

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 834 OF 2011

1. M/s. Universal Associates through its partner Imran Ahmed Munir Shaikh and Ors. ..Applicants

Vs

1. Malik Sikandar Surme and Ors. .. Respondents

WITH

CIVIL REVISION APPLICATION NO. 835 OF 2011

1. Dawale Industrial Premises Co-operative Society Limited through : ..Applicants
a) Pappadikoikal Oonnunny Samuel and Ors.

Vs

1. Malik Sikandar Surme and Ors. .. Respondents

WITH

Civil Revision Application NO. 836 OF 2011

1. Abdul Gani Abdul Majid Dongre and Ors ..Applicants

Vs

1. Malik Sikandar Surme and Ors. .. Respondents

Mr. R.S. Apte, Senior Advocate, a/w. Mr. Mandar Limaye and Mr. Mahendra Agavekar, for Applicants in C.R.A No.834/2011 and Respondents No.1 & 5 in C.R.A No.836/2011 and Respondents No.1 & 9 in C.R.A No.835/2011.

Mr. Ashish S. Gaikwad, Advocate for Applicants in C.R.A No.836/2011 and for Respondents No.12, 13, 15 to 17 in C.R.A Nos.834/2011 and C.R.A No.835/2011.

Mr. A.Y.Sakhare, Senior Advocate i/b Vikram Chavan and Joel J. Carls, Advocates for applicants in C.R.A No.835 of 2011.

Mr. Sagheer A. Khan a/w Mr Sharique Nachan & Mohd Shoeb i/b. Judicare Law Associate, for Respondents No.2 to 9 in C.R.A Nos.836/2011 and 835/2011.

Mr. M.S. Ansari i/b. R.M. Momin for respondents No.10 & 11 in C.R.A No.834/2011.

CORAM :	R.G.KETKAR,J.
RESERVED ON:	23/03/2016.
PRONOUNCED ON:	26/04/2016.

PC:

1. Heard Mr. R.S. Apte, learned Senior Counsel for the applicants in C.R.A No.834 of 2011 and for respondents No.1 & 5 in C.R.A No.836 of 2011 and for respondent Nos.1 and 9 in C.R.A No.835/2011. Mr. A.Y.Sakhare, learned Senior Counsel for applicants in C.R.A No.835 of 2011. Mr. Sagheer Khan, learned counsel for respondents no.2 to 9 in C.R.A Nos 835 of 2011 and 836 of 2011. Mr Ashish Gaikwad, learned counsel for applicants in C.R.A No.836 of 2011 and respondents no.12, 13, 15 to 17 in C.R.A no.834 and 835 of 2011 at length.

2. All these applications filed under Section 83(9) of the Wakf Act, 1995 (for short, 'Act') challenge the judgment and order dated 5.10.2011 passed by the learned Presiding Officer, Maharashtra Waqf Tribunal, Aurangabad (for short, 'Tribunal') in Application No.94 of 2010. By that order, the Tribunal allowed the application and held that all the agreements executed by respondents no.3 to 8 on behalf of Kausa Jama Masjid in favour of

respondents no.9 and 10 with respect to wakf properties, Survey Nos 56 to 60 including the lease deeds, sub-lease deeds, declarations or confirmation deeds of whatever nature before filing of the application, are void and non est and stand cancelled automatically. The Tribunal further held that all the agreements of lease, sub-lease, transfer deeds or agreements of whatever nature executed by respondents no. 3 to 8 and 11 in favour of each other or any other person with respect to the land bearing survey no.49/1 or any building, structure built thereon, are void and non est and stand cancelled automatically. The Tribunal held that all the NOCs and permissions for development issued by respondents no. 1 and 2 with respect of Kausa Jama Masjid, Wakf property Survey Nos 56 to 60 and 49/1 in general, and particularly Resolution No. 26-1/2008, 85/2008, amended Resolution No. 22/2009 and NOC No. MSBW/SNT. 1/F.39/3179/2009 and NOC No. MSBW/SNT/3178/2009 are not binding on the wakf institution or its properties, being in breach of express provisions of law. The Tribunal directed Wakf Board to take appropriate steps for recovery of the wakf properties described therein at an earliest.

3. C.R.A No.834 of 2011 is instituted by M/s Universal Associates (original opponent no.11) and Hasan Sahil (original opponent no.14). C.R.A No.835 of 2011 is instituted by Dawale

Industrial Premises Co-operative Housing Society Ltd., through its office bearers (original opponent no.10). C.R.A No.836 of 2011 is instituted by Abdul Gani Abdul Majid Dongre and Ors (original opponents no.3, 4, 6 to 8. Parties shall, hereinafter, be referred to as per their status before the Tribunal. The relevant and material facts giving rise to filing of these applications, briefly stated, are as follows.

4. Application No.94 of 2010 was instituted by (1) Malik Sikandar Surme; (2) Ismail Mohammed Amin Raut, (3) Liyakat Abdullah Dhole, (4) Abdul Salaam Ibrahim Dalvi, (5) Munaf Ayyub Raut, (6) Rizwan Mohammed Saeed Dhole, (7) Haji Ahmed Gulbar (8) Maqsood Abdul Kadir Gulbaar, (9) Haroon Kamuddin Raut, hereinafter referred to as 'applicants', under section 83 (2) of the Act challenging (i) various Resolutions passed by the Wakf Board opponent no.1-Maharashtra State Board of Waqf (for short, 'Board'); (ii) NOCs issued by the Board, (iii) lease deed dated 1.7.2008, supplementary agreement dated 9.4.2007, declaration dated 7.6.2010 executed by opponents no. 3 to 8 in favour of opponent no.10.

5. It is the case of applicants that initially, Kausa Jama Masjid (for short, 'Trust') was registered on 6.1.1953 under the provisions of the Bombay Public Trusts Act, 1950 as public Trust bearing Registration PTR No.B-9/Thane. The properties situate in

village Kausa and village Dawale, as more particularly set out in paragraph 2 of the application, are shown as properties of the Trust in Schedule-I. After the commencement of the Act, the Trust is deemed to be registered as a Wakf under Section 43 of the Act. Accordingly, it was formerly registered by the Board as Wakf No.M.S.B.W./Thane/71/2009. The wakf automatically came under the supervision of the Board.

6. It is the case of the applicants that Change Report no.64 of 1998 was approved wherein the names of 8 persons were shown as trustees. Their names were appearing in Schedule-1 as trustees. The second Board of Trustees claim to be elected by Muslim Jamat some time in the year 2001. In view of all the vacancies due to death, resignation of the earlier trustees, the applicants filed application dated 24.6.2010 before the Board for taking steps for appointment of mutwalli by holding elections and appointing new management as per the mode of succession. Opponents no.3 to 8 in collusion with each other started disposing of the waqf properties. Respondent no.3 in collusion with Opponents no.4 to 8 executed notarized lease deed in favour of opponent no.9-M/s Sakar Developer Group on 27.10.2006 for a period of 99 years which is void. On 9.4.2007, opponent no.3 executed supplementary agreement in favour of opponent no.9 thereby permitting it to develop the wakf

properties and to create third party interest therein. Both these transactions are void and do not create any right, title and interest in favour of opponent no.9.

7. Opponent no.9, in turn, executed sub lease on 1.7.2008 in favour of opponent no.10 Dawale Industrial Co-operative Societies Ltd for a period of 99 years. Opponent no.3 in his alleged capacity of Chief Trustee signed the said agreement as consenting party which is illegal. On the basis of No Objection Certificate dated 1.8.2009 issued by the Board, opponent no.10 got a registered deed of declaration. The said document confirmed the lease deed dated 1.7.2008 executed by opponent no.9 in favour of opponent no.10. The said registered deed refers to earlier instruments dated 9.4.2007 and 1.7.2008 which are illegal and void and do not create any rights, title and interest in favour of opponents no. 9 and 10 as these documents were executed in utter breach of the provisions of the Act. Opponents no. 9 and 10 and/or any person to whom wakf properties are illegally transferred have not acquired any legal rights, title and interest in the said properties.

8. It is the case of the applicants that Survey Nos. 56 to 60, in all admeasuring 222 Gunthas, are thrown to the winds by executing illegal agreements of development. Opponent no.1 approved these agreements by resolution no.26.1/2008 dated

3.4.2008. Only 2 members of the Board were present in the meeting. The said resolution was confirmed in the next meeting convened on 27.5.2008 attended by only 2 members. As such, decision of the Board to issue N.O.C for development is passed by the Board in the absence of valid corum. Even in the next meeting of the Board dated 21.11.2008, only 2 members were present. The then Chief Executive Officer Shri S.S. Gunjal had objected issuance of N.O.C as transactions were illegal and were not in the interest of wakf institution as also on the ground that they were not passed by 2/3rd majority. The Board, however, ignored the said objections and passed the impugned resolutions in the meeting dated 21.11.2008.

9. On 26.7.2009, resolution no. 22/2008 was passed by the Board on the application made by opponent no.9 for development of Wakf property. By that resolution, it was resolved to issue N.O.C in favour of opponent no.9. The then Chief Executive Officer Shri S.S.Ali Quadri in collusion with other opponents and without considering the provisions of Section 26 of the Act, issued N.O.C under section 32 under his signature on 1.8.2009 in favour of opponent no.9. On the same day, opponent no.1 also issued direction to the Municipal Corporation of City of Thane (for short, 'Corporation') to issue Transfer of Development Rights certificate (T.D.R.) in the name of trustees of the wakf in

question as some part of Survey No.50/2 was reserved by the Corporation for construction of road.

10. The applicants further alleged that there was a building of trust on Survey no.26/4. Though the building was in good condition, the opponents demolished it. Opponent no.15 who is real brother of opponent no.3 is trying to alienate the same. It is the case of the applicants that Survey no. 49/1 belonging to wakf was reserved for the school. Opponents no. 11 to 14 are constructing residential towers consisting of flats and shops thereon and are intending to sell flats to prospective purchasers. The applicants, therefore, informed the Board about registration of documents pertaining to wakf properties. Opponent no.2, C.E.O of the Board, issued letters to the Sub Registrar, Thane for not registering any document relating to alienation of wakf properties. Opponent no.2 also issued letter dated 31.7.2010 to the Corporation for removing illegal construction and not to issue T.D.R certificate to the trustees. Initially, agreement to develop Survey no. 49/1 was entered into with M/s Iqra Enterprises. M/s Eqra Enterprises got the building plans approved on 2.3.2005 and revised plans on 17.8.2007. M/s Eqra Enterprises could not develop the property and surrendered the property to the trustees along with N.O.C. in favour of opponent no.11. On 28.5.2005, resolution was passed for granting lease to opponent no.11. Accordingly, lease deed was executed on 6.6.2005. Board

approved the said lease on 4.5.2006 on the same conditions as were prescribed for lease between Trust and M/s Eqra Enterprises. In sum and substance, the applicants contend that all the agreements, lease deeds, resolutions, N.O.Cs issued by Board are illegal, null and void and are against the provisions of the Act. They have prayed for direction to the Board to recover the wakf properties.

11. Opponents no.3, 4, 6 to 8 filed Written Statement at Exhibit-37, inter alia, contending that the application is not maintainable. The applicants have no locus standi to file such application. The applicants want to grab management of the wakf and the proceedings are initiated with a view to pressurizing them to hand over the management. The application also suffers from non joinder of necessary parties as wakf is not joined as party. It is contended that all the transactions were entered into in accordance with law after following legal formalities as also by passing resolutions and seeking permissions from the Board. The transactions entered into by them was in the interest of the wakf.

12. Opponent no.5 filed written statement at Exhibit 21. It was contended that he is unnecessarily joined as party though he has already tendered resignation to the third opponent on 23.7.2010 and he is no more trustee. He substantially supported the application by contending that the lease deeds are illegal

and against the law. He was not made known about the transactions by other Mutwalli. He was not taken into confidence. The transfer of development rights and N.O.Cs granted by opponents no. 1 and 2 are against law. Opponent no.11 is illegally alienating the flats constructed on Survey No.49/1 and even the building constructed thereon is illegal. Opponent no.15 who is brother of opponent no.3 is carrying on illegal construction and is alienating residential unit to the third persons without proper permissions of competent authority. The Board is also not properly constituted.

13. Opponent no.9 filed Written Statement at Exhibit-24 opposing the application. It is contended that the application is barred by limitation and is not maintainable. The application suffers from misjoinder and nonjoinder of the party. It is contended that initially lease deed for 99 years was executed in favour of opponent no.9 on 27.10.2006 pertaining to Survey Nos 56 to 60. On 9.4.2007 the supplementary agreement cum declaration was executed between opponent no.9 on one hand and the management of the Trust and opponent no.10 on the other. Another supplementary agreement also came to be executed on 1.7.2008 between opponent no.9 and Trust.

14. It is further contended that the lease agreement executed between the Trust and opponents no.9 and 10 are registered

documents whereunder opponent no.9 relinquished his leasehold rights in favour of opponent no.10 which it had got under the lease agreement dated 27.10.2006. After execution of the registered deed dated 7.6.2010, opponent no.9 has no concern with the properties or any transaction of development as opponent no.10 is in occupation of the said properties. It is contended that Jama Masjid Kausa had executed documents legally in its favour. Opponent no.9 in turn signed its leasehold rights in favour of opponent no.10. Opponent no.10 had become lessee.

15. Opponent no.10 filed written statement at Exh.28 opposing the application. It was reiterated that the application suffers from misjoinder and nonjoinder of necessary parties. Jama Masjid Kausa is not made party. The management of Jama Masjid Kausa decided to protect wakf properties from encroachment and trespass and, therefore, decided to lease out the properties to third person. On 27.10.2010 as a step towards achieving these objects, Trust leased out Survey Nos.56 to 60 to opponent no.9. On 9.4.2007 supplementary agreement was executed between Trust and opponent no.9. On 11.7.2007, another lease deed was executed between Trust, opponent no.9 and opponent no.10. The lease deed was registered before the Sub Registrar, Thane on 7.6.2010 and area admeasuring 49 Guntha was leased out to

opponent no.10. Further, lease deed came to be registered between Trust, Opponent no.9 and opponent no.10 on 11.7.2010 which was also registered. In respect of Survey nos 56 and 57 admeasuring 49 Guntha, lease deed dated 7.6.2010 was executed by Trust in favour of opponent no.10. On 1.7.2008 opponent no.9 granted leasehold rights in favour of opponent no.10 as sub lessee. The sub lease is also executed in accordance with law. In pursuance of the agreement of sub lease, Trust delivered possession to opponent no.10. Opponent no.10 contended that the Trust made application dated 16.12.2006 to opponent no.1 seeking permission to develop wakf properties. The Board granted N.O.C on 1.8.2009. The N.O.C. was granted in favour of opponent no.9. Opponent no.9 transferred its rights to opponent no.10. Opponent no.10 is in lawful occupation and possession of the trust properties as per documents executed in its favour by opponents no. 3 to 8 and opponent no.9. Opponents, therefore, prayed for dismissal of the application.

16. Opponent no.11 filed written statement at Exhibit 58 also challenging locus standi of the applicants. Opponent no.11 is concerned with Survey no.49/1 admeasuring 30.3 Guntha. The said land was initially allotted to M/s Iqra Enterprises by Resolutions dated 24.3.2003 and 6.12.2003 and order dated 24.8.2004. The said land was demarcated as part-A and Part-B.

Part-A is lying vacant. In respect of Part-B, M/s Eqra Enterprises submitted proposal for development of Part-B on 2.3.2005. M/s Eqra Enterprises could not develop Part-B and, therefore, it was surrendered to the Trust along with N.O.C dated 1.6.2005 in favour of opponent no.11. Trust granted lease in favour of opponent no.11 on 28.5.2005. The Board approved the said lease on 4.5.2006 on same conditions as were prescribed for lease between Trust and Eqra Enterprises. On 23.3.2007, Trust obtained N.A permission. Opponent no.11 maintained that all the resolutions, N.O.Cs, agreements, lease deeds are perfectly legal and in accordance with law and they are in the best interests of wakf. For these reasons, opponent no.11 prayed for dismissal of the applications.

17. By the impugned order, the Tribunal has allowed the applications, as indicated earlier. It is against this decision, opponent no.11 has instituted C.R.A. No.834 of 2011, opponent no.10 has instituted C.R.A. No.835 of 2011 and Opponents no.3,4, 6 to 8 have instituted C.R.A. No.836 of 2011.

18. Mr. Apte appearing for applicants in C.R.A. No.834 of 2011 raised following contentions.

- (i) Application instituted before the Tribunal under Section 83(2) of the Act suffers from non joinder of necessary party, namely, Trust.

- (ii) Applicants before the Tribunal have no locus standi to maintain the Application.
- (iii) Application suffers from gross delay and latches and is barred by limitation.
- (iv) Tribunal committed error in proceeding on the premise that the property in dispute is under reservation which is factually incorrect and contrary to record.
- (v) Trust executed monthly lease on 6.6.2005 in favour of opponent no.11 – M/s Universal Associates. Thus, there is no violation of section 56(2) of the Act. The Tribunal, however, proceeded on the footing that the lease deed is void and of no effect as, firstly, it was for a period of exceeding three years and secondly it was made without previous sanction of the Board.

19. Mr. Sakhare appearing on behalf of applicants in C.R.A. No.835 of 2011 also raised above contentions. In addition, he raised following contentions.

- (i) Lease was executed by the Trust in favour of opponent no.9-M/s Sakar Developer Group on 27.10.2006 for achieving the objects of the trust.
- (ii) Opponent no.10 has not violated any terms and conditions of the lease deed or N.O.C issued by the Board.
- (iii) Lease Deed executed by the Board is not in violation

of any of the provisions of the Act and more particularly section 56 thereof.

20. Mr. Gaikwad appearing on behalf of applicants in C.R.A No.836 of 2011 reiterated the submissions advanced before the Tribunal. He also adopted the submissions advanced by Mr. Apte and Mr.Sakhare. He submitted that all the transactions namely Lease Deeds, Development Agreements were entered into subject to approval of Wakf Board and also as per resolutions passed by the Trust.

21. On the other hand, Mr. Khan supported the impugned order. He submitted that Section 32 of the Act deals with powers and functions of the Board. In particular, Section 32(2)(j) lays down that the board shall sanction lease of any immovable property of a wakf in accordance with the provisions of the Act and the Rules made thereunder. Proviso thereto lays down that no such sanction shall be given unless a majority of not less than two-thirds of the members of the Board present cast their vote in favour of such transaction. He submitted that the Tribunal has recorded a finding of fact that two members were present while passing various resolutions. In other words, the resolutions were passed contrary to proviso to section 32(2)(j) of the Act. In fact, on this ground the then Chief Executive Officer Shri S.S.Gunjal had objected issuance of NOC as transactions were illegal and

were not in the interest of the Wakf Institution as also on the ground that they were not passed by 2/3rd majority. The Board, whoever, ignored the said objections and passed resolutions in the meeting dated 21.11.2008.

22. Mr. Khan relied upon Section 56(2) of the Act which, at the relevant time, provided that a lease or sub lease for any period exceeding one year but not exceeding 3 years of wakf property which is immovable, is void and of no effect, notwithstanding any thing contained in the deed or instrument of wakf or in any other law for the time being in force unless it is made with the previous sanction of the Board. In the first place, the lease deed executed is exceeding one year and is made without previous sanction of the Board. It is therefore, null, void and is of no effect.

23. Mr. Khan relied upon clauses (a) and (k) (i) of Section 3 which define expressions “beneficiary” and “person interested in a wakf”. He submitted that conjoint reading of these provisions shows that the applicants before the Tribunal have locus standi to maintain the application under section 83(2) of the Act. He relied upon the decision in Navab Zain Yar Jung Vs Director of Endowments, AIR 1963 SC 985 and in particular paragraph 12 thereof as also Maharashtra State Board of Wakfs Vs. Shaikh Yusuf Bhai Chawla, (2012) (6) SCC 328. He submitted that no case is made out for invocation of powers under Section 83(9) of

the Act.

24. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The controversy in these applications is in respect of Survey No.49/1, admeasuring 30 Gutnhas, situate at village Kausa and survey nos. 56 to 60, situate at village Dawale. Initially, in respect of Survey no.49/1 the lease was executed in favour of Asgar Husain Rizvi, proprietor of Iqra Enterprises on 18.10.2002. Resolutions were passed by Trust on 24.3.2003 and 6.12.2003. The Board sanctioned the said lease vide resolution dated 24.8.2004. As Iqra Enterprises could not complete the venture, by agreement, the lease was created in favour of opponent no.11 for a period of 99 years. In paragraph 130 of the impugned order, the Tribunal noted that though the nomenclature to the lease deed was granted as a monthly lease but the document Exh.70/3 the lease deed executed between Wakf Management and opponent no.11 shows that it is created for a period of 99 years, that too, by only a notarized document. In other words, the lease was not a registered instrument and thus was in violation of Section 56 of the Act.

25. Mr. Apte relied upon Deed of Lease dated 6.6.2005 and in particular clause (b) thereof to contend that it was a monthly lease. I do not find any merit in this submission. The recital of

these documents shows that vide resolution dated 28.5.2005 the Trust agreed to grant lease and rights of development in favour of opponent no.11. The recital also shows that the lease was for a period of 99 years. Clause (a) at page 8 shows that the lease was for a period as specified in the order. The order, however, does not show that the lease was a monthly lease. That apart, Section 56(2) of the Wakf Act contemplates previous sanction of the Board. In the instant case, sanction was granted by the Board on 4.5.2006. In paragraph 126, the Tribunal also recorded reply filed by the Board where it candidly admitted that though the N.O.Cs were issued in favour of the Wakf and its lessees, they were void as no lease exceeding three years could be granted by the Board. N.O.Cs were obtained by concealing material facts. The Tribunal, therefore, held that the transaction made with opponent no.11 is void and is of no legal effect. After considering the material on record, I do not find that the Tribunal committed any error. The lease was not made with the previous sanction of the Board. There is clear breach of Section 56(2) of the Wakf Act as also section 32(2)(j).

26. In so far as the property bearing survey nos 56 to 60 situate at Dawale village is concerned, initially, these survey numbers were leased out to opponent no.9-M/s Sakar Developers for a period of 99 years by lease deed dated 26.10.2006.

Opponent no.9 transferred leasehold rights in favour of opponent no.10 and trustees consented for such transfer. On 9.4.2007 and 1.7.2008 supplementary agreements were executed. On 1.8.2009, the Board gave NOC for carrying out construction. The lease deed dated 27.10.2006 between Trust and opponent no.9 is a notarized document and is not a registered instrument. Thus, this lease deed is void as it is executed for 99 years which is in contravention of Section 56(2) of the Act. It is also not registered instrument. Opponent no.9, in turn, executed lease deed dated 1.7.2008 in favour of opponent no.10 which is in fact a sub lease. In paragraph 145 the Tribunal recorded that various transactions and the documents executed by the Trust are void and illegal. After considering the material on record, I do not find that the Tribunal committed any error in this regard.

27. Learned counsel for the applicants submitted that the application is barred by limitation. This aspect is considered by the Tribunal in paragraphs 148 to 151. The Tribunal recorded that all the transactions are void and, therefore, it cannot be said that the application is barred by limitation. I have already held that the translations in question are void ab-initio and are of no effect and , therefore, it cannot be said that the application instituted is barred by limitation.

28. On behalf of the applicants, it was further contended that

the applicants before the Tribunal have no locus to maintain the application under section 83(2) of the Act before the Tribunal. It is not disputed that applicants before the Tribunal have a right to offer prayer and have right to perform religious rites in the mosque etc. as contemplated by Section 3(k)(i) of the Act. A conjoint reading of Section 3(a),(k)(i) clearly shows that the applicants have locus to maintain the applications. I do not find any merit in this submission.

29. It was further contended that the applications suffer from non-joinder of necessary party, namely, Trust. This aspect is considered by the Tribunal in paragraph 155 and observed that the Wakf is not a legal entity like a deity. Mutwalli represents the wakf. In view thereof, I do not find any merit in this objection as well.

30. In the case of M.L.Sethi Vs R.P.Kapur, 1972 (2) SCC 427, the Apex Court thereafter considered the scope of section 115 of C.P.C. It was observed in paragraph 12 as under :

“.. The jurisdiction of the High Court under section 115 of the C.P.C. is a limited one. As long ago as 1884, in Rajah Amir Hassan Khan v. Sheo Baksh Singh, the Privy Council made the following observation on Section. 622 of the former Code of Civil Procedure, which was replaced by Section 115 of the Code of 1908:

"The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide

the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In *Balakrishna Udayar v. Vasudeva Aiyar*, AIR 1917 PC 71, the Board observed :

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved."

In *N. S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras*, AIR 1949 P.C. 156, the Judicial Committee said that section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on those three matters, it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law.

This Court in [Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee and others](#) and *Vora Abbashhai Alimahomed v. Haji Gulamnabi Haji Safibhai*) has held that a distinction must be drawn between the errors committed by sub-ordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said Court, and errors of law which have no such relation or connection. In [Pandurang Dhoni Chougute v. Maruti Hari Jadhav](#)(3), this Court said :

"The provisions of Section 115 of the 'Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section

115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed, to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of s. 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court under Section 115."

31. Applying the tests laid down to the facts of the present case, I do not find that the Tribunal committed any error in passing the impugned order. The Tribunal has correctly borne in mind principles of law. The facts have been properly appreciated and after considering all the material and relevant facts, the Tribunal has passed the impugned order. The applicants were not in a position to demonstrate that the findings recorded by the Tribunal are perverse being based on no evidence or that on basis of evidence on record, no prudent man could have come to that conclusion. The decision of the Tribunal does not lead to miscarriage of justice. The High Court while exercising the powers under Section 83(9) of the Act cannot substitute its own

view in place of Tribunal merely because it considers to put better view.

32. For all these reasons, I do not find any merits in these Applications and the same are dismissed.

33. At this stage, learned counsel for the applicants pray for stay of this order for a period of 12 weeks from today. They further assure that they will not apply for further extension of stay. Assurance given by learned counsel for the applicants is recorded. In view thereof, notwithstanding dismissal of the applications, this order shall stand remained stayed for a period of 12 weeks from today with a clear understanding that no application for extension of stay shall be entertained. Order accordingly.

(R.G.KETKAR, J.)