

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

CIVIL REVISION APPLICATION NO. 172 OF 2011

1. Bhaskarrao s/o Bapurao Patil
Khatgaonkar, Age : 66 Yrs.,
Occ. Agril., R/o : Rajendra
Nagar, Nanded, Tq. &
Dist. : Nanded.
2. Nitin s/o Premraj Agale
Age : 38 Yrs., Occ. Agri.
& Business, R/o : Vazirabad,
Nanded.
3. Sow. Parwatibai w/o Marotirao Karlekar
Age : 52 Yrs., Occ. Agril.,
R/o : Rajendra Nagar,
Nanded
4. Ganpatrao Jiiwantrao Munde
Age : 63 Yrs., Occ. Agril.,
R/o : Anand Nagar, **APPLICANTS/**
Nanded. **[ORI. PLAINTIFFS]**

V E R S U S

1. The Maharashtra State Board of Wakfs,
Panchakki, Aurangabad

Through its Chief Executive **RESPONDENT/**
Officer, Aurangabad. **[ORI.DEFENDANT]**

2. Jama Masjid, Wajegaon,
Nanded Thr. its President
Abdul Gafoor Mohammad Osman
Age : 48 Yrs., Occ. Business,
R/o : Wajegaon, Tq. & Dist.
Nanded. **RESPONDENT**

.....

Mr. P.M.Shah, Senior Counsel,
Mr. A.B.Dhongade & Mr. M.S.Kulkarni,
Advocates h/f Mr. S.P.Shah, Advocate
for Applicants.
Mr. S.S.Kazi, Advocate for R – 2.

.....

CORAM : T.V.NALAWADE, J.

DATE OF JUDGMENT : 20/07/2016

JUDGMENT :

1. The proceeding is filed against the Judgment and Order of Wakf Suit No. 84/2008 which was pending before the Wakfs Tribunal, Aurangabad. The Suit filed by present applicants for relief of declaration that suit

property is not wakf property with relief of cancellation of entry No. 75 in part 'C' in Gazette and for relief of permanent injunction, is dismissed by the Wakfs Tribunal. Heard Mr. P.M.Shah, learned Senior Counsel for the applicants and Mr. S.S.Kazi, learned counsel for newly added respondent No. 2 - intervener. Surprisingly, nobody turned up for Wakf Board.

2. In short, the facts leading to the institution of the proceeding can be stated as follows.

The Suit was filed in respect of land S.No. 8 admeasuring 23 Acres 1 guntha situated at village Wajegaon, Tahsil and district Nanded. It is the case of the plaintiffs that the suit property was initially with one Mohd. Moinuddin as Inamdar and Inam was given by Nizam of Hyderabad State in 1296 Fasli [1887 A.D.]. It is contended that the land was given to Inamdar for rendering services to Masjid, but it was Madatmash grant. It is contended that the successors of Mohd. Moinuddin were Inamdars when the provisions of Hyderabad Inam and Cash Grants Abolition Act, 1954 came into force.

3. It is the case of the plaintiffs that as Inam

was Madatmash, it was abolished and occupancy rights were conferred on one Kishanlal s/o Parshuram Gawli, who was in possession of the suit property on the relevant date i.e. 01/07/1960. It is the case of the plaintiffs that the provisions of Wakf Act, 1954 were applicable to this area, but on 01/01/1955 service inam lands were not included in the definition of 'wakf' given in Wakf Act, 1954 and so the inam was abolished. It is the case of the plaintiffs that first time such inams were included in the definition of 'wakf' in the year 1964 due to the amendment made to aforesaid Wakf Act, but this amendment can not be given retrospective effect. It is contended that in the year 1954, Mashrut-Ul-Khidmat or Madatmash lands were not included in the definition of 'wakf' and so the benefit of amended provision can not be taken by the Wakf Board.

4. It is the case of the plaintiffs that the property was notified as wakf property under the provisions of Wakf Act, 1954 in Govt. Gazette which was published in the year 1974, but in the said notification also, relevant portions of Gazette containing necessary information regarding 'muntakhab' was not filled as

'muntakhab', was not available. It is contended that this notification is not binding on the plaintiffs as they came in picture only after purchasing the property from aforesaid Kishanlal Gawali in the year 2001-2002.

5. It is the case of the plaintiffs that aforesaid Kishanlal Gawali got occupancy rights under Inam Abolition Act prior to the year 1960 and in the year 1969, Collector granted him permission to alienate the land subject to payment of necessary charges to the Govt. It is contended that Kishanlal Gawali had deposited amount for getting occupancy rights and then condition imposed in respect of alienation was also removed. It is contended that Kishanlal Gawali then got converted the suit property to non agriculture on 12/04/1993.

6. It is the case of plaintiffs that under the sale deed dated 20/11/2001, the successors of Kishanlal Gawali sold 19 Acres portion of suit land to plaintiff Nos. 1 to 3 and to the husband of plaintiff No. 3 and possession of this portion was given to the plaintiffs. It is contended that portion of 77 R. was purchased by the plaintiffs from one Gangaram s/o Chotulal Bhatawale and

the said sale deed was in the name of plaintiff No. 1. It is contended that under different sale deeds, 60 R. portion was sold to plaintiff No. 2 and 25 R. portion was sold to plaintiff No. 4 by said Gangaram Bhatawale in 2002 and so entire area of land S.No. 8 is with the plaintiffs as owner.

7. It is the case of the plaintiffs that they have obtained approval to lay-out plan prepared by them in respect of the suit property and they intend to sell the plots prepared by them. It is contended that when they gave advertisement for the sale of plots, objection was taken by the Wakf Board and the objection was published in the news-paper dated 15/12/2007 by the Wakf Board. It is contended that as Wakf Board has informed to the public in the objection published in news-paper that it is wakf property, it has become necessary for the plaintiffs to challenge the notification made in the Govt. Gazette in the year 1974 and cause of action took place for Suit when the objection was taken by the Wakf Board. It is contended that notice of 60 days was given to the Wakf Board by the plaintiffs before filing of the Suit.

8. It appears that R.C.S.No. 114/2008 was filed by the plaintiffs in the Civil Court. It is their case that they withdrew this Suit after taking permission of the Court and then they filed the Suit before the Wakf Tribunal, but with the same cause of action dated 15/12/2007, the date on which objection was published by the Wakf Board.

9. Wakf Board filed Written Statement and contested the matter by making following contentions.

[i] Suit property is service inam land and it was dedicated for the benefit of Masjid, for rendering services to Masjid. It is contended that to that extent, plaintiffs have also made similar contention and this contention of the plaintiffs is admitted by the Wakf Board.

[ii] Suit property is inam land and as it was dedicated for rendering services to religious institution, Masjid, the provisions of Hyderabad Inam Abolition Act, 1954 were not applicable to the suit land.

[iii] There is no record to give particulars of nature of inam viz. 'Muntakhab' with the

plaintiffs and at no time finding was given by competent authority that it was not given for rendering services to the religious institution, Masjid. At the time of abolition of Inam, no notice was given to the Wakf Board or the Committee which was managing the Masjid and so abolition, if any, made is not binding on Wakf Board.

- [iv] There is no record like order made by the competent authority to abolish the inam and the plaintiffs are relying only on some record like mutation and the payment of amount made for getting occupancy rights.
- [v] Even under the provisions of Wakf Act, 1954, the suit property was wakf property and the contention that only after the amendment made to the Wakf Act in 1964, the property could have been treated as 'wakf', is not correct.
- [vi] There is no record with the plaintiffs to show that Kishanlal Gawali was tenant or occupant as required under the relevant provisions of the Inam Abolition Act for giving him occupancy rights.
- [vii] As the Inam could not have been abolished and occupancy rights could not have been

given to Kishanlal Gawali, no title passed to Kishanlal Gawali and so under the sale deeds executed in favour of the plaintiffs, no title is passed to them. Similarly, aforesaid Gangaram Bhatwale was not owner of any portion of suit property and no title has passed under sale deeds executed by him in favour of the plaintiffs.

[viii] The order of grant of permission made by the Collector to alienate the property in favour of Kishanlal Gawali and the subsequent order of converting agricultural land to non agriculture is only consequential order and when no occupancy rights could have been given to Kishanlal Gawali, not much could have been made due to these 2 orders made subsequently in favour of Kishanlal Gawali.

[ix] The suit property was notified in Govt. Gazette as wakf property in 1974 and this notification was not challenged in time by Kishanlal Gawali. There was dispute pending between Kishanlal Gawali and Inamdars and the authority had expressed in the dispute that the civil Court can decide such dispute.

[x] As the property was notified in Govt. Gazette as 'wakf' in the year 1974, Suit ought to

have been filed by Kishanlal Gawali before 1977 and as the Suit was not filed within the prescribed period of limitation, the notification is conclusive to decide the nature of the suit property.

[xi] The value of the suit property was more than ₹ 2 Crores but in the Suit, plaintiffs have avoided to mention the value of the property as they want to grab the property of Masjid.

10. Issues were framed on the basis of aforesaid pleadings. Both sides gave evidence. Wakf Tribunal has held that suit property is wakf property and no title was there with Kishanlal Gawali and under sale deeds executed by successors of Kishanlal Gawali, no ownership or interest has passed in favour of the plaintiffs. The Tribunal has held that the Suit ought to have been filed within limitation i.e. within 3 years from the date of cause of action.

11. The submissions made and the reasons given show that 'Muntakhab' is not available. So also, no complete record of any enquiry made under the provisions of Hyderabad Atiyat Enquiry Act, 1952 is

available. In view of these circumstances, Wakf Tribunal has decided the matter on the basis of the pleadings, oral evidence and other record like revenue record.

12. In the plaint, at least at 2 places, nature of Inam is described by the plaintiffs. The plaint para No. 1 is as under.

*“ That, Survey No. 8 adm. 23 Acres
1 guntha situated at village Wajegaon,
Tq. and Dist. Nanded was granted as
Madatmash by the Rular of Ex-
Hyderabad State towards the
remuneration for the performance of
service to Masjid of village Wajegaon,
Tq. and Dist. Nanded .”*

In plaint para No. 2, it is contended by the plaintiffs that the suit property was given as Madatmash grant for rendering services to Masjid in the year 1296 Fasli.

13. One Nitin s/o Premraj Agale, a person holding general power of attorney given by the plaintiffs is examined by the plaintiffs for them at Exh. 42. Nitin has given evidence as per the aforesaid pleadings

including the pleadings from plaint para Nos. 1 and 2.

14. The aforesaid pleadings from plaint and the substantive evidence of Nitin is treated as admission for relevant point by Wakf Tribunal. It is held that this admission itself is sufficient to infer that the suit property was given for the benefit of Masjid for rendering services to Masjid and so the dedication by muslim Rular was for religious purpose and so it is a 'wakf'.

15. Learned Senior Counsel for the applicants took this Court through a copy of extract from Inam Register and submitted that this is the main document to ascertain the nature of Inam. This document at Exh. 33 shows that 2 persons viz. Mohd. Ismail and Pyaresaheb, sons of Munnumiyan, were shown as Inamdars of 60 Bigha land situated at village Wajegaon, district Nanded. This document shows that the grant was given on 02/02/1296 Fasli. The successors of these 2 persons are alive and they had started proceedings under Atiyat Enquiry Act against Kishanlal Gawali in the year 1986. In view of these circumstances, it can be said that Exh. 33 is not the only record available and it was created recently,

though may be before 1950. Copies of 2 proceedings filed by the successors by 2 Inamdars are at Exhs. 39 and 50.

16. 7/12 extract at Exh. 36 shows that one Moinuddin Pyaresaheb, the applicant from Atiyat proceeding produced (at Exh. 50) was shown as occupant, Inamdar. This 7/12 extract is for the year starting from 1960-1961.

17. There is record like Pik Pahani Patrak, crop enquiry register and that was kept from prior to the year 1954. Such record is not produced by the plaintiffs to show that Kishanlal Gawali was tenant or he could have been treated as person in possession on the relevant date. The plaintiffs are relying only on the orders made by Atiyat Enquiry authority which are at Exhs. 39 and 50 in that regard.

18. Learned Senior Counsel for the applicants submitted that the definition of 'wakf' given in Section 3 (l) of the Wakf Act, 1954 does not show that Mashrut-Ul-Khidmat or Madatmash lands were included in the

definition of 'wakf'. He submitted that such Inams, grants came to be included first time in the definition of Wakf Act in the year 1964. He submitted that as in Exh. 33, the grant is described as Madatmash, the property could not have been treated as 'wakf'. As there is admission that for rendering services to religious institution, Masjid, the property was given to Inamdar, let us see whether in the definition of 'wakf' given in the Wakf Act, 1954, before the year 1964, this property was treated as 'wakf'. Section 3 (l) of Wakf Act, 1954 runs as under.

“ 3 (l) 'wakf' means the permanent dedication by a person professing Islam or any other person of any moveable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes -

(i) a wakf 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, muafies, khairati, qazi services, madatmash for any purpose

*recognized by the Muslim law as pious,
religious or charitable; and*

(iii) a wakf-al-alaulad ”.

19. The aforesaid definition needs to be read and interpreted with due regard to the scheme of the Act of 1954. The definition shows that if the property is dedicated by muslim for rendering services to religious institution like Masjid and the property is given to Inamdar, Inamdar can not claim that the property was given to him for his own benefit. The name of Inam like 'Madatmash' will not make difference in such a case. If there is such kind of grant and the Inamdar fails to render services to the religious institution, the grant can be resumed. In such a case, Inamdar may collect income from the property and utilise it as per Muslim law but the property is required to be kept intact to see that for all the time to come there is somebody to render services to Masjid by using income of such property.

20. On the aforesaid point, learned counsel for the respondent – intervener placed reliance on the observations made by the Apex Court in the case reported

as AIR 1998 Supreme Court – 972 [Sayyed Ali & Ors. Vs. A.P. Wakf Board, Hyderabad & Ors.]. The facts of this case show that the property was notified as 'wakf' in Govt. Gazette dated 30/11/1961 before the amendment to Wakf Act made in the year 1964. The relevant observations for the present purpose can be found in para Nos. 7 and 14 and they are as under.

“7. Ex. B-3 shows that an enquiry was conducted wherein it was found that the inam which was classified as Devadavam was granted for the support of Dargah of Visakhapatnam and was free of tax. The enquiry further revealed that the services were being performed by the legal representatives of three ancestors whose names were noted and appear the words Dargah as Ansar Saheb, Madina Saheb and Mohammed Saheb. The inam was confirmed and title deed No. 42 was issued. Further, column 8 of the Inam Fair Register indicates that the inam was granted for support of Dargah, Visakhapatnam. Column 10 shows that the grant was to continue so long as the service is performed.

These entries in the Inam Fair Register establish the ingredients of Wakfs as defined under Section 3 (1) of the Act. For the purposes of that definition, it is not necessary that dedication should be in favour of Dargah. It is sufficient if the dedication is made for the purpose recognized by the Muslim Law as pious, religious or charitable. Thus, we are of opinion that grants by way of service inams for the purposes recognized by the Muslim Law as pious, religious or charitable would clothe the property with the character of "Wakf". We, therefore, find that the view taken by the High Court that disputed property is Wakf as defined in Section 3 (1) of the Wakf Act is correct in law and the same does not suffer from any legal infirmity. "

"14. Lastly, it was contended by the learned counsel for the appellant that once patta, under the Inams Act, having been granted in favour of Mokhasadar, it was not open to the High Court to hold that the property was a Wakf property. In other words, the argument seems to proceed on the basis that once patta has been granted

under the Inams Act to Mokhasadars, the land has ceased to be a Wakf property. It may be stated that a Wakf is a permanent dedication of property for purposes recognized by Muslim Law as pious, religious or charitable and the property having been found as Wakf would always retain its character as a Wakf. In other words, once a Wakf always a Wakf and the grant of patta in favour of Mokhasadar under the Inams Act does not, in any manner, nulify the earlier dedication made of the property constituting the same as Wakf. After a Wakf has been created, it continues to be so far all time to come and further continues to be governed by the provisions of the Wakf Act and a grant of patta in favour of Mokhasadar does not affect the original character of the Wakf property. We accordingly find no substance in the last argument of learned counsel for the appellant. ”

21. There are more observations made by the Apex Court in the case reported as (1998) 2 - SCC - 642. [Sayyed Ali & Ors. Vs. A.P.Wakf Board, Hyderabad & Ors]. In this case, the Apex Court has referred and used

the observations made by Andhra Pradesh High Court in the case reported as [1978] 2 A.P. L.J. - 399 [R.Doraswamy Reddy Vs. Board of Wakfs']. The observations are as under.

“ It is true that the land was granted to an individual to perform service. But it does not mean that he acquires title to that property. Similarly, if the land can be resumed for non-performance of service and can be regranted to another person for rendering service, it does not mean that the original grantor continues to be the owner of the property. When once the wakf was created it continues to be a wakf. When the inam is resumed and regranted it does not mean that there is revocation of the service. It only means that the wakf property is entrusted to another individual to perform the service. ”

22. Learned Senior Counsel for the applicants placed reliance on one case reported as 1966 Mh.L.J. - 55 [Shaikh Omar Shaikhilal Vs. Mohammadji Madarji]. The facts of this reported case were totally

different. Further, when there is law laid down by the Apex Court in the aforesaid cases, the observations made by this Court in the case cited by the learned Senior Counsel for the applicants can not be used.

23. In the present matter, it is admitted by the plaintiffs that the property was given by muslim Rular and it was given for rendering services to Masjid. This admission can not be ignored at any time. The ingredients of definition given in Wakf Act, 1954 are satisfied due to this admission. Further there is revenue record in which the property was shown as inam property and aforesaid persons were shown as Inamdars. On this point, reliance can be placed on the case reported as 2010 (5) Mh.L.J. - 642 [S.R.Srinivasa & Ors. Vs. S.Padmavathamma]. In this case, it is observed by this Court that true and clear admission would provide the best proof of facts admitted. Such admission may proved to be decisive unless successfully withdrawn or proved to be erroneous. In view of the nature of admission and the law with regard to the admission and aforesaid circumstances, the Tribunal has rightly used the admission for ascertaining the nature of the property and

giving decision that it is wakf property.

24. Learned Senior Counsel for the applicants argued much on the basis of the circumstances like so called abolition of inam and depositing of money by Kishanlal Gawali as provided by the provisions of Inam Abolition Act, 1954. The order which could have been made for abolition of inam is not on record. The plaintiffs are relying on copy of mutation No. 72 only. This document shows that mutation was sanctioned on 23/12/1958 and the mutation was to the effect that under Inam Abolition Act, the land was taken over by the Govt. on 20/11/1955 and as per the provisions of Section 6 (1) (a) of the same Act, the possession was given to Kishanlal Gawali. These rights were subject to the restrictions imposed by the Act.

25. The aforesaid record is considered and discussed by the Wakf Tribunal and it is held by the Tribunal that such order could not have been made prior to 01/07/1960. It is also held that from the record, it can be at the most inferred that the Tahsildar had made order but he was not competent authority for making such

order and only the Collector or Dy. Collector could have made such order.

26. Wakf Tribunal has referred some cases reported as viz. 1965 Mh.L.J. - 881 [F.B.] [Bombay] [Dattatray Sadashiv Dhond Vs. Ganpati Raghu Gaoli]. In this case, this Court has discussed everything about the use of provisions of Inam Abolition Act and the relevant date for giving occupancy rights to the persons other than Inamdar. The Tribunal has quoted the relevant portions as (a) to (m) as under.

“ (a) That the provisions of Hyderabad Tenancy and Agricultural Lands Act vis a vis Hyderabad Inam and Cash Grants Abolition Act, did not apply to the service Inam lands. ”

(b) Sec. 4 of the Amending Act of 1956 imposes a liability on the inamdar to pay land Revenue of the inam land for the period from 20/07/1955 to 01/07/1960.

(c) Sec. 33 saves the mutual rights and obligations of Inamdars and his

tenant till the vesting of rights in the Government.

(d) The Inamdar possessed right to receive rent and recover possession from the tenant subject to restrictions contained in the Tenancy Act and tenant possessed reciprocal right to remain in possession and enjoy property subject to his liability to pay rent and restore possession to the Inamdar in accordance with law of Tenancy.

(e) That the relationship of landlord and tenant shall subject between these two dates and shall come to an end on date of vesting i.e. 01/07/1960. But till this date the Inamdar is presumed to be occupant.

(f) That no occupancy rights shall be granted to the tenant before 01/07/1960 when Sec. 5 and 6 of Inam Abolition Act, 1954 came into force.

(g) That the right of Inamdar to recover possession from tenant did not vest in Government till 01/07/1960

and it is not entitled to resume possession till then. Thus the Government can not be said to be in constructive possession on 20/07/1955 when the Inam is abolished.

(h) The person in possession on 01/07/1960 became entitled to all the rights of an occupant under the Land Revenue Act.

(I) The material date for consideration of a right to be declared as occupant is 01/07/1960 and not the date of vesting i.e. 20/07/1955 any date prior to 01/07/1960.

(j) That the Inamdar is entitled to terminate tenancy and file proceeding for recovery of possession under Tenancy Act before 01/07/1960.

(k) The criteria for decision should not be who is in possession but who is entitled to possession on 01/07/1960. If inamdar obtains final order for recovery of possession on 01/07/1960 then the Inamdar and not the tenant or occupant shall be entitled to status

of occupant after abolition of inam.

(l) The inamdar would be so entitled if the order for possession is made in favour of inamdar before 01/07/1960 and if such order is not set aside in appeal, revision or other proceeding by superior court.

(m) The possession which would entitle a person to be recognized as an occupant must also be lawful. Thus, if a person had unlawfully taken possession of a land, he could not claim occupancy rights unless the right to recover possession from him had become barred by limitation before 1st July, 1960. ”

27. The observations made by the Apex Court in the case reported as **AIR 1971 SC – 1859 [State of Maharashtra Vs. Laxman Ambaji & Anr.]** show that aforesaid interpretation made by Full Bench of this Court in Dattatray's case cited supra is approved by the Apex Court.

28. If the aforesaid position of law with regard to

Inam Abolition Act is kept in mind and that law is applied to the present case, it can be said that the order could not have been made in favour of Kishanlal Gawali before 01/07/1960. Further, it is not the case of the plaintiffs that Inamdars had contested the said matter or Inamdars had appeared in the matter started by Kishanlal Gawali for getting occupancy rights. In any case, notice of this proceeding was not given to the Wakf Board and notice was not given even to the Committee of Masjid which must have been managing the Masjid at the relevant time. As the order was made prior to the relevant date, it can be said that this order can not be used against the Inamdars and against the religious institution. Even if it is presumed that Inamdar had joined hands with Kishanlal Gawali and due to that such things happened prior to 1960, those orders can not bind the religious institution as the property was wakf, dedicated for rendering services to Masjid. The subsequent orders like giving permission by the Collector to Kishanlal Gawali to alienate the property i.e. removal of restriction which was there on the rights of Kishanlal Gawali and converting the land for its use to non agricultural purpose, have no meaning. These orders were obtained by Kishanlal

Gawali.

29. Learned Senior Counsel for the applicants placed reliance on the case reported as 1986 Mh.L.J. - 83 [Abdul Wahed Sk. Farid & Ors. Vs. State of Maharashtra & Anr.]. He submitted that the order made under Inam Abolition Act has become final and so the matter can not be re-opened. The facts of the reported case were altogether different and so the observations made by this Court are of no use to the applicants. Basically the authority had no jurisdiction in the present matter to make such order as it was wakf property. Further the order was not made by the competent authority and it was made prior to the relevant date.

30. The provision of Section 1 (2) (i) of Hyderabad Abolition of Inams and Cash Grants Act, 1954 runs as under.

“(1) This Act may be called the Hyderabad Abolition of Inams [and Cash Grants] Act, 1954.

(2) It extends to [the Hyderabad

area of the [State of Maharashtra] and shall be applicable to all inams except :

(i) Inams held by or for the benefit of charitable and religious institutions.

(ii) Inams held for rendering village service useful to the Government or to the village community including sethsendhi neeradi and balutha inams.”

The aforesaid provision shows that the order of abolition of inam and grant of occupancy rights could not have been made under this Act in respect of the suit property as it was the property given for rendering services to religious institution. The Wakf Tribunal has rightly held that the so called orders have not changed the nature of the property.

31. The Tribunal has held that the Suit is not within limitation as it was not filed within 3 years from the date of cause of action. On this point, learned Senior Counsel for the applicants placed reliance on the case reported as **AIR 1979 – SC – 289 [The Board of Muslim Wakf, Rajasthan Vs. Radhakishan & Ors.]**. In this case,

the Apex Court has laid down the limitation of one year period given in Wakf Act to challenge the notification published in Govt. Gazette when property is 'wakf', is not applicable to non muslim. There is no dispute over this proposition. Even if it is presumed that the period is not one year in the present matter, there was limitation period as per general law for challenging this notification against Kishanlal Gawali and that was as provided under Article 58 of the Limitation Act. The record is sufficient to infer that Kishanlal Gawali had knowledge about the notification published in the year 1974. Even if it is presumed that he did not get knowledge in 1974, there were 2 proceedings filed by Inamdars against Kishanlal Gawali in which it was informed that property was notified as 'wakf'. Thus, the time had started running against Kishanlal Gawali at least in the year 1986. He did not take steps to challenge the notification. It is already observed that the orders already made were without jurisdiction and so it was necessary for Kishanlal Gawali to get cleared things after publication of notification in official gazette. The authority under Atiyat Enquiry Act made it clear that such dispute can be resolved by civil Court, but no steps were taken by Kishanlal Gawali.

Thus, record was there to show that the property was wakf property, dedicated for rendering services to Masjid and there was also the record of litigation between the Inamdars and Kishanlal Gawali. In view of these circumstances, even the plaintiffs can not say that they had no knowledge with regard to the aforesaid dispute and publication of notification in the official Gazette when they purchased property after the year 2000. They were expected to make necessary enquiry and this record would have become easily available to them. In oral evidence, the power of attorney of plaintiffs has said that he learnt about the record prior to 5 years of the date of Suit. This clear admission goes against the plaintiffs and it also shows that the Suit was not filed within prescribed period of 3 years by the plaintiffs even if the best case possible is accepted for them.

32. Learned Senior Counsel for the applicants placed reliance on the case reported as (1999) 6 Supreme Court Cases – 582 [Wakf Board A.P. Represtned by its Secretary Vs. Biradavolu Ramana Reddy]. This case was on totally different point. In the present matter, the burden was on plaintiffs to prove that

the Suit was within limitation in view of the nature of relief claimed by them and in view of the provision of Section 6 of the Wakf Act. So, the observations made by the Apex Court are of no use to the plaintiffs.

33. The conduct of the plaintiffs also needs to be kept in mind. The plaintiffs first approached civil Court and after about 4 years, they withdrew the Suit and went before the Tribunal. When they had approached the civil Court, the Tribunal was in existence. This circumstance shows that plaintiffs are interested only in protracting the things. In the present matter, it needs to be observed that Wakf Board is now not showing interest to protect the interest of the religious institution. Nobody turned up for Wakf Board to argue the matter for it. It can be said that before the Wakf Tribunal also, Wakf Board had not produced the relevant material. The State Govt. needs to look into this aspect of the matter as the State Govt. is the supervising authority over the Wakf Board.

34. In view of the discussion made above, this Court holds that the Wakf Tribunal has considered the entire material and the decision of the Tribunal is as per

the record and position of law. There is no possibility of interference in the decision given by the Wakf Tribunal.

35. In the result, Civil Revision Application stands dismissed. Rule is discharged.

[T.V.NALAWADE, J.]