

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

**CIVIL REVN. APPLN. NO.: 113 OF 2010**

\*\*\*

Shaineshwar Devasthan Trust,  
Shinganapur,  
Through its Manager.  
Shri Sanjay Mohan Bankar,  
Age: 39 years, Occ.:  
Tq. Newasa, Dist. Ahmednagar.

... **PETITIONER**

**VERSUS**

1. Sayyad Shaukat Mehboob  
Age 50 years, Occ. Agri.,  
R/o Sonai, Tq. Newasa,  
Dist. Ahmednagar.
2. Yakub Babamiya Sayed,  
Age: 74 years, Occu. and  
R/o as above.
3. Shaikh Saleem Tamboli,  
Age: 48 years, Occ. Agril.  
R/o as above.
4. Sayed Rafique Yakub  
Age: 48 years, Occ. Agril.  
R/o as above.
5. Firoz Hussain Pathan,  
Age: 38 years, Occ. &  
R/o as above.
6. Sayed Dadabhai Bansi,  
Age Major, Occ. Agril.  
R/o as above.
7. Sayed Shaukat Bansi,  
Age: Major, Occ. Agri.,  
R/o as above.

8. Shabirabi Bashir Sayed,  
Age: Major, Occ. Household,  
R/o as above.
9. Rubabbi Iqbal Shaikh,  
Age: Major, Occ. Household,  
R/o as above.
10. Zubeda Bansi Sayed,  
Age: Major, Occ. Household,  
R/o as above.
11. Sattar Gafoorbhai Shaikh,  
Age: Major, Occ. Agril.  
R/o Devgaon, Tal. Newasa,  
Dist. Ahmednagar.
12. Pandharinath Raghuji Shete,  
Age: 63 years, Occu.: Agril.  
R/o Shinganapur, Tq. Newasa,  
Dist. Ahmednagar.
13. Raosaheb Bajirao Shete,  
Age: 59 years, Occ. Agril.  
R/o Shinganapur, Tq. Newasa,  
Dist. Ahmednagar.
14. Bhausahab Appasaheb Darandale,  
Age 59 years, Occ. Agril.  
R/o Shinganapur, Tq. Newada,  
Dist. Ahmednagar.
15. Bhimraj Balwant Darandale,  
Age: 45 years, Occ. Agril.  
R/o Shinganapur, Tq. Newada,  
Dist. Ahmednagar.
16. Shivaji Shankar Shete,  
Age: 54 years, Occ. Agril.,  
R/o Shinganapur, Tq. Newasa,  
Dist. Ahmednagar.
17. Dr. Raosaheb Sukhdev Bhankar,  
Age: 36 years, Occ. Agril.,  
R/o Shinganapur, Tq. Newasa,  
Dist. Ahmednagar.

18. Machindra Kondaji Shete,  
Age: 60 years, Occu.: Agril.,  
R/o Shinganapur, Tq. Newasa,  
Dist. Ahmednagar.

[R.Nos. 12 to 18 deleted as per  
Court order dated 4th August, 2010].

19. Maharashtra State Board of Wakfs,  
Through Chief Executive Officer,  
Panchakki, Aurangabad.

... **RESPONDENTS**

\*\*\*

Mr. V. D. Sapkal, Advocate for the Petitioner.

Mr. R. R. Mantri, Advocate h/f Mr. S. S. Kazi, Advocate for  
Respondent Nos.1 to 5.

Mr. S. D. Kotkar, Advocate for Respondent Nos. 6 to 11.

Mr. Y. B. Pathan, Advocate for Respondent No.19.

\*\*\*

## **CIVIL REVN. APPLN. NO.: 115 OF 2010**

\*\*\*

Syed Dadabhai Bansi,  
Age: 45 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
District: Ahmednagar.

... **PETITIONER**  
**[ORIG.DEFT.NO.1]**

### **VERSUS**

1. Syed Shaukat Maheboob,  
Age: 52 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
District: Ahmednagar.
2. Yakub Babamiya Syed,  
Age: 76 years, Occu. Nil,  
R/o as above.
3. Shaikh Saleem Tamboli,  
Age: 50 years, Occ. Agril.  
R/o as above.
4. Syed Rafiq Yakub  
Age: 50 years, Occ. Agril.  
R/o as above.

5. Firoz Hussain Pathan,  
Age: 40 years, Occ. Agril.,  
R/o as above.
6. Syed Shaukat Bansi,  
Age 58 Years. Occ. Agril.  
R/o Ward No.1, Gavare Nagar,  
Shrirampur, Tq. Shrirampur,  
Dist. Ahmednagar.
7. Smt. Shabirabi Bashir Syed,  
Age: 60 Years, Occ. Household,  
R/o Sonai, Tq. Newasa,  
Dist. Ahmednagar.
8. Smt. Rubabbee Iqbal Shaikh,  
Age: 60 years, Occ. Household,  
C/o Iqbal Fujjubhai Shaikh,  
R/o Deolali Pravara, Tq. Rahuri,  
Dist. Ahmednagar.
9. Zubaida Bansi Syed,  
Age: 56 years, Occ. Household,  
C/o Shamadbhai Babulal Shaikh,  
R/o Walki, Tq. Rahata,  
Dist. Ahmednagar.
10. Balasaheb Govind Mali,  
Age: 50 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
Dist. Ahmednagar.
11. Ramesh Govind Mali,  
Age: 48 years, Occu. Agril.,  
R/o as above.
12. Digambar Govind Mali,  
Age: 46 years, Occu. Agril.,  
R/o as above.
13. Mrs. Subhadrabai Govind Mali,  
Age: 69 years, Occu.: Household,  
R/o as above.

[Respdt.Nos.6 to 13 deleted as per  
Court's order dated 9th August, 2010].

14. Maharashtra State Board of Wakfs,  
Through Chief Executive Officer,  
Panchakki, Aurangabad.

... **RESPONDENTS**

**[NO.1 TO 5 ORI.PLTFFS.]**

**[NO.6 TO 14-ORI.DEFTS.**

**NOS.2 TO 10]**

\*\*\*

Mr. C. K. Shinde, Advocate for the Petitioners.  
Mr. S. S. Kazi, Advocate for Respondent Nos1 to 5.  
Mr. Y. B. Pathan, Advocate for Respondent No.14.

\*\*\*

## **CIVIL REVN. APPLN. NO.: 116 OF 2010**

\*\*\*

Syed Dadabhai Bansi,  
Age: 45 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
District: Ahmednagar.

... **PETITIONER**  
**[ORIG.DEFT.NO.1]**

### **VERSUS**

1. Syed Shaukat Maheboob,  
Age: 52 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
District: Ahmednagar.
2. Yakub Babamiya Syed,  
Age: 76 years, Occu. Nil,  
R/o as above.
3. Shaikh Saleem Tamboli,  
Age: 50 years, Occ. Agril.  
R/o as above.
4. Syed Rafiq Yakub  
Age: 50 years, Occ. Agril.  
R/o as above.
5. Firoz Hussain Pathan,  
Age: 40 years, Occ. Agril.,  
R/o as above.

6. Syed Shaukat Bansi,  
Age 58 Years. Occ. Agril.  
R/o Ward No.1, Gavare Nagar,  
Shrirampur, Tq. Shrirampur,  
Dist. Ahmednagar.
7. Smt. Shabirabi Bashir Syed,  
Age: 60 Years, Occ. Household,  
R/o Sonai, Tq. Newasa,  
Dist. Ahmednagar.
8. Smt. Rubabbee Iqbal Shaikh,  
Age: 60 years, Occ. Household,  
C/o Iqbal Fujjubhai Shaikh,  
R/o Deolali Pravara, Tq. Rahuri,  
Dist. Ahmednagar.
9. Zubaida Bansi Syed,  
Age: 56 years, Occ. Household,  
C/o Shamadbhai Babulal Shaikh,  
R/o Walki, Tq. Rahata,  
Dist. Ahmednagar.

[Respdt. Nos.6 to 9 & 11 deleted as per  
Court's order dated 9th August, 2010].

10. Maharashtra State Board of Wakfs,  
Through its Chief Executive Officer,  
Panchakki, Aurangabad.
11. The Secretary,  
Newasa Taluka Vikas Gramodyog Sangh,  
Tq. Newasa, Dist. Ahmednagar.

... **RESPONDENTS**  
**[NO.1 TO 5 ORIG.**  
**PLTFS. NO.6 TO 11**  
**ORIG.DEFTS.2 TO 7]**

\*\*\*

Mr. C. K. Shinde, Advocate for the Petitioners.  
Mr. S. S. Kazi, Advocate for Respondent Nos1 to 5.  
Mr. Y. B. Pathan, Advocate for Respondent No.14.

\*\*\*

**CIVIL REVN. APPLN. NO.: 117 OF 2010**

\*\*\*

Syed Dadabhai Bansi,  
Age: 45 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
District: Ahmednagar.

... **PETITIONER**  
**[ORIG.DEFT.NO.1]**

**VERSUS**

1. Syed Shaukat Maheboob,  
Age: 52 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
District: Ahmednagar.
2. Yakub Babamiya Syed,  
Age: 76 years, Occu. Nil,  
R/o as above.
3. Shaikh Saleem Tamboli,  
Age: 50 years, Occ. Agril.  
R/o as above.
4. Syed Rafiq Yakub  
Age: 50 years, Occ. Agril.  
R/o as above.
5. Firoz Hussain Pathan,  
Age: 40 years, Occ. Agril.,  
R/o as above.
6. Syed Shaukat Bansi,  
Age 58 Years. Occ. Agril.  
R/o Ward No.1, Gavare Nagar,  
Shrirampur, Tq. Shrirampur,  
Dist. Ahmednagar.
7. Smt. Shabirabi Bashir Syed,  
Age: 60 Years, Occ. Household,  
R/o Sonai, Tq. Newasa,  
Dist. Ahmednagar.
8. Smt. Rubabbee Iqbal Shaikh,  
Age: 60 years, Occ. Household,  
C/o Iqbal Fujjubhai Shaikh,  
R/o Deolali Pravara, Tq. Rahuri,  
Dist. Ahmednagar.

9. Zubaida Bansi Syed,  
Age: 56 years, Occ. Household,  
C/o Shamadbhai Babulal Shaikh,  
R/o Walki, Tq. Rahata,  
Dist. Ahmednagar.

10 Sattar Gafurbhai Shaikh,  
Age: Major, Occu.: Agril.,  
R/o Devgaon, Tq. Newasa,  
Dist. Ahmednagar.

[R.No.6 to 10 deleted as per Court's order  
dated 9th August, 2010].

11. Maharashtra State Board of Wakfs,  
Through its Chief Executive Officer,  
Panchakki, Aurangabad.

... **RESPONDENTS**  
**[NO.1 TO 5 ORIG.**  
**PLTFS. 6 TO 11 ORI.**  
**DEFTS.2 TO 7].**

\*\*\*

Mr. C. K. Shinde, Advocate for the Petitioners.  
Mr. S. S. Kazi, Advocate for Respondent Nos1 to 5.  
Mr. Y. B. Pathan, Advocate for Respondent No.11.

\*\*\*

## **CIVIL REVN. APPLN. NO.: 118 OF 2010**

\*\*\*

Vijay S/o Vitthal Vairagar,  
Age: 45 years, Occu. Agril.  
R/o Khedale Parmanand, Tq. Newasa,  
District Ahmednagar.

... **PETITIONER**

**[ORIG. DEFT. NO. 7]**

### **VERSUS**

1. Syed Shaukat Maheboob,  
Age: 52 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
District: Ahmednagar.

2. Yakub Babamiya Syed,  
Age: 76 years, Occu. Nil,  
R/o as above.
3. Shaikh Saleem Tamboli,  
Age: 50 years, Occ. Agril.  
R/o as above.
4. Syed Rafiq Yakub  
Age: 50 years, Occ. Agril.  
R/o as above.
5. Firoz Hussain Pathan,  
Age: 40 years, Occ. Agril.,  
R/o as above.
6. Syed Dadabhai Bansi,  
Age: 45 years, Occu.: Agril.,  
R/o Deogaon, Tq. Newasa,  
District: Ahmednagar.
7. Syed Shaukat Bansi,  
Age 58 Years. Occ. Agril.  
R/o Ward No.1, Gavare Nagar,  
Shrirampur, Tq. Shrirampur,  
Dist. Ahmednagar.
8. Smt. Shabirabi Bashir Syed,  
Age: 60 Years, Occ. Household,  
R/o Sonai, Tq. Newasa,  
Dist. Ahmednagar.
9. Smt. Rubabbee Iqbal Shaikh,  
Age: 60 years, Occ. Household,  
C/o Iqbal Fujjubhai Shaikh,  
R/o Deolali Pravara, Tq. Rahuri,  
Dist. Ahmednagar.
10. Zubaida Bansi Syed,  
Age: 56 years, Occ. Household,  
C/o Shamadbhai Babulal Shaikh,  
R/o Walki, Tq. Rahata,  
Dist. Ahmednagar.

11. Nanasaheb Popat Kedare,  
Age: Major, Occu. Agril.,  
R/o Khedale Parmanand, Tq. Newasa,  
Dist. Ahmednagar.

12. Namdeo Suryabhan Varude,  
Age: Major, Occu. Agril.,  
R/o Khupati, Tq. Newasa,  
Dist. Ahmednagar.

[Respondent Nos.6 to 12 are deleted as  
per court's order dated 9th August, 2010].

13. Maharashtra State Board of Wakfs,  
Through its Chief Executive Officer,  
Panchakki, Aurangabad.

... **RESPONDENTS**  
**[NO.1 TO 5 ORIG.**  
**PLTFS. 6 TO 13 ORI.**  
**DEFTS.1 TO 6,8 & 9].**

\*\*\*

Mr. C. K. Shinde, Advocate for the Petitioners.  
Mr. S. S. Kazi, Advocate for Respondent Nos1 to 5.  
Mr. Y. B. Pathan, Advocate for Respondent No.13.

\*\*\*

## **CIVIL REVN. APPLN. NO.: 119 OF 2010**

\*\*\*

Balkrishna S/o Suryabhan Varude,  
Age: 40 years, Occu. Agril.,  
R/o Khupati, Tq. Newasa,  
District: Ahmednagar.

... **PETITIONER**  
**[ORIG.DEFT.NO.6]**

### **VERSUS**

1. Syed Shaukat Maheboob,  
Age: 52 years, Occu. Agril.,  
R/o Sonai, Tq. Newasa,  
District: Ahmednagar.

2. Yakub Babamiya Syed,  
Age: 76 years, Occu. Nil,  
R/o as above.

3. Shaikh Saleem Tamboli,  
Age: 50 years, Occ. Agril.  
R/o as above.
  4. Syed Rafiq Yakub  
Age: 50 years, Occ. Agril.  
R/o as above.
  5. Syed Dadabhai Bansi,  
Age: 45 years, Occu. Agri.,  
R/o Sonai, Tq. Newasa,  
Dist. Ahmednagar.
  6. Syed Shaukat Bansi,  
Age 58 Years. Occ. Agril.  
R/o Ward No.1, Gavare Nagar,  
Shrirampur, Tq. Shrirampur,  
Dist. Ahmednagar.
  7. Smt. Shabirabi Bashir Syed,  
Age: 60 Years, Occ. Household,  
R/o Sonai, Tq. Newasa,  
Dist. Ahmednagar.
  8. Smt. Rubabbee Iqbal Shaikh,  
Age: 60 years, Occ. Household,  
C/o Iqbal Fujjubhai Shaikh,  
R/o Deolali Pravara, Tq. Rahuri,  
Dist. Ahmednagar.
  9. Zubaida Bansi Syed,  
Age: 56 years, Occ. Household,  
C/o Shamadbhai Babulal Shaikh,  
R/o Walki, Tq. Rahata,  
Dist. Ahmednagar.
- [Respondent Nos. 6 to 9 are deleted  
as per Court's order dated  
9th August, 2010].
10. Maharashtra State Board of Wakfs,  
Through its Chief Executive Officer,  
Panchakki, Aurangabad.

... **RESPONDENTS**  
**[NO.1 TO 4 ORIG.**  
**PLTFS. 5 TO 10 ORI.**  
**DEFTS.2 TO 5 & 7].**

@@@

Mr. C. K. Shinde, Advocate for the Petitioners.  
Mr. S. S. Kazi, Advocate for Respondent Nos1 to 4.  
Mr. S. D. Kotkar, Advocate for Respondent No.5.  
Mr. Y. B. Pathan, Advocate for Respondent No.10.

\*\*\*

**CORAM:- T. V. NALAWADE, J.**  
**DATED:- 14th DECEMBER, 2015.**

**JUDGMENT:**

1. In all the Revisions, the decision given by the Wakf Tribunal, Aurangabad on preliminary issue of jurisdiction framed by the Wakf Tribunal is challenged. The applications were moved in the suits under section 9A of Civil Procedure Code (Maharashtra Amendment) and on that basis issue was framed like, "*whether the Wakf Tribunal has jurisdiction to try and decide the suit*". Both the sides are heard.

2. The suits are filed by some of the Respondents of the Revision Proceedings and they are in respect of different portions of land Survey No.12 from village Sonai, Tahsil Newasa, District Ahmednagar. The total area of this land was 22 Acres 39 Gunthas. During implementation of the scheme of consolidation under the provisions of Prevention

of Fragmentation and Consolidation of Holdings Act, this property was given Gat No.2141. As different portions were sold by some of the Respondents, Pot Hissas were prepared and suits are filed in respect of these separate Pot Hissas.

3. It is the case of the plaintiffs that the aforesaid property belongs to a *Masjid* and the *Masjid* has been in existence since time immemorial. It is contended that to the portion on which the structure of *Masjid* is standing, a separate number is given as House No.181 in village Panchayat record of Sonai. It is contended that the aforesaid land is *Service Inam* land and it is dedicated for the services of the *Masjid*.

4. It is the case of plaintiffs that the land was in the possession of the predecessor in title of person like Bansi Mohammad as Inamdar and he was holding the property for rendering the services to the *Masjid*. It is contended that, to grab the property, these persons did some illegal acts and they created some record. It is the case of plaintiffs that the *Masjid* and the land were recorded under the provisions of Bombay Public Trust Act in the office of Charity Commissioner on 16<sup>th</sup> October, 1959. It is

contended that when the property was Wakf property and it was also registered under the Bombay Public Trust Act, the property was given in possession of different persons by the successors of original *Inamdar* and then some proceedings were stated even under the Tenancy Act. It is contended that by using the decisions given in such tenancy proceedings and revenue proceedings the successors of *Inamdar* like defendant Nos.1 to 5 of Wat Suit No.71 of 2004 started representing that the land was their private property. It is contended that these defendants then transferred different portions of the property to the other defendants of the suits. In the suits, the plaintiffs have contended that they are interested in the *Wakf* and so they are entitled to file the suits. They have claimed for reliefs of declaration that Survey No.12 (entire Gat No.2141) is *Wakf* property and it belongs to the *Masjid*. They have also prayed for declaration that various transactions made in favour of defendants by the successors of original *Inamdar*, which are of the year 2003, 2004 etc. are null and void. They have prayed for declaration that the orders made by Tahsildar under revenue jurisdiction and also tenancy jurisdiction are null

and void and they cannot be recognized in law as it is *Wakf* property. Relief of restoring possession of the land is also claimed, though it is contended that possession needs to be given to the plaintiffs. The possession can be given to *Mutawali* or to *Wakf* Board.

5. The objection to the jurisdiction was initially rejected by *Wakf* Tribunal on 21<sup>st</sup> August, 2006. Revisions were filed in the year 2006 and this Court remanded the matters in the year 2010. The Tribunal then framed preliminary issue and the matter is again decided by the Tribunal against the present petitioners, some of the original defendants.

6. The learned counsels for petitioners took this Court through various provisions like provisions of sections 6, 7, 40, 83 and 85 of *Wakf* Act, 1995 (hereinafter referred to as the Act). Submissions was made that in the list of *Wakf* properties published by the State Government in the year 2004 this property was not shown as *Wakf* property and so the *Wakf* Tribunal has no jurisdiction to decide the dispute of aforesaid nature. It was submitted that in view of the provisions of Sections 6 and 7 of the Act suit could have been filed as provided in those provisions only if the property was shown in the list of *Wakfs*. It was also

submitted that no inquiry which was possible under section 40 of the Act was made by the *Wakf* Board and so the Tribunal cannot consider the dispute as the Court of original jurisdiction.

7. This Court has carefully gone through the provisions of the Act and particularly those chapters in which the procedure is given. In Chapter II the procedure for survey of *Wakfs* is given. The provisions of Section 6 and Section 7 of the Act show that if after publication of the list, dispute arises as to whether, a particular property specified as *Wakf* property in the list is *Wakf* property or not, then the Board of *Mutawalli* or any person aggrieved or “*person interested in the Wakf*” may institute a suit in Tribunal for the decision of the question and such suit needs to be filed within one year from the date of publication of the list. The provision of section 7 of the Act shows that if after commencing of the Act, any question or dispute arises about the particular property's nature viz. it is *Wakf* property or not when it is published in the list of *Wakf* properties, *the Board or Mutawalli of the Wakf or any person aggrieved by the publication* can make application to Tribunal for decision of the question and such application

needs to be made within one year. These two provisions show that they relate to the surveys method, initial and subsequent and when there is a dispute in respect of the property which is shown in the list as *Wakf* property.

8. The provision of section 36 of the Act shows that every *Wakf*, whether created before or after commencement of the Act, needs to be registered at the office of the Board and it is the duty of the *Mutawalli* to apply for such registration. The provision of section 40 of the Act shows that even when no application is made for registration of *Wakf*, the Board may itself collect information and decide as to whether the property is *Wakf* property or not. The decision taken by the Board under sections 36 and 40 can be challenged before the *Wakf* Tribunal. Rules are made by the State Government in that regard about the nature of proceeding which can be filed to challenge such orders. Thus, provision of Chapter V of the Act show that if there are some properties which are not considered during first survey or subsequent surveys, inquiry into the nature of those properties can be made under this Chapter and those properties also can be registered as *Wakf* Properties. The provision of section 43

of Chapter V of the Act is *non-obstante* clause and it runs as under:

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

9. The aforesaid provision shows that there is no need of registration of the property again under the provisions like Sections 6, 7, 36 and 40 of the Act. This provision needs to be interpreted in such a way that it is possible to infer that in such cases there is no need of fresh inquiry to ascertain the nature of the property. Thus, the registration of a property under *Wakf* Act and following the aforesaid procedure is not necessary when there is deemed registration to the *Wakf*, Trust already registered under the provisions of Acts like *Wakf* Act, 1954 or *Bombay Public Trust* Act. In the present matter, there is record to show

that the property in dispute was registered under the provisions of Bombay Public Trust Act in year 1959. A copy of the extract from the Register maintained under Bombay Public Trust Act is produced and it shows that in the year 1959 property Survey No.12 of Sonai village was shown as the property of the aforesaid *Masjid*. Further, House Property No.181 situated within the limits of village was also shown as the property of the *Masjid*. The initial *Inamdar* was shown as one Shri Syed Banshi Mohammad residing at Sonai and after him the name of Syed Dadabhai Banshi *Inamdar* was entered as the *Inamdar*. The management, sweeping, laying of *Masjid*, *Azan* and *Namaz*, repair of *Masjid* and make other all necessary arrangements for *Masjid* was with the *Inamdar*. This entry was made on 16<sup>th</sup> October, 1959. This entry was never challenged and this entry shows that Syed Banshi *Inamdar* had registered the Wakf under Bombay Public Trust Act and he had shown himself as *Inamdar* with aforesaid conditions of *Inam*. It can be said that he was *Mutawalli*.

10. There is record of aforesaid nature in support of the pleadings in the complaints. The record was created by *Inamdar* himself in the year 1959 and then successors

made transactions in the year 2003 and 2004 which are under challenge. The aforesaid provisions show that after survey when registration is made and after inquiry made under section 36 and 40 of the Act when registration is made of the property, the matter goes before the Tribunal when there is challenge to the registration. From that, it cannot be said that if the property was not shown in the register, the Tribunal does not get the jurisdiction. This is not the only way or the reason to approach the Tribunal. Provision of section 43 shows that there is a deemed registration of the property which is already registered as the property of religious institution like *Masjid* under Bombay Public Trust Act. When some dispute is created in respect of such property, such dispute also can be taken to the Tribunal. In that regard, the provisions of Section 83 (1) and 85 of the Act need to be seen. They are as follows:

***“83. Constitution of Tribunal 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 Waqf or Waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of***

*such property, under this Act and define the local limits and jurisdiction of such Tribunals.*

... ..

**85. Bar of jurisdiction of Civil Court, revenue Court and any other authority]. - No suit or other legal proceeding shall lie in any Civil Court, revenue Court and any other authority in respect of any dispute, question or other matter relating to any Waqf, Waqf property or other matter which is required by or under this Act to be determined by a Tribunal."**

11. Aforesaid two provisions show that whenever any dispute arises, not necessarily due to the survey done or the orders made under section 36 or 40 of the Act, but when the dispute is relating to *Wakf* or *Wakf* property, the Tribunal has jurisdiction to decide such dispute. Section 85 of the Act shows that when a matter which is required to be determined by the Tribunal under this Act, the matter needs to be taken before the *Wakf* Tribunal and Civil Court has no jurisdiction in that regard. These provisions are considered by the Tribunal.

12. The learned counsel for the Petitioners placed reliance on some reported cases on aforesaid points. The

main case on which reliance was placed is reported as **AIR 2010 S.C. 2897(1) (Ramesh Gobindram (deceased by LRs. Vs. Sugra Humayun Mirza Wakf)**. The learned counsel took this Court through few paras of the judgment like para Nos.13 to 18 and then para No.21. The facts of the reported case show that it was a dispute between tenant and landlord. The tenants had challenged jurisdiction of *Wakf* Tribunal by contending that the subject matter which was a dispute between the tenant and landlord is not covered by the Act. The Apex Court held that - *"the Civil Court has no jurisdiction in relation to matters which are specifically filed under section 6 and 7 of the Act and also the matters which are filed under section 85 of the Act. However, section 85 does not exclude the jurisdiction of Civil Court when the dispute is not of nature covered by the Act though the property involved is Wakf Property.* This case was considered by the Apex Court in subsequently decided case, reported as **(2010) 12 SCALE 323 (Board of Wakf, West Bengal V/s Anis Fatma Begum and another)**. The relevant paras are para Nos.18 to 22, which are as under:

*"18. It is well-settled that when there is a*

*special law providing for a special forum, then recourse cannot be taken to the general law vide Justice G. P. Shingh's Principles of Statutory Interpretation (9th Edn. 2004, pp 133-134).*

19. *In Chief Engineer, Hydel Project and Ors. V. Ravinder Nath and Ors., (2008) 2 SCC 350, this Court held that when the matter fell in the area covered by the Industrial Disputes Act, the Civil Court would have no jurisdiction. In the above decision the Court has referred to several earlier decisions on this point.*

20. *In view of the above, we are of the opinion that since the matter fell under the purview of the Wakf Act, only the Wakf Tribunal has jurisdiction in the matter, and not the Civil Court.*

21. *However, in view of the decision of this Court in Sardar Khan V. Syed Najmul Hasan (Seth) and Ors., AIR 2007 SC 1447, the Wakf Act will not be applicable to suits/ appeals/ revisions/ proceedings commenced prior to 1.1.1996 when the Wakf Act came into force.*

22. *Learned counsel for the respondent, however, relied on the decision of this Court in Ramesh Gobindram V. Sugra Humayun Mirza Wakf (2010) 8 SCALE 698. In the aforesaid decision it was held that eviction proceedings can only be decided by the Civil Court and not by the Wakf Tribunal."*

13. The observations made by Honourable Apex Court

show that what is important is subject matter of the dispute. In the present proceeding there is dispute regarding the nature of property. There is record of aforesaid nature and due to some transactions made, the relief of declaration that the property is *Wakf* property is claimed and other reliefs are also claimed. It cannot be said in the present matter that the subject matter of the suits is not covered by the Act.

14. Reliance was placed by the learned counsel for petitioners on another case reported as ***AIR 2002 SC 402 [Tamil Nandu Wakf Board V/s Hathija Ammal (Dead) By L.Rs. etc. etc.]***. The facts of the reported case were altogether different. There was no registration of the property under any Act and there was no question of use of provision of section 43 of the Act. There was some transaction made by the heirs of Dedicator himself and there was the claim of ownership by adverse possession by the purchaser. The other facts were that there was no inquiry made as provided in section 27 (old Act) similar to section 40 of the Act and straightway the suit was filed. Thus, facts were different. In the present matters, there was registration under the Trust Act way back, in the year

1959 and there is record that the property was in possession of *Inamdar* and his successors till the dates of the transactions under challenge.

15. Reliance was placed by learned counsel for the Petitioners on the case reported as **2009 (1) Bom.C.R. 498 (Abdul Kadar @ babbu Tailor Ismail & Ors. V/s Masjid Juma Darwaja )**. It was also eviction suit and in view of the nature of the subject matter of the suit the observations were made that the Civil Court had the jurisdiction. Thus, facts were different. It needs to be kept in mind that after the amendment of the Act made in the year 2013 a definition is made available for “*encroacher*” in section 3 (ee). Thus, after termination of tenancy, lease or license, after the amendment of the year 2013 those matters also fall under Section 54 of the Act. Section 83 (1) now covers matters of eviction of tenant also.

16. Learned counsel for Respondents, original plaintiffs placed reliance on a case reported as **(2010) 12 SCALE 323 (Board of Wakf, West Bengal V/s Anis Fatma Begum and another)** (*cited supra*), on another point. The Apex Court has interpreted the words “*any dispute*” used in section 83 of the Act and the observations are at

para Nos.14 and 16, as under:

*“14. 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.*

*15. ... ..*

*16. 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."*

17. Thus, the Apex Court has clarified more the jurisdiction of Wakf Tribunal and it is laid down that it is not necessary that unless and until there is some order made by Wakf Board a party cannot approach the Tribunal. It cannot be disputed that in view of the scheme of the Act the Tribunal has original jurisdiction and also Appellate jurisdiction. Under the scheme, applications can be filed, as already mentioned, under section 7 of the Act and other provisions, appeals can be filed against the orders made under section 40 etc. as provided in the Rules framed by the State Government under the Act and suits of the present nature can also be filed. On this point, one case is decided by Apex Court like ***Special Leave Petition (Civil) No.10947 of 2012 dated 21<sup>st</sup> November, 2013 (AIR 2014 SC 501 Haryana Wakf Board V/s Maheshkumar)***. In this case the Apex Court has

specifically laid down that in view of provisions of sections 7 (5) and 85 of the Act suit can be filed when there is dispute regarding the nature of the property shown in the list, whether the suit property is *Wakf* property or not, if the Tribunal is available and the suit is already not filed in Civil Court. It was a suit filed for recovery of possession by *Wakf* Board. In view of this position of law, the submission made by the learned counsels for present Petitioners that the relief of declaration and possession cannot be given by *Wakf* Tribunal is not acceptable.

18. The learned counsel for the Petitioners submitted that the decisions given by Revenue Authority or Tenancy Court under Land Revenue Code or Tenancy Act cannot be declared as null and void by the Tribunal. The relevant provisions of the Act are already discussed and they show that for making inquiry regarding nature of suit property there is separate legislation like the Act and there is statutory authority. In view of these circumstances, if any decision is given by the authority like Revenue Authority or Tenancy Court, it is open to the Tribunal to ascertain as to whether such decision could have been given in view of the provisions of those Acts and the provision of the *Wakf*

Act. The law is well settled on this point also but this Court is avoiding to express more on this point as there is possibility that the Tribunal may get influenced. Thus, there is no force in the objection taken to the jurisdiction of the Tribunal by the present petitioners.

19. It appears that one more point was argued for the Petitioners before the Tribunal and that was about the payment of Court fee. It was submitted that the provisions of the Bombay Court Fee Act are applicable and the Court fee ought to have been paid in respect of the reliefs as per the provisions of Bombay Court Fee Act. In Civil Revision Application No.63 of 2008 decided by this Court on 16<sup>th</sup> June, 2015 this point is already dealt with and the point is no more *rest integra*. It is held that the *Wakf* Tribunal is created under Special Enactment and the provisions of that Act are applicable and unless and until the State Government makes some legislation, the Court fee will not be payable on such proceedings as provided under the Bombay Court Fee Act. There is no need to discuss this point more in view of the circumstance that this point is already decided by this Court.

20. Before parting with the judgment it needs to be

mentioned that the so called successors of *Mutawalli* have collected huge amounts by selling the property of the *Masjid* to the present petitioners. The suits were filed in the year 2004 and till today the Tribunal could not make any progress due to the proceedings like the present one, filed by the petitioners, original defendants. It is unfortunate that the proceedings involving such small point remained pending in this Court for around five years.

21. In the result all the civil revision applications are dismissed.

22, The learned counsels for Petitioners requested for continuation of interim relief, stay to the proceedings pending before Tribunal for some period as they want to challenge the decision of this Court. The stay is refused as already by misusing the process of law, the petitioners have protracted the decisions of the suits for more than eleven years.

**[T. V. NALAWADE, J. ]**

Dated:14/12/2015.  
ans/113