued before this Court, that the Civil Writ Petitions (supra), be dismissed on the above score, besides also the Civil Revision Petitions (supra) be dismissed, given theirs being completely time barred.

(iii) They further submit, that irrespective of an entry in the classification column of the relevant revenue records, rather unfolding, qua the lands becoming described therein, as **Gair Mumkin Kabaristan**, but yet when in the relevant column of ownership, the land has been described as “Shamilat Deh”. Therefore, they submit, that the assigning of concurrent reasons by both the authorities below, for disregarding the above entry in the column of classification, on the ground of apposite prolonged non-user, for the relevant purpose, by the Muslim community, rather is a validly recorded reason. Thus, on account of its prolonged non-user, not only the legal effect, if any, of the above entry becomes rendered inconsequential, but also the panchayat concerned, held the empowerment to allot it on lease to the respondent(s) concerned.

(iv) Moreover, they also contend, that the jurisdiction to try the lis at hand, was solitarily vested in the authorities contemplated, in the Punjab Act, 1953, and, that the Punjab Wakf Tribunal was not vested with any

jurisdiction over the petition properties. The said jurisdiction becoming completely ousted, in the face of non-user of the burial site for the relevant purpose, by the Muslim community. In support of the above arguments, the learned counsels placed reliance on the judgment of the Hon'ble Apex Court, recorded in case titled as ***Punjab Wakf Board versus Gram Panchayat alias Gram Sabha, AIR 2000 Supreme Court 3488***, wherein, in relevant paragraph 29 thereof, para whereof becomes extracted hereinafter, it has been held, that in case the land is described in the revenue records as “shamilat deh”. Therefore, impliedly any entry in the revenue records depicting the lands concerned, as burial site(s), rather becoming rendered meaningless. Moreso when, there is prolonged non-user of the relevant site, by the Muslim community hence for the relevant purpose. Reliance in respect of the above argument, is also placed, upon a decision made by this Court on 23.9.2011, upon ***CWP No. 19029 of 2009***.

29. In this connection, we may refer to the findings recorded by the Assistant Collector that the revenue records show that the Gram Panchayat is the owner and also that the property in question is being used for common purposes of the Gram Panchayat. We have already extracted its above findings recorded by the Assistant Collector. The revenue records thus showed the land was being used by Village community. It is obvious from the definition of 'Shamilat Deh' in Section 2(g) of the Punjab Village Common Land (Regulations) Act, 1961 that the land in question did not fall within the exclusionary part of the definition. Therefore, the land was 'Shamilat deh' and was being used as such as per the revenue records. Thus, [Section 12](#) of the Act would apply and preclude a suit by the Wakf Board.”

(v) The learned State counsel, and, the learned counsel for the

Gram Panchayats concerned, make a further submission, that the effect of

inconsequentiality of the entry of **Gair Mumkin Kabaristan**, as assigned qua the petition land, is that, the issuance of notification(s) under Section 5 of the Act, also being rendered non est. The above argument is further rested, upon the factum, that prior to the issuance of the apposite notifications, no notice was served, upon the Gram Panchayat concerned. Therefore, when it became issued in violation of the principles of natural justice, thus, it has no force in the eyes of law.

(vi) They also submit that the above vice gripping the apposite notifications rather make the Civil Revision Petitions (supra), as directed against the verdict, made by the Punjab Wakf Tribunal, to be yet maintainable before this Court, as the said verdicts are also non est, nor also any belated institution of the Civil Revision Petitions (supra), before this Court, at the instance of the aggrieved, does attract thereons the bar of limitation.

Submissions of the learned counsel for the petitioners

18. The learned counsels appearing for the petitioners-Wakf Board submit, with much force before this Court;

(i) That the judgment made by the Hon'ble Apex Court in *Gram Panchayat of village Jamalpur's case (supra)*, does not cover the lis in hand. The reason which they assign, is grooved in the factum, that the said decision settled the *ratio decidendi* only in respect of a pointed therein factual situation, inasmuch as, when in the jamabandis concerned, there occurs only an entry of Hasab Rasad Khewat, but yet when there is also a further entry existing in the apposite classification column rather describing the petition lands, as **Gair Mumkin Kabaristan**, thereupon, the said judgment is not applicable to the facts of the instant case.

(ii) They further submit, that the above entry, occurred in the revenue records, prior to coming into force of the Punjab Act, 1953, and, but with a corresponding entry in the column of classification, rather revealing that the members of the Muslim community were cultivating the petition lands. Therefore, they submit, that though any right, title, and, interest of the Muslim community, if any, as held on the petition lands, but prior to the year 1953, rather became validly extinguished. However, they submit, that the extinguishment of the above rights of the Muslim community in the petition lands, or of any other community, thus squarely appertains to the existence in the revenue records, of an entry of Hasab Rasad Khewat. Nonetheless, they submit, that when contradistinct to the above entry, as carried in the records appertaining to judgment (supra), the entry in the column of classification appertaining to the extant petition lands, is of **Gair Mumkin Kabaristan**. Therefore, as but a natural corollary, the petitions lands could never be cultivated, nor were ever cultivable, but on the other hand, the said sacred site, was required to be maintained, irrespective of its prolonged non-user, for the relevant purpose, by the Muslim community. In supporting the above submission, they rest the same, upon, a decision of the Hon'ble Apex Court, rendered in *Syed Mohd. Salie Labbai's case (supra)*, wherein in clause (4) thereof, clause whereof becomes extracted hereinabove, the apposite thereto expostulation of law occurs. They further submit, that since the revenue records relating to the petition lands, do vividly suggest, that they become classified as **Gair Mumkin Kabaristan**. Thus, they submit, that when the judgment (supra) assigns conclusivity to the said entry, as such, the said entry would constitute conclusive proof qua hence on the petition land, a public

graveyard existing. Therefore, they submit, that the above reflection in the relevant revenue records, is but imminently conclusive about truth of such an echoing, thereupon, the said situation was required to become ensured to be ever existing even on the site. Consequently, they submit, that the factual situation at the relevant site, was required to be perennially carrying consonance with the assigning of conclusivity, to an entry in the classification column of the relevant revenue records, rather declaring the petition lands as **Gair Mumkin Kabaristan**. Thus, they submit, that the character, and, nature of the petition lands, was not required to be ever altered through allotments thereof, being made to the lessees concerned, and/or through the constructions being raised thereons.

(iii) In consequence, the learned counsels further submit, that the clear, and, candid declaration(s), in the revenue entries qua the petition lands being classified, as **Gair Mumkin Kabaristan**, and/or a graveyard, meant for the user of the Muslim community, rather existing thereons, do thereupon, rather make the said descriptions, as, assigned to the petition lands, to be conclusive proof, and, that any non-user(s) thereof, for the relevant period, was but completely inconsequential. Moreover, they submit, that the further legal effect of the above argument, is that, any non-user thereof, of the petition lands even for any elongated period of time, but was completely insignificant. In other words, they submit, that with imminent conclusivity becoming assigned to the above revenue entries, thereupon, the said revenue entries can never be eroded, nor the prolonged non-user of the relevant site, for the relevant purpose, by the Muslim community, rather cannot capacitate the Gram Panchayat concerned, or the revenue authorities concerned, to through any mode, make an alteration of

the said indefeasible conclusivity, assigned to the panchayat lands. Thus, they submit that the column of ownership describing the petition land as 'shamlat deh' becomes eclipsed, by the said entry in the column of classification, as carried in the relevant revenue records.

(iv) The learned counsel for the petitioners also submit, before this Court, that since the relevant notifications, as issued under Section 5 of the Act of 1954, are expostulated, in paragraph 14 of the judgment, rendered by the Hon'ble Apex Court, in *Punjab Wakf Board versus Raj Rani's case (supra)*, paragraph whereof extracted hereinabove, to render their issuance under Section 5 of the Act of 1954, conspicuously in the absence of any challenge being made thereto, to become hence clothed, through the mandate occurring in Section 81 of the Evidence Act, with an aura of presumption, with regard to their genuineness. Therefore, they submit, that there was no requirement of any notice being issued to the Gram Panchayat concerned, prior to the making of the said notification(s).

(v) The learned counsels further submit, that the requirement of any notice being issued to the Gram Panchayat concerned, prior to the issuance of the said notifications, by the competent authority, through the exercising of powers under Section 5 of the Act of 1954, also did not ever become aroused. The reason which they assign for the above, becomes hinged upon the factum, that since in the judgment, rendered by the Hon'ble Apex Court in *Syed Mohd. Salie Labbai's case (supra)*, rather the firmest conclusivity becomes assigned to the entry in the revenue records, rather reflecting the petition lands, as, **Gair Mumkin Kabaristan**. Therefore, when the notifications, as issued under Section 5 of the Act of 1954, were in complete consonance thereto, thus no notice prior to the issuance of said

notifications was required, besides reiteratedly the said notifications were unchallengable, as in the judgment made by the Hon'ble Apex Court in *Syed Mohd. Salie Labbai's case (supra)*, rather the firmest conclusivity has been assigned to the said revenue entry.

(vi) The learned counsels further submit, that the Punjab Wakf Tribunal, alone held the jurisdiction to try the lis at hand, and, that the statutory authorities contemplated under the Punjab Act, 1953, were completely divested to either exercise jurisdiction or to make a valid decision, upon the controversy(ies) concerned.

Reasons for accepting the submissions of the learned counsel for the petitioners-Wakf Board, and, for rejecting the submissions of the learned State counsel, and, the learned counsel for respondent-Gram Panchayats concerned.

19. For the reasons to be assigned hereinafter, this Court accepts the submissions, as addressed before this Court by the learned counsel for the petitioners-Wakf Board, and, rejects the submissions, as addressed before this Court, by the learned State counsel, and, the learned counsel for the Gram Panchayats concerned.

20. The centralized focus of the learned State counsel, and, of the learned counsel for the Gram Panchayats concerned, is upon the verdict, as made by the Hon'ble Apex Court in *Gram Panchayat of village Jamalpur's case (supra)*.

21. On the basis of the above judgment, they make an effort to deprive the exercising(s) of jurisdiction, by the Punjab Wakf Tribunal, upon the apposite controversy. Moreover, they also, on the basis of an entry of Shamilat Deh, occurring in the relevant revenue records, make an effort to make inconsequential, the entry in the column of classification, wherein,

the petition lands, are classified as **Gair Mumkin Kabaristan**. The above made effort is completely misfounded. The reason for making the above inference, becomes anchored upon the factum, that though in *Gram Panchayat of village Jamalpur's case (supra)*, the Hon'ble Apex Court had assigned precedence, and, prevalence to the Punjab Act, 1953 over the Administration of Evacuee Property Act, 1950. Therefore, it is but obvious, that the conflict in the above case or repugnancy in the above case arose, not in respect of exercising(s) of jurisdictions, respectively by the Wakf Board concerned, and/or by the statutory authorities concerned, as, contemplated in the Punjab Act, 1953. Contrarily, the repugnancy which arose in the case (supra), squarely appertained qua the inter se jurisdictional competence of the Custodian under the Administration of Evacuee Property Act, 1950, and, the statutory authorities contemplated under the Punjab Act, 1953. Therefore, when the foundational matrix of the instant case, relates to the competing claims qua exercisings of jurisdiction rather by the authorities contemplated in the Punjab Act, 1953, and, by the statutory mechanism(s), created under the Central Law concerned, nomenclatured as the Wakf Act, 1954. Thus, but obviously the above extant controversy, is at the outset, completely contradistinct, with the controversy which beset the Hon'ble Apex Court in *Gram Panchayat of village Jamalpur's case (supra)*, Resultantly, also the verdict (supra), as made by the Hon'ble Apex Court may not, to the fullest, hold any effect viz-a-viz the facts at hand.

22. Even if assuming the Punjab Act, 1953, has been declared in verdict (supra), to become enacted by the State Legislature, through the exercising of valid apposite Legislative competence, vested in it, through Entry No. 18, as carried in the State List, inasmuch as, it has been declared

to be enacted as a measure of agrarian reform, and/or, to ensure the welfare of the village community. Moreover, though it has also been pronounced therein, that hence the said entry enjoys the protection of Article 31-A of the Constitution of India. Though, further it has also been held therein, that hence precedence is to be assigned to the State enacted law, over the apposite Central Law. However, the competing exercisings of jurisdiction in the case (supra) was not inter se the Wakf Tribunal, created under the Central Law, and/or, by the statutory authorities contemplated in the Punjab Act concerned. Moreover, the lands in the case (supra) were described in the relevant revenue records, as Shamilat Deh. However, the Hon'ble Apex Court, in verdict (supra) declared, that irrespective of the lands therein, being described as shamilat deh, in the relevant revenue records, but when there is a further entry therein, describing the lands as Hasab Rasad Khewat. Therefore, the latter entry conferred rights of cultivation in the cultivators concerned, but only in proportion to the other lands, which they own/owned in the mohal or village concerned. It appears that the Punjab Act, 1953 was, in the face of the above entries, assigned precedence over the Administration of Evacuee Property Act, 1950, and, the said assigning of precedence, does appear to become engendered from the factum, that with the happening of partition of the country, in the year 1947, thus led the Muslims to migrate from India to Pakistan. The Muslim migrants, in the said year, from India to Pakistan, in the garb of an entry of Hasab Rasad Khewat carried in the revenue records, through earlier to 1947, became statutorily vested with the right to hold cultivating possession of the lands concerned, but the said cultivating right of possession as held prior to 1953, rather became extinguished through the Punjab Act of 1953. Therefore, in

other words, when otherwise in respect of the above described lands, they could, but after coming into force of the Punjab Act, 1953, hence save the vestment(s) of the said land(s), in the Panchayat concerned, but yet only when they were, prior to 1953, citizens of India, and/or, had not migrated to Pakistan, when the partition of the country, occurred after 1947. It appears that in case they did migrate to Pakistan, and, ceased to cultivate the lands as described in the revenue records, as Hasab Rasad Khewat. Resultantly, the effect of the cultivators concerned, ceasing to make cultivations of the lands, in the year 1947, obviously did not make such lands to become saved from vestment under the Punjab Act, 1953, as they did not fulfil the requisite condition(s) of theirs continuously, prior to 1950 or 1953, as the case may be, rather keep lawful cultivating possession of the lands concerned. Therefore, it was held that the lands, described in the relevant revenue records as Hasab Rasad Khewat, and, which became cultivated by the Muslim community upto 1947, but on the happening of partition of the country, in the year 1947, rather with the Muslim cultivators concerned, leaving for Pakistan. Resultantly, the lands with the said descriptions, could not become capitalized, by the migrants from Pakistan to India, to either cultivate the said land or to save them from vestment in the Panchayat Deh, rather it became amenable for common user by the Panchayat deh, as then rather it became vested in the Panchayat deh. Moreover, it appears, that in the verdict (supra), the Hon'ble Apex Court, had chosen to assign jurisdictional competence to the custodian concerned, but only under the Evacuee Property Act, and, only in respect of those lands of the migrant Muslims from India to Pakistan, besides subject to the said lands not being entered in the revenue records as Hasab Rasad Khewat, and, also subject to

the migrant Muslim community from India to Pakistan, hence not lawfully cultivating the said lands. In other words, the lands other than the lands, described in the relevant revenue records, as Hasab Rasad Khewat, were but subject to compliance with the other dire statutory conditions, hence made amenable for being treated as evacuee property, and, also the jurisdictional competence to allot the said lands, to the migrants from Pakistan to India, was exercisable by the custodian concerned.

23. Pointedly the description of the land(s) concerned, in the judgment (supra), is Hasab Rasad Khewat. The implication of the said entry, irrespective of the fact, that it may have been, prior to 1947, cultivated by the Muslim cultivators, who however on the happening of the partition of the country in 1947, may have migrated from India to Pakistan, but the verdict (supra), does not cover the further aspect, which is the foundational fact in the instant case, inasmuch as, it does not encompass the classification assigned to the petition lands, in the classification column of the relevant jamabandis. The classification assigned in the revenue records to the petition lands, is **Gair Mumkin Kabaristan**. The said classification assigned, to the petition lands, but naturally makes the petition lands, to be construable, as a site sacred to the Muslims, and, but as a further natural corollary, it cannot be deemed to be the subject matter of competent allotments by the custodian concerned, to the migrants from Pakistan to India.

24. In other words, it cannot be deemed to don the character of evacuee property. In consequence, the judgment (supra), does not for reasons (supra), settle the competing jurisdictional competence(s), respectively of the authorities under the Punjab Act concerned, and, of the

Wakf Tribunal, created under the Central Law, to try the lis in respect of the petition lands, rather described in the relevant revenue records, as **Gair Mumkin Kabaristan**. The said judgment (*supra*) erases the right, title, and, interest of Muslim migrants from India to Pakistan, and/or of those Muslims, who left India for Pakistan in the year 1947, and who were prior thereto in the garb of an entry of Hasab Rasad Khewat, existing in the relevant revenue records, hence making lawful cultivation of the lands concerned.

Applicability of the judgment of *Syed Mohd. Salie Labbai's case (supra)*

25. The judgment of the Hon'ble Apex Court in *Syed Mohd. Salie Labbai's case (supra)*, when is aplomb to the foundational strata, as appertaining to the instant lis, inasmuch as, in the relevant paragraph thereof, which becomes extracted hereinabove, a clear and vivid pronouncement, becomes carried, qua the description(s) of the lands, as **Gair Mumkin Kabaristan**, in the relevant revenue records, rather constituting conclusive proof of the character, and, nature of the petition lands. Therefore, the notification issued under Section 5 of the Act of 1954, declaring the petition property(ies), as Wakf property, was but in tandem therewith. Moreover, the effect, if any, of the Panchayats concerned, being not served with a notice by the authorities concerned, prior to the issuance of the apposite notifications, is but completely meaningless, and, is also insignificant.

26. Though, the learned counsel appearing for the respondents, made a vigorous address before this Court, that since in the verdict, as made by the Hon'ble Apex Court in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*, the Hon'ble Apex Court has declared, that

when the petition land, though become described in the revenue records as Gair Mumkin Kabaristan, but when there is prolonged evident non-user thereof, thus, the said prolonged non-user, for the relevant purpose, by the Muslim community, does erase the effect, if any, of the said entry. Consequently, they submit, that since there is evident prolonged non-user for the relevant purpose, of the petition lands, by the Muslim community. Therefore, the allotment of the petition lands, by the Gram Panchayats concerned, to the respondents concerned, was both valid as well as tenable. However, the above submission also becomes completely unrested, and, unhinged. The reason for making the above inference becomes anchored, upon the factum, that the said submission is rested, upon a reference qua the said submission, being made by the counsels concerned, before the Hon'ble Apex Court, leading it to make a verdict in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*. However, after the Hon'ble Apex Court referring to the said submission, it has not either assigned any answer thereto, nor obviously the said factum has been dilated upon. Contrarily when the reason which appears to prevail, upon the Hon'ble Apex Court, hence to declare that in respect of lands, described in the revenue records, as Shamilat Deh, rather the statutory authorities contemplated under the Punjab Act, 1953, hold the able jurisdiction to try the said controversy, and, that the Punjab Wakf Board rather does not hold the jurisdictional trying capacity, became singularly founded upon, the factum qua the lands therein, being described as Shamilat Deh, and, thus they were meant for a village common purpose. Though, the above reason was assigned, but irrespective of any answer, being meted to the contentions, raised by the counsels concerned, that the revenue entries,

rather described the lands therein, as **Gair Mumkin Kabaristan**, but yet with the lands therein, not being used for the said purpose, rather for an elongated length of time, therefore, the said entry was construed to assign competence in the Gram Panchayat concerned, to make allotments thereof, and/or the jurisdictional capacity to determine the apposite controversy, was held to vest in the statutory authorities, contemplated in the Punjab Act, 1953. Moreover, it appears from a reading of the judgment (*supra*), that through therein a reference is made to the verdict in *Syed Mohd. Salie Labbai's case (supra)*, but despite a reference therein being made to the judgment (*supra*), yet the Hon'ble Apex Court in its esteemed wisdom, deemed it fit not to make any discussion either qua correctness thereof, nor did the Hon'ble Apex Court distinguish the said judgment.

Reasons for not relying upon Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)

27. The revenue entry qua the lands, in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*, was **Gair Mumkin Kabaristan**, but in *Syed Mohd. Salie Labbai's case (supra)*, the above description(s) assigned to the lands concerned, in the classification column of the therein revenue records, rather became pronounced to be conclusive proof rather in respect of truth of such description. Therefore, in *Syed Mohd. Salie Labbai's case (supra)*, it was held that the said entry is conclusive proof about truth thereof, and, but with a further implication, that the prolonged non-user thereof, yet not empowering any authority concerned, to erode the conclusivity of truth of the said entry or to concomitantly change, on the spot, the condition of the land to some other condition. The judgment made in *Syed Mohd. Salie Labbai's case (supra)*, was made in the year 1976, whereas, the judgment made by the Apex Court

in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case* (*supra*), was made in the year 1999, thus subsequent to the judgment rendered in *Syed Mohd. Salie Labbai's case* (*supra*). Therefore, the judgment of the Hon'ble Apex Court, as made in *Syed Mohd. Salie Labbai's case* (*supra*), occurred prior to the making of the judgment by the Hon'ble Apex Court in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case* (*supra*). In consequence, when the Hon'ble Apex Court, in the above situation, where the earlier Judge Bench strength of the Hon'ble Apex Court, hence makes an expostulation of law, in respect of the above, or in respect of a similar controversy, hence arising also before a subsequent Judge Bench strength of the Hon'ble Apex Court rather of a co-equal quorum, did, in case titled ***Central Board of Dawoodi Bohra Community and another versus State of Mahararashtra and another***, to which ***Writ Petition (Civil) No. 740 of 1986***, becomes assigned, make the hereinafter extracted expostulations of law, qua the binding effect, of an earlier made verdict, by a Judge Bench strength of the Hon'ble Apex Court, rather on a controversy hence similar to the one which becomes raised also before a subsequent co-equal Bench strength of the Hon'ble Apex Court. Therefore, it but becomes incumbent to hereafter ad verbatim reproduce the said expostulations of law.

(1) *The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.*

(2) *A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger*

quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

(3) *The above rules are subject to two exceptions :*

(i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and

(ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation in Raghubir Singh & Ors. and Hansoli Devi & Ors.(supra).

So far as the present case is concerned, there is no reference made by any Bench of any strength at any time for hearing by a larger Bench and doubting the correctness of the Constitution Bench decision in the case of Sardar Syedna Taher Saifuddin Saheb's case (supra). The order dated 18.3.1994 by two-Judge Bench cannot be construed as an Order of Reference. At no point of time the Chief Justice of India has directed the matter to be placed for hearing before a Constitution Bench or a Bench of seven-Judges.

28. A reading of the hereinabove extracted expostulations of law, do unveil, that when in the earlier rendered judgment, the Judge Bench strength of the Hon'ble Apex Court, is co-equal to the subsequent Judge Bench strength of the Hon'ble Apex Court, besides when the controversy in both the cases is similar. Therefore, the subsequent Judge Bench strength of the Hon'ble Apex Court of a co-equal number, may in its esteemed wisdom, have either considered the correctness of the said finding or to distinguish it. However, it appears that the subsequent Judge Bench strength of the Hon'ble Apex Court hence carrying a quorum co-equal to the earlier Judge Bench strength, in its esteemed wisdom did not adopt any of the above. Moreover, when it has also been therein expostulated, that when the above has not been done, thereupon, the earlier pronouncement upon the same controversy, as made by the Co-ordinate Judge Bench strength of the Hon'ble Apex Court, rather being binding upon the subsequent Judge Bench strength of the Hon'ble Apex Court, hence of a co-equal Judge Bench quorum. In consequence, the mandate, as made by the Hon'ble Apex Court in *Syed Mohd. Salie Labbai's case (supra)* enjoys precedence, and/or settles the *ratio decidendi* besides is to be revered.

29. Consequently, when *Syed Mohd. Salie Labbai's case (supra)*, conclusivity has been assigned to truth of the entry, carried in the classification column, describing the land concerned, as **Gair Mumkin Kabaristan**, besides when the said entry has been declared to prevail or hold precedence over any entry of Shamlat Deh, as occurring in the revenue records concerned. Thus, the entry of Shamlat Deh as exists in the relevant revenue records, is of the least legal significance, nor does it erode the conclusivity of truth, as becomes assigned to the entry of **Gair Mumkin**

Kabaristan, nor the jurisdictional competence to try the lis, is vested in the statutory authorities, contemplated in the Punjab Act, rather the jurisdictional competence to try the lis, solitarily vests in the Punjab Wakf Tribunal.

30. Moreover, a deep reading of the verdict, made in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*, reveals, that though thereins an argument was raised, that an entry does exist in the revenue records, rather pronouncing the land thereins, to be carrying the classification of **Gair Mumkin Kabaristan**, but the said argument was not considered, but only on the basis of an entry of Shamilat deh, as, existing in the revenue records, precedence thereto was assigned over the entry of **Gair Mumkin Kabaristan**. Therefore, when the controversy with respect to the assignment of conclusivity qua the entry in the revenue records, classifying the lands, as **Gair Mumkin Kabaristan**, became finally clinched in *Syed Mohd. Salie Labbai's case (supra)*, and, that too by a Judge Bench strength of the Hon'ble Apex Court rather of a co-equal quorum, to the Judge Bench strength of the Hon'ble Apex Court, which was subsequently faced with the above contention, in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*. Therefore, reiteratedly in the face of the above expostulation of law, hence in its esteemed wisdom, the subsequent co-equal Judge Bench strength of the Hon'ble Apex Court, when became seized with a similar controversy, devolving upon assigning of authenticity, and/or of conclusivity to an entry of **Gair Mumkin Kabaristan**, may have taken to either distinguish the earlier made view or to ensure the consideration of correctness thereof, through a reference being asked to be made by the Hon'ble Chief Justice of India, hence to a larger Bench of the Hon'ble Apex

Court.

31. However, in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*, the Hon'ble Apex Court hence with a Judge Bench strength co-equal to the Judge Bench strength of the Hon'ble Court which rendered the earlier verdict in *Syed Mohd. Salie Labbai's case (supra)*, in its esteemed wisdom did not deem it fit to either distinguish the earlier view, recorded in *Syed Mohd. Salie Labbai's case (supra)*, nor in its esteemed wisdom, deemed it fit to ensure the consideration of correctness of the said issue through a reference being asked to be made by the Hon'ble Chief Justice of India to a larger Bench of the Hon'ble Apex Court. Thus, reiteratedly, the verdict made in *Syed Mohd. Salie Labbai's case (supra)*, holds force, insofar as it declares that the entry in the revenue records declaring the site concerned as **Gair Mumkin Kabaristan**, holding conclusivity, and, but with a concomitant effect that it enjoys precedence over the entry of Shamilat Deh, as, may exist(s) in the relevant column of the revenue records.

32. The upshot of the above conclusion, is that the issuance of the notification(s) under Section 5 of the Act, do hold legal weightage, and, as but a natural corollary, the jurisdictional competence to try the lis became vested in the Wakf Tribunal concerned, than in the authorities contemplated in the Punjab Act concerned.

Conclusion

33. The effect of the above is that, the entry in the classification column of the relevant revenue entry, enjoys precedence over the entry in the revenue records describing the petition lands as Shamlat Deh.

The further concomitant effect thereof, is that, the notifications issued under Section 5 of the Act of 1954, declaring the petition lands, as Wakf property, were validly made notifications, as the same are in complete tandem therewith. Furthermore, also non issuance of any notice by the competent authority concerned, upon the Gram Panchayat concerned, imperatively prior to the making of the said notifications, is inconsequential, nor the makings of the said notifications, become stained from any non-adherence, if any, being made to the principles of natural justice.

34. The jurisdictional competence to try the lis becomes solitarily vested in the Punjab Wakf Tribunal, as constituted under the Central Act concerned, and, the statutory authorities contemplated under the Punjab Act concerned, do not have any jurisdictional competence to try the lis.

35. The exercise of jurisdiction by the Wakf Tribunal concerned, was a validly exercised jurisdiction, as the Wakf Tribunal concerned, became constituted through a notification issued on 23.10.2001, whereby, the Court concerned, has been conferred the powers of the Wakf Tribunal concerned. Therefore, since through the mandate, carried in the said notification, the jurisdiction, upon the petitions concerned, became validly assumed by the learned Additional District and Sessions Judge concerned. Therefore, the assumption of jurisdiction on the apposite lis' rather by the Wakf Tribunal concerned, was a validly assumed jurisdiction, as, the jurisdiction became assumed in respect of revenue entries describing the land as **Maqbooja Ahle Islam Gair Mumkin Kabaristan**. Therefore, when the judgment of the Hon'ble Apex Court rendered in *Syed Mohd. Salie*

Labbai's case (supra), makes a declaration, that in the event of the entries in the revenue records describing the petition lands as **Maqbooja Ahle Islam Gair Mumkin Kabaristan**, thereupon the jurisdiction to decide the apposite lis, is vested in the Wakf Tribunal, and, not in Civil Courts, nor in the authorities under the Punjab Act. Therefore, the jurisdictional of competence to try the lis in respect of the lands described as **Maqbooja Ahle Islam Gair Mumkin Kabaristan**, is always vested in the Wakf Tribunal concerned. Moreover, when Section 108-A of the Wakf Act, 1995, provisions whereof extracted hereinafter, completely oust the jurisdiction of the Civil Courts or of any other Court, in respect of matters concerning with Wakf properties.

“108A. Act to have overriding effect- The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

36. In consequence, the judgments, and, decrees, as pronounced by the Civil Court concerned, upon the civil suits concerned, do not have any binding, and, conclusive force. Moreso, when even the provisions of Section 85 of the Wakf Act, provisions whereof stand extracted hereinafter, completely oust the jurisdiction of the Civil Court, in respect of those lands, which become described in the revenue records as **Maqbooja Ahle Islam Gair Mumkin Kabaristan**, Predominantly also when the consequent therewith notification becomes issued under the Wakf Act, by the competent authority concerned. Moreover, also when a notification assigning

jurisdiction in the Additional District Judge rather becomes issued by the competent authority concerned.

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.

37. The reasons assigned by the Wakf Tribunal to assign conclusivity to the earlier orders, as, made on the petitions cast under the Punjab Village Common Lands (Regulation) Act, are also hit by Section 85, and, by Section 108-A of the Wakf Act. Therefore, no conclusivity is assignable to the earlier decisions, as, made by the Collector or by the Commissioner concerned, nor hence to the subsequent motions any bar of res-judicata becomes attracted. Contrarily the jurisdiction to make any valid decision thereons was always vested in the Wakf Tribunal concerned.

Principles

38. (1) The judgment in *Ranjit Singh's* case (supra) holds force only in respect of repugnancy or a conflict arising inter se the jurisdictional competence of the Custodian under the Administration of Evacuee Property Act, 1950, rather with the statutory authorities contemplated under the Punjab Act, 1953. The said judgment does not hold force in respect of an entry in the revenue records declaring the land as **Gair Mumkin Kabaristan** and/or **Maqbooja Ahle Islam**.
- (2) Moreover, any entry in the revenue records declaring the land as **Gair Mumkin Kabaristan** and/or **Maqbooja**

Ahle Islam, enjoys conclusivity, and, is required to be ensured to be protected even at the site concerned, despite evidence of prolonged non-user thereof by the Muslim community.

- (3) The judgment rendered in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*, declaring that the mere entry of the lands, in the revenue records, as Shamilat Deh overrides, and, overcomes the entry in the classification column, describing the land, as Gair Mumkin Kabaristan and/or Maqbooja Ahle Islam, does not settle law, as the same is earlier settled by a judgment of the Hon'ble Apex Court rendered in *Syed Mohd. Salie Labbai's case (supra)*, especially when it became rendered by a Judge Bench strength of co-equal quorum vis-a-vis the Judge Bench strength, which subsequently rendered the verdict in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*, besides when the judgment in *Punjab Wakf Board versus Gram Panchayat alias Gram Sabha's case (supra)*, did not in its esteemed wisdom deem it fit to either distinguish the earlier verdict pronounced in *Syed Mohd. Salie Labbai's case (supra)*, nor in its esteemed wisdom, deemed it fit to ensure determination of correctness thereof, through, the asking for a reference from the Hon'ble Chief Justice of India to a larger Bench of the Hon'ble Apex Court. Therefore, the earlier

judgment of a co-equal Judge Bench strength rendered in *Syed Mohd. Salie Labbai's* case (supra), holds force, thus rendering the entry in the classification column of the revenue records, describing the petition lands as Gair Mumkin Kabaristan, to hold precedence over the entry, if any, of Shamilat Deh, as carried, in the ownership/possession column of the revenue records. In the face of the said entry, the jurisdictional competence to try the lis is solitarily vested in the Punjab Wakf Board, and, is not vested in the authorities contemplated under the Punjab Act concerned.

Final order

39. The effect of the above is that, the exercise of jurisdiction by the authorities concerned, under the Punjab Act, concerned, thus is completely void and non est. In consequence, the concurrently made orders by the statutory authorities contemplated under the Punjab Act concerned, are non est, and, are quashed, and, set aside.

40. Consequently, Civil Revision Nos. 3780 of 2017, 190 of 2018, 1912 of 2016, 2112 of 2016, 3639 of 2016, and, 826 of 2014, as well as CWP No. 16600 of 2015, instituted by the Wakf Board, concerned, are allowed. Accordingly, the impugned orders are quashed, and, set aside.

41. Insofar as, CWP No. 2785 of 2009, instituted by Balwinder Singh, and, CWP No. 13839 of 2015, instituted by Darshan Singh, are concerned, the same are hereby dismissed. Civil Revision No. 2267 of 2012, instituted by the Gram Panchayat concerned, is also dismissed.

42. All the pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 10, 2023
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes