

**THE HIGH COURT OF TRIPURA
AGARTALA**

RSA NO.67 OF 2008

Smt. Rahima Begam Choudhury,
W/O Sri Abdul Basit Choudhury of
Village Ichaibaruakandi,
P.O. Ichai Sonapur, P.S. Dharmanagar,
District-North Tripura.

..... *Plaintiff-appellant*

- *Vs* -

1. The State of Tripura,
(Represented by the Secretary,
Department of Revenue,
Government of Tripura,
Agartala).

2. The Chief Executive Officer,
Tripura Wakf Board,
Revenue Building, Agartala,
West Tripura.

3. The District Magistrate & Collector,
North Tripura, Kailashahar.

4. The Sub-Divisional Magistrate,
Dharmanagar, North Tripura.

5. The Tahashildar,
Ichailalcherra, Dharmanagar,
North Tripura.

..... *Defendant-Respondent*

**BEFORE
HON'BLE MR. JUSTICE S.C. DAS**

For the appellant	:	Mr. A.C. Bhowmik, Sr. Advocate Mr. D.C. Roy, Advocate.
For the respondents	:	Mr. D. Chakraborty, Sr. Advocate Mr. H. Laskar, Advocate
Date of hearing	:	22.04.2015
Date of delivery of Judgment & Order	:	06.05.2015

Whether Fit for Reporting :	Yes	No
	✓	

JUDGMENT & ORDER

This second appeal under Section 100 of the Code of Civil Procedure, 1908 is directed against the judgment and decree dated 22.08.2008 and 30.08.2008 respectively passed by learned Addl. District Judge, North Tripura, Kailashahar in Title Appeal No.08 of 2008 whereby and whereunder the learned Addl. District Judge set aside the judgment and decree dated 17.01.2008 passed by learned Civil Judge, Sr. Division, North Tripura, Kailashahar in T.S. No.11 of 2007.

2. The second appeal has been admitted for hearing on the following substantial questions of law:

“(a) Whether the private property can be declared as wakf property without due process of law?

(b) Whether the Appellate Court below while exercising appellate jurisdiction can consider a document not exhibited in the trial court and can pass decree on the basis of the same without affording any opportunity to the plaintiff?

(c) Whether the finding of the first Appellate Court to the effect that a female/lady cannot hold the post of Mutawali is sustainable as per Islamic Law?”

3. Heard learned senior counsel, Mr. A.C. Bhowmik for the appellant and learned senior counsel, Mr. D. Chakraborty for the respondents.

4. The appellant as plaintiff(hereinafter mentioned as plaintiff) instituted Title Suit No.11 of 2007 against the respondents(hereinafter mentioned as defendants) seeking declaration of her title over the suit land described in the schedule of the plaint measuring 8.45 acres.

5. The plaintiff in her pleadings, *inter alia*, contended that her predecessor, Nachir Mohammed, son of late Kadir Mohammed of village-Ichaibaruakandi under Sub-Division Dharmanagar, executed a registered Will on 5th of Baishakh, 1315 T.E, about 100 years ago and thereby created a private Wakf of an area of land measuring one and half drone and in the said Will the testator, Nachir Mohammed clearly stated that from the income of the said one and half drone of land the Mutawalli shall pay the Government revenue and maintain the Ichaibaruakandi Jama Masjid set up by said Nachir Mohammed, provide candlelight(cheregbati) and facilitate performing of all religious performance and with the surplus amount maintain the family of his daughter and her son or heirs in perpetuity.

After the death of Nachir Mohammed, the predecessors-in-interest of the plaintiff had been owning and possessing the suit

land and enjoying the usufruct from the income of the suit land after maintaining the Masjid set up by Nachir Mohammed. The suit land was recorded in Khatian No.11 of Mouja Ichailalcherra and the name of the plaintiff was recorded in Column No.24 of the Khatian.

The plaintiff let out some portion of the suit land to fourteen persons of the locality on lease and on 30.11.2005 the defendant-respondent No.4 at the instance of the defendant respondent No.3 issued notices to those fourteen persons to deposit ₹1,000/- per kani towards lease of the land and the plaintiff contended that defendant No.4 without having any authority and having no right title or interest issued that notices and thereby tried to interfere in the private Wakf property of the plaintiff.

The plaintiff further contended that subsequently she came to know that as per instruction of defendant No.5, the defendant No.3 made arrangement for leasing out the suit property without having any authority and on 29.05.2006 issued an advertisement stating that land measuring twenty kanies will be given on lease for a period of one year according to the provisions of the Wakf Act and to take the lease to deposit ₹1,000/- per kani.

The plaintiff contended that the said notice was issued without any jurisdiction and further contended that the Wakf property is a privately managed Wakf property and the plaintiff and her predecessors maintaining and enjoying it for more than

hundred years and that the plaintiff was inheriting it as Mutawalli as per solemn sacred and pious instruction of the testator, Nachir Mohammed.

Since the defendants issued notice dated 29.05.2006 for leasing out the suit land the plaintiff instituted CRP No.34 of 2006 in the Agartala Bench of the Gauhati High Court and by judgment and order dated 05.01.2007 the High Court disposed the petition of the plaintiff with the following direction:

“Accordingly, this petition is disposed of with direction that the petitioner within a period of two weeks shall file necessary objection before the Tahashilder, Ichailalcherra, Dharmanagar, North Tripura stating her claim over the disputed land before the said authority. On filing of such objection, the respondent authorities or any other competent and appropriate authority shall decide the same taking note of the objection so filed by giving opportunity of hearing to the petitioner. Till the aforesaid decision is taken, no further action upon the impugned notices would be taken by the respondents—authorities, such decision, however, shall always be open to challenge by the aggrieved party. The right of the petitioner to approach the competent civil court for necessary relief can also not be denied with.

With the aforesaid observation and direction, this civil revision petition is disposed of.”

As per the above direction the plaintiff submitted a prayer before the Tehshildar, Ichailalcherra Tehshil but the Tehshildar did not take any action on the petition of the plaintiff.

It is alleged by the plaintiff that she paid revenue to the Government regularly and she maintained the Wakf property as a Wakf-alal-aulad and she was performing the duties of Mutawalli and that she has exclusive right title interest over the suit land and the defendants having no jurisdiction or authority were trying to grab the suit land and therefore she instituted the suit seeking declaration of her right title over the suit land.

6. The defendant Nos.1 to 4 filed a joint written statement denying the allegation made in the plaint and further contended that Khatian No.11 of Mouja Pratyekroy under Ichailalcherra Tehshil Kachari has been recorded in the name of Wakf Board of Ichaibaruakandi Masjid without mentioning any specific name of Mutawalli and the name of plaintiff, Rahima Begum Choudhury has been recorded in Column No.24 of the Khatian as permissive possessor.

The defendants also contended that it was not known to them whether the plaintiff was the legal heir of Nachir Mohammed and whether it was a private Wakf or not. The defendants further contended that the plaintiff, Rahima Begum Choudhury used to perform the religious functions of the said Masjid but most of the

pious religious persons of Ichabaruakandi were dissatisfied in the maintenance of the Masjid and therefore the Wakf Board, Agartala took appropriate action as per the provisions of law and notice dated 29.05.2006 was issued as per decision of the Wakf Board. The land measuring 8.45 acres has been recorded in favour of the Wakf *i.e.* Ichaibaruakandi Masjid and there was nothing wrong in the action taken in respect of the suit property.

7. The defendant-respondent No.5, the Chief Executive Officer of Tripura Board of Wakf has filed a detailed written statement *inter alia* contending that the suit instituted by the plaintiff under Section 34 of the Specific Relief Act is not maintainable since the plaintiff did not pray for any other relief. As per the order passed by the High Court the plaintiff filed a petition before Tehshildar but the plaintiff did not wait for the decision of Tehshildar and hence the suit was premature and was not maintainable.

It is also contended by the defendant that Nachir Mohammed died leaving his only daughter, namely Latifa Bibi and Latifa Bibi died leaving her only daughter Esha Bibi. Esha Bibi died leaving her only daughter Laila Bibi and the plaintiff Rahima Begum Choudhury is the daughter of Laila Bibi. Laila Bibi, mother of the plaintiff died during lifetime of Esha Bibi and so the plaintiff has no right to inherit the property of her grandmother Esha Bibi since her mother Laila Bibi predeceased her.

It is also contended by the defendant that Nachir Mohammed, the testator, appointed Md. Mussa, the husband of Latifa Bibi as the Mutawalli of the Wakf property to perform all other religious activities. According to Mahomedan Law, a female is not barred from acting as Mutawalli but a female cannot perform the spiritual duties and therefore the testator appointed his son-in-law as Mutawalli. Since a female cannot perform the spiritual duties of an Imam in a Mosque who leads the congregation, the plaintiff cannot hold the post of Mutawalli and cannot therefore own or possess the suit property in any manner.

It is also contended by the said defendant that on 01.09.2005 he visited Dharmanagar when the President of Sub-Divisional Wakf Committee, namely Abdul Matin Choudhury and the Secretary of the Wakf Committee, namely Mohammed Abdullah met him and informed him that there was no Imam in the Mosque situated in the Wakf property and that the spiritual duties were not performed properly and therefore they prayed for taking necessary steps for taking over the Wakf property for its management and preservation from being wasted and considering their request the defendant appointed Abdul Mannan Choudhury, the son of second wife of Mohammed Mussa as the Mutawalli in exercise of power under Section 63 of the Wakf Act, 1995 subject to approval of the Wakf Board and assigned the management of the Wakf property to the said Abdul Mannan Choudhury. After the death of Abdul Mannan Choudhury, another Abdul Hannan Choudhury, son of Abdul Suban

was appointed as Mutawalli and he was looking after the Wakf property.

It is also contended by the defendant that in the month of October, 2005 he again visited the Wakf property and some of the local people met him and expressed their intention to take some land of the Wakf property on lease for agricultural purpose and accordingly Sub-Divisional Magistrate, Dharmanagar, the Assistant Survey Commissioner of Wakf, issued a public notice authorizing Tehshildar of Ichailalcherra Tehsil to take necessary steps who issued notice on 30.11.2005 to fourteen people of the locality to deposit premium of ₹1,000/- per kani for one year to take lease of the property but those fourteen people did not respond. On 29.05.2006 a public notice was published inviting application from the intending leasees for grant of lease of Wakf property for the period of one year on payment of ₹1,000/- per kani and in response seven persons approached the Assistant Survey Commissioner for grant of lease at the rate of ₹1,000/- per kani.

The Wakf was thereafter registered under Section 37 of the Wakf Act, 1995 and after registration the property is now under the direct control of the Board of Wakf and the plaintiff has no right to hold the office of Mutawalli for the purpose of maintaining the Wakf property.

8. Considering the pleadings the learned trial Judge framed following issues:

- "1. Is the suit maintainable in its present form?*
- 2. Is there any cause of action for this suit?*
- 3. Is the suit barred by limitation?*
- 4. Has the plaintiff right, title and interest over the suit land?*
- 5. Are the parties entitled to any other relief/cost?"*

9. In course of trial plaintiff examined herself as PW1 and also examined two more witnesses, namely PW2 Sri Ramananda Nath and PW3 Md. Mojar Ali. In support of her case the plaintiff proved the following documents:

Exbt.1—Certified copy of the judgment of Hon'ble High Court in CRP No.34 of 2006,

Exbt.2—Copy of objection to Tehsildar dated 17.01.2007,

Exbt.3—Copy of Will dated 5th of Baishak, 1315 T.E.

Exbt.4—Copy of Khatian No.11 of Mouja-Pratyekroy,

Exbt.5— Copy of khatian No.165,

Exbt.6—Copy of khatian No.450,

Exbt.7—Copy of Notice issued by Tehsildar.

Exbt.8—Copy of rent receipts.

Exbt.9—Extraordinary issue of Tripura gazette dated 24.09.1981.

Exbt.10—Copy of death certificate of Esha Bibi.

Exbt.11—Copy of death certificate of Laila Begum.

Defendant No.5 examined himself as DW1 and also examined four more witnesses, namely DW2 Abdul Matin Choudhury, DW3 Abdul Hannan, DW4 Dwijendra Kumar Deb and DW5 Md. Abdul Rakib. The evidence of DW3 was discarded since in his examination-in-chief submitted by affidavit his father's name was mentioned as Late Musakari Choudhury but when he was taken in the witness box for cross-examination he stated his father's name as Abdul Suban Choudhury and therefore his evidence was discarded. The defendant No.5 proved the following documents:

Exbt.A—Copy of Khatian No.11 of Mouja Pratyekroy.

Exbt.B—Copy of registration of Wakf property.

Exbt.C—Copy of Wakf Notification dated 29.05.2006.

Exbt.D—Copy of Tripura Gazette Notification dated 18.07.2001.

Exbt.E—Certified copy of order dated 05.01.2007 in CRP 34/06,

Exbt.F—Deputation of 7 persons to C.E.O., Tripura Wakf Board.

Exbt.G—Copy of lease proposal by Tahasildar to S.D.M., Dharmanagar.

10. At the conclusion of trial the learned Civil Judge, Senior Division decided all the issues in favour of the plaintiff and accordingly declared that the plaintiff has title over the suit land and accordingly decreed the suit.

11. Aggrieved, the defendant No.5 preferred Title Appeal No.8 of 2008 and by impugned judgment dated 22.08.2008 the learned Addl. District Judge, Kailashahar allowed the appeal and set aside the judgment and decree passed by the learned trial Judge and hence this second appeal.

12. It is an admitted position that Nachir Mohammed was the original owner of the suit property and he executed a registered Will dated 5th of Baishakh, 1315 T.E. and by that Will he bequeathed and settled the suit property and his other properties. It is also an admitted position that Nachir Mohammed died leaving behind his only daughter Latifa Bibi and Latifa Bibi died leaving behind her only daughter Esha Bibi and Esha Bibi also has left behind her only daughter Laila Bibi and the plaintiff Rahima Begam Choudhury is the only daughter of Laila Bibi. According to the plaintiff, Esha Bibi died leaving behind Laila Bibi and Laila Bibi died leaving behind the plaintiff. But according to the defendants, Laila Bibi predeceased Esha Bibi and so the plaintiff Rehima Begum Choudhury being the daughter of Laila Bibi cannot claim as a legal heir of Esha Bibi. It is also an admitted position that the testator

Nachir Mohammed by executing the registered Will dated 5th of Baishakh, 1315 T.E. dedicated one and half drones of land described in the schedule of the Will for religious purpose and thereby created a Wakf stipulating that out of the usufruct of that property land revenue should be paid and from the rest amount lighting of candle(cheragbati) should be made in the Masjid set up by him and also the Masjid should be maintained out of the usufruct and the rest amount should be utilized by his daughter and her heirs in perpetuity. If they fail to do so they will not be entitled to enjoy the Wakf property. He appointed his son-in-law Md. Mussa to perform those acts during his lifetime and thereafter it should be maintained by his legal heirs.

13. According to the plaintiff, the defendants at first issued notice on 30.11.2005 to fourteen persons to whom the plaintiff leased out a portion of the suit property and thereafter on 29.05.2006 issued public notice inviting application to take lease of the suit land from different persons and thereby the defendants were trying to take over the suit land from the possession of the plaintiff.

14. The defendant No.5 contended that on 01.09.2005 when he visited Dharmanagar the President and Secretary of Sub-Divisional Wakf Committee met him and made request to take over the suit property alleging that it was not properly managed and there was no Imam of the Mosque and therefore the defendant

No.5 appointed Abdul Mannan Choudhury as the Mutawalli and thereafter Abdul Hannan Choudhury as Mutawali and the suit property was entered in the register of Wakf property and subsequently public notice was issued to give away a part of the suit property on lease.

15. It is an admitted position that Nachir Mohammed created a Wakf dedicating one and half acres of property by a registered Will with specific intention to maintain a Mosque set up by him in the dedicated property, to maintain the Mosque and to light candle in the Mosque out of the usufruct of the property and further intended that the excess amount after maintaining the Mosque and payment of revenue, etc. to the Government should be enjoyed by his successors. It was therefore a composite intention of the testator. The testator's intention should be read as a whole and not in isolation. In one paragraph of the Will the testator created the Wakf specifying therein his intention as to how the income out of the property should be used. The question therefore which is argued by both side to be decided here as to whether it was a public Wakf or a private Wakf. Wakf has been defined in Section 3(r) of the Wakf Act, 1995 which reads as follows:

"(r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes—

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants", including mashrut-ul-khidmat for any purpose recognized by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad o the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable, and "wakif" means any person making such dedication;"

16. It is submitted by learned senior counsel, Mr. Bhowmik that the Wakf created by Nachim Mohammed was a Wakf-alal-aulad and so it was a private Wakf creating thereunder the religious purpose as well as the interest of the legal heirs of the testator. The intention of the testator cannot be severed and therefore the plaintiff cannot be deprived of her right to enjoy the property to the extent the testator has specified/declared under the Will.

A Wakf generally made with a pious, charitable and religious purposes. Normally, a Wakf property is vested in God. But there may be Wakf where some other interest is created at the same time while dedicating the property to God. There are often tying up of property in the ownership of God and the devotion of the profits for the benefit of human beings.

Wakf-alal-aulad had developed as a means of dedicating property in favour of oneself and one's lineal decedents, as a pious act and something directing a major or minor portion of the usufruct towards religious or charitable objects in the name of Allah. Extension of the institution of Walkf-alal-aulad, having nothing to serve for public charity, till the whole line of the Wakif and his children and their descendents stands extinguished, or having little to serve for public charity, but the bulk of the usufruct being directed for the benefit of the Wakif and his descendents, and the office of the Mutawalli being confined to the Wakif and/or his legal descendents alone. Whether there was a Wakf for a purely religious, pious or a charitable object or one for the support of a Wakif and his kith and kin, with some religious, pious or charitable objects added to it, the corpus of the Wakf could not be allowed to the usurped or eroded but the usufruct could be used or applied to the objects of the Wakf.

17. Here the intention of the testator is clear and unambiguous. He has created the Wakf for religious and charitable purpose as well as for the interest of his legal heirs/descendents. He set up a Mosque on his property and he created the Wakf to maintain that Mosque as well as to put candlelight in the Mosque and nothing more he has mentioned in his Will. He clearly specified that out of the income of the property, the land revenue should be paid first and thereafter the candlelight should be arranged in the Mosque set up by him and the Mosque should be maintained and

the rest amount shall be enjoyed by his heirs in perpetuity. So this interest created by the testator cannot be separated to say that it was a Wakf created absolutely for religious or charitable purpose. In my considered opinion it was a Wakf created for religious purpose as well as for maintaining the legal heirs/descendents of the testator.

18. Wakf may be created by Muslim generally falls into two categories. One is public Wakf in the sense that the beneficiaries are members of the public and the other is private Wakf in the sense that public as such are not the beneficiaries and certain specified individual happens to be the beneficiaries. Even with regard to a private Wakf there may be two kinds. One is a Wakf-al-al-aulad simpliciter and the other is Wakf in which there is a dedication or gift in praesenti in the sense that a portion of the income from the Wakf property is preserved for being spent for strangers and other objects of piety or charity and the other portion being spent for the benefit for the Wakif's relations and members of the family.

In the given facts of this case the Wakf was created for performing specific religious and charitable purpose as well as for maintenance of the legal heirs/descendents of the testator and the testator has specified that in the event the legal heirs/descendents failed to maintain the Mosque and light candles in the Mosque, they will be deprived of enjoying the usufruct of the Wakf property.

Therefore, in my considered opinion it was a private Wakf created for some religious purpose as well as for the interest of the family members of the Wakif.

19. Learned senior counsel, Mr. Bhowmik has referred the case of ***Tamil Nadu Wakf Board v. Larabsha Darga Panruti*** reported in ***(2007) 13 SCC 416*** and submitted that the apex Court clearly held in the judgment that the suit property was belonged to a private Wakf and Wakf-alal-aulad. Though the fact of that case and the fact of the present case are not exactly similar but the principles enunciated in that judgment may fairly be applied in the facts of this case and I am of the considered opinion that the Wakf created by Nachir Mohammed in the facts of the present case is a private Wakf, Wakf-alal-aulad and it is not a public Wakf.

20. Learned senior counsel, Mr. Chakraborty has referred the case of ***Mohd. Ismail v. Sabir Ali*** reported in ***AIR 1962 SC 1722*** but having carefully gone through the said judgment I am of the considered opinion that it was on a different context and ratio of that decision cannot be applied in this case. It was purely a Wakf in perpetuity and not a Wakf-alal-aulad.

21. It is not disputed that under Mahomedan Law a female also can perform the act of Mutawalli. If a female can perform the act of Mutawalli the defendant No.5 should not have appointed any

other person as Mutawalli in exercise of the power under Section 63 of the Wakf Act, 1995. The testator in his Will creating the Wakf did not say anything about the performance of any spiritual duties but simply stated about lighting of candle and maintenance of the Mosque out of the income of the Wakf property and those can be performed by any Mutawalli whether a male or female. From the pleadings and evidence of defendant No.5 it is clear that only based on the statement of the President and Secretary of the Sub-Divisional Committee the defendant No.5 without having any enquiry appointed Abdul Mannan Choudhury as Mutawali and thereafter Abdul Hannan Choudhury as Mutawali which was not at all called for. There is nothing in the Mahomedan Law as admitted by the defendants also that a female cannot perform the act of Mutawalli. The plaintiff admittedly being a descendent of the testator Nachir Mohammed can perform the act of Mutawalli irrespective of the fact that her mother died before the death of her grandmother Esha Bibi. That point that Laila Bibi died before Esha Bibi is not material point to be considered by the Court and I do not find any importance to be attached on that issue. I have therefore no hesitation to come to the conclusion that the plaintiff being the legal representative of the testator Nachir Mohammad was/is entitled to act as Mutawali of the Wakf property.

22. Learned senior counsel, Mr. Bhowmik has submitted that gazette notification dated 16.11.2007 has been considered by the appellate Court without affording any opportunity to the plaintiff

and without exhibiting the said document. I find no substance in this argument of learned senior counsel, Mr. Bhowmik. On perusal of order dated 15.07.2008 passed by the appellate Court I find that after hearing learned counsel of both side the appellate Court accepted gazette notification 16.11.2007 as additional evidence. So there is nothing wrong in considering that notification as an item of evidence.

23. The core issue now to be decided as to whether the civil Court has got jurisdiction in view of the provision of Section 85 of the Wakf Act, 1995. Section 85 reads as follows:

“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.”

The above provision clearly barred the jurisdiction of civil Courts in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under the Wakf Act to be determined by a Tribunal.

Section 83 of the Wakf Act, 1995 prescribes provision for constitution of Tribunals by the State Government. Section 84 prescribes the provision authorizing Tribunal to hold proceedings

expeditiously and to furnish to the parties copies of its decision.

Section 83 reads as follows:

"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 wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

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

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

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf

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

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

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

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

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

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

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

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

Section 84 reads as follows:

"84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.—*Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute."*

24. It is submitted by learned senior counsel, Mr. Chakraborty for the respondents that there are Tribunals constituted by the State Government to decide the disputes in respect of Wakf and such submission is not disputed. Mr. Chakraborty , learned senior counsel also referred the decision of

the apex Court in the case of **W.B. Wakf Board v. Anis Fatma Begum** reported in **(2010) 14 SCC 588** wherein the apex Court has held that the Tribunal has the only jurisdiction in the matter of Wakf disputes and the Civil Court has no jurisdiction. In paras 10, 11, 12 and 13 the apex Court has held:

"10. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words "any dispute, question or other matters relating to a wakf or wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal. The word "wakf" has been defined in Section 3(r) of the Wakf Act, 1995 and hence once the property is found to be a wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

11. Under Section 83(5) of the Wakf Act, 1995 the Tribunal has all powers of the civil court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2-A of the Code of Civil Procedure, 1908 to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a wakf or wakf property.

12. We may further clarify that the party can approach the Wakf Tribunal, even if no order has been passed under the Act, against which he/she is aggrieved. It may be mentioned that Sections 83(1) and 84 of the Act do not confine the jurisdiction of the Wakf Tribunal

to the determination of the correctness or otherwise of an order passed under the Act. No doubt Section 83(2) refers to the orders passed under the Act, but, in our opinion, Sections 83(1) and 84 of the Act are independent provisions, and they do not require an order to be passed under the Act before invoking the jurisdiction of the Wakf Tribunal. Hence, it cannot be said that a party can approach the Wakf Tribunal only against an order passed under the Act. In our opinion, even if no order has been passed under the Act, the party can approach the Wakf Tribunal for the determination of any dispute, question or other matters relating to a wakf or wakf property, as the plain language of Sections 83(1) and 84 indicates.

13. We may clarify that under the proviso to Section 83 (9) of the Wakf Act, 1995 a party aggrieved by the decision of the Tribunal can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. This provision makes it clear that the intention of Parliament is that the party who wishes to raise any dispute or matter relating to a wakf or wakf property should first approach the Tribunal before approaching the High Court.”

25. In view of the provisions laid down in the Wakf Act and the law explained by the apex Court in **Anis Fatma Begum**(supra) the civil Court is barred in exercising jurisdiction in respect of a dispute of Wakf. Since in the present case, it is an admitted position that a Wakf was created by the deceased Nachir Mohammed, any dispute regarding the Wakf or Wakf property should be decided by the Tribunal and the plaintiff or the defendants may approach the

Tribunal for deciding the dispute which is brought in the civil suit. The apex Court has held that against the decision of the Tribunal an aggrieved party can approach the High Court which can call for the records for satisfying itself as to the correctness, legality or propriety of the decision of the Tribunal. The plaintiff-appellant, if so advised may approach the appropriate Tribunal for deciding the dispute and in case the plaintiff-appellant is aggrieved by the decision of the Tribunal it may approach the High Court as per the law explained by the apex Court.

26. Subject to the above observation the appeal stands dismissed.

27. Send back the LCRs along with a copy of this judgment.

JUDGE