THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY
and
THE HONOURABLE SRI JUSTICE
B.CHANDRA KUMAR

W.A.Nos.215, 578, 625 of 2002; W.P.No.26553 of 2003
and
C.C.No.401 of 2008

Date of Order: 03-12-2010

C.T. in W.A.No.215 of 2002

Between:

A.P.State Wakf Board rep.
by its Secretary.

..Appellant

and

1. The Hyderabad Archdioceses Society
   Archbishop House, Secunderabad rep.
   By its GPA Holder, Sri B.Janardhan and others

..Respondents

The Court made the following Common Judgment:

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY
and
THE HONOURABLE SRI JUSTICE
B.CHANDRA KUMAR

W.A.Nos.215, 578, 625 of 2002;
W.P.No.26553 of 2003
and
C.C.No.401 of 2008

Common Judgment: (Per Hon'ble Sri Justice ***A.Gopal Reddy***)

The A.P. State Wakf Board filed W.A.No.215 of 2002 and W.P.No.26553 of 2003 questioning the judgment of the learned single Judge of this Court in W.P.No.23792 of 1995 and judgment of the Special Court under the Land Grabbing (Prohibition) Act, 1982 (for short "the Act") in L.G.C.Nos.151 of 1996 respectively. Respondent No.6 in W.P.No.23972 of 1995 filed W.A.No.578 of 2002; State Government, Revenue Divisional Officer and Mandal Revenue Officer, who are respondents 1 to 3 in W.P.No.23792 of 1995 filed W.A.No.625 of 2002 against the very same judgment in W.P.No.23792 of 1995; whereas C.C.No.401 of 2008 is filed by the 13th respondent in W.P.No.26553 of 2003 complaining violation of *status quo* order passed by this Court in W.P.M.P.No.33624 of 2003 in W.P.No.26553 of 2003, dated
29-12-2003.

Since all the writ appeals, writ petition and contempt case are interlinked with each other, they heard together and disposed of by this common judgment.

The facts, which give rise to filing these appeals, writ petition and contempt case may, briefly, be stated as under:

On issuing a notification published in the A.P. Gazette dated 29-12-1988 by the A.P. State Wakf Board declaring an extent of Ac.90.00 gts. situated in Sy.Nos.1 to 9 of Guttala Begumpet Village, Ranga Reddy District as Wakf Property pursuant to entry made in Endowment at page 117, Sl.No.41 as ordered in File No.44/M1/RR/87 by the A.P. State Wakf Board, the Hyderabad Archdiocese Society, Archbishop House, Secunderabad through its GPA holder (for short "Society") filed W.P.No.23792 of 1995 contending that the above land was originally belonging to Lt. Col.Cox along with other survey numbers who sold the above extent in favour of B.Ramalingeswar Rao under a registered sale deed dated
08-05-1963 bearing document No.218/63, who in turn gifted an extent of Ac.90.00 gts. under an un-registered gift deed
05-10-1973 in favour of the 1st respondent—Society and ever since the gift, the Society was in possession of the entire property.

It has been pleaded that transfer of the above property has been admitted by the M.R.O. in the declaration filed under Land Reforms Act in C.C.No.2379/KEL/75 and the said property has been excluded from the holdings of Ramalingeswar Rao, accepting the gift deed executed by him in favour of the petitioner—Society on 05-10-1975. Before purchase of the property by Ramalingeswar Rao, the Tahsildar accorded permission under Sections 47 and 48 of A.P. Tenancy (Telangana Area) and Agricultural Lands Act, 1950 (for short

“A.P. Tenancy Act”) in favour of Lt. Col.Cox permitting him to alienate the patta lands in Sy.Nos.1 to 9 comprising Ac.94.17 gts. situated in Guttala Begumpet Village, Ranga Reddy District to Ramalingeswar Rao. After completion of land ceiling proceedings, the M.R.O. conducted an enquiry under Section 5-A of A.P. Record of Rights in Pattedar Pass Books Act, 1971
(for short “ROR Act”) and validated the unregistered & unstamped documents of transfer in the revenue records in favour of the Society. The same has been confirmed by the Joint Collector by proceedings dated 24-06-1991, rejecting the claim of other claimants. Questioning the same the persons aggrieved filed W.P.Nos.8543, 8544, 8575, 8617 of 1991 and 1196 of 1992. The High Court by common order dated 08-07-1992 allowed the writ petitions and remanded the matter to the Joint Collector for fresh enquiry. On such remand, the M.R.O. after conducting a detailed enquiry by proceedings dated 10-09-1993 accepted the claim of the Society to an extent of Ac.62.00 gts. and accordingly declared that the alienation of lands effected in favour of the Society as valid. Aggrieved by the said order some of the interested persons preferred an Appeal before the R.D.O., who by proceedings No.C/5704/93, dated 29-04-1995 confirmed the order of the M.R.O., accepting the claim of the Society.

The Kasra Pahani prepared in the year 1954-55 also confirmed the title of Col. Cox and recognized him as Pattedar and the subsequent transfer of the property in favour of B.Ramalingeswar Rao was also accepted by mutating his name in the revenue records from whom the Society succeeded to the said property. While so, the Sub-Divisional Magistrate initiated proceedings under Section 145 Cr.P.C. against K.S.N.Murthy and A.P. State Wakf Board in respect of Sy.Nos.6 and 7 of Guttala Begumpet Village. In the said enquiry the Sub-Divisional

Magistrate (R.D.O.) has confirmed the title of Col.Cox and also B.Ramalingeswar Rao. The Sub-Divisional Magistrate while disposing of the proceedings under Section 145 Cr.P.C. confirmed the claim of the A.P. State Wakf Board only to the extent of 1000 square yards in Sy.Nos.6 and 7 and rejected the rest of the claim. On an appeal filed by the Wakf Board, the Additional District and Sessions Judge, Ranga Reddy District remanded the matter to the M.R.O. for fresh enquiry. On such remand, the M.R.O. after conducting a detailed enquiry confirmed the title of Col.Cox and B.Ramalingeswar Rao and restricted the claim of the A.P. State Wakf Board only to the extent of 1000 square yards. While so, the A.P. State Wakf Board got issued the above notification. The Society came to know about the said notification only for the first time when the Wakf Board filed O.S.No.45 of 1994 on the file of Subordinate Judge, Ranga Reddy for permanent injunction against the Society and others. On notifying the property as Wakf property, the Wakf Board filed L.G.C.No.151 of 1996 against eight respondents including the petitioners in W.P.No.23792 of 1995. The respondents 4 and 5 in L.G.C.No.151 of 1996 filed L.G.C.No.155 of 1996 against the Wakf Board claiming the property. The Special Court declared the Wakf Board as land grabber and directed it to restore the possession to the respondents therein. Respondents 9 to 15; 16 & 17; 18 and 19 were added as parties in L.G.C.No.151 of 1996 as per the orders in I.A.No.1211, 1212, 1213 and 1214 of 1996 dated 20-11-1996 and 21-11-1996 respectively; whereas the 20th respondent was impleaded as per the orders in I.A.No.6 of 1997 dated

26-02-1997. The Land Grabbing Tribunal by its common judgment dated 19-09-2003 dismissed L.G.C.No.151 of 1996 in view of findings on issues 1, 3 and 4 that the respondents therein are not land grabbers within the meaning of Section 2(d) and (e) of Act XII of 1982, and the

Wakf Board is not entitled to recover the possession of the schedule property. Consequently L.G.C.No.155 of 1996 was held to be not maintainable as the Land Grabbing Court has no jurisdiction to try the case on third issue and directed to return the application to the applicants for presentation before the appropriate court. Questioning dismissal of L.G.C.No.151 of 1996, the A.P. State Wakf Board filed W.P.No.26553 of 2003. Aggrieved by the order of the learned single judge in W.P.No.23792 of 1995, setting aside the notification, the A.P. State Wakf Board filed W.A.No.215 of 2002; Chairman and Managing Committee of the mosque filed W.A.No.578 of 2002 and State Government filed W.A.No.625 of 2002.

Sri Shafiq Rahaman Mahajir, learned counsel appearing for the Wakf Board contends that the Special Court under the Land Grabbing Act is a *coram non-judice* on enforcement of Wakf Tribunal under the Wakf Act, 1995, which came into force on 22-11-1995. Since the land grabbing case was filed on 29-08-1996, the Special Court will not have any jurisdiction to decide the *lis*, viz., whether the property is a registered wakf or not; and it is only the Wakf Tribunal constituted under the Wakf Act is competent to decide the said issue. The entire findings recorded by the Land Grabbing Act in L.G.C.No.151 of 1996 are liable to be set aside leaving the parties to agitate their rights before the appropriate Forum. In support of the submissions strong reliance is placed on the judgments of this court.

1. ***MOHAMMAD QUTUBUDDIN v. M.MALLA REDDY***[1]
2. ***P.RAMA RAO v. HIGH COURT OF A.P.***[2]
3. ***UNITED BANK OF INDIA v. ABHIJIT TEA CO. (P) LTD.***[3]

Alternatively, he pleaded that he may be permitted to withdraw

L.G.C.No.151 of 1996 to file the same before the appropriate forum—Wakf Tribunal constituted under the Wakf Act.

He further contends that the learned single Judge erred in allowing W.P.No.23792 of 1995 filed challenging the notification notifying the property as Wakf Property. He also contends that when notification dated 29-12-1988, notifying Ac.93.11 gts. in Sy.Nos.1 to 9 of Guttala Begumpet as Wakf Property, was issued by the A.P. State Wakf Board, the Executive Magistrate in proceedings initiated under Section 145 Cr.P.C. cannot decide the title of the property on which much reliance is placed by the learned single Judge in allowing W.P.No.23792 of 1995.

The writ petition was filed with a prayer to set aside the notification; whereas the reasoning given by the learned single Judge is quite different to the findings recorded. In a petition filed under Article 226 of the Constitution, the learned Judge cannot decide the title of either parties, which can be done only on appropriate pleadings by the Civil Court or Wakf Tribunal. The appellant in W.A.No.578 of 2002 moved the Court to register the property as Wakf property, whereas the claim of the Society is on the basis of unregistered gift deed, dated 05-10-1973 executed by B.Ramalingeswar Rao under which no title could be passed to the Society. When the claim of B.Ramalingeswar Rao—vendor of the Society has not been accepted by the Tribunal, the unregistered gift deed cannot be regularized.

Sri S.Ramachandra Rao, learned senior counsel appearing for the respondents 4, 5, 16, 17 and 19 in W.P.No.26553 of 2003 contends that one Miss D'Costa Saheba was the Pattedar and possessor of the land including the land in Sy.Nos.1 to 9 having purchased the same in the auction and she was granted patta in the year 1916 and 1917 and she sold the land in Sy.No.13 to some others in the year 1940 under a registered sale deed. Her name was recorded in the concerned revenue records, viz., Sethwar, Pucca Book of the year 1929, Classer Register, Parthi Book. Lt.Col.Cox was the sole legal heir of D'Costa and as such he became the Pattedar of the property. The Tahsildar by proceedings dated 19-03-1963 accorded permission under Sections 47 and 48 of A.P. Tenancy Act to alienate the property in favour of B.Ramalingeswar Rao—2nd respondent in W.P.No.26553 of 2003. Ramalingeswar Rao purchased the property under a registered sale deed and whose name was recorded as Pattedar, which is evident from the proceedings dated 21-04-1964. Col.Cox and Ramalingeswar Rao executed various sale deeds alienating the land in Sy.Nos.1 to 9 in favour of various persons; out of which Ac.15.00 of land in Sy.Nos.4 and 5 was sold to the 4th respondent under an agreement of sale dated 11-04-1964; he also sold Ac.14.00 in Sy.Nos.5 and 6 to the 5th respondent under agreement of sale dated 20-05-1964. Ramalingeswara Rao gifted Ac.90.00 to the Society under an unregistered gift deed, dated 05-10-1973, which was validated under ROR Act. Before the same the respondents 4 and 5 filed O.S.No.138 and 137 of 1981 against their vendor—B.Ramalingeswar Rao for declaration of their title and injunction in respect of their property in Sy.Nos.4, 5 and 6. On decreeing the suits, they got validated the unregistered alienation under ROR Act. Similarly, the Society also filed an application for validation of Ac.90.00. The M.R.O. by proceedings dated 10-09-1993 allowed the claim of respondents 4 and 5 and issued certificates in Form 13-B and 13-C regularizing unregistered sale in their favour. The appeal preferred against the said order was dismissed and the same has become final. Challenging the order of the M.R.O. dated 10-09-

1993, allowing the claim of respondents 4 and 5 and issuing certificates in Form 13-B and 13-C and the appellate order passed by the R.D.O. dated 29-04-1995, the Wakf Board filed W.P.No.22099 of 1996 but the said writ petition was dismissed as withdrawn. The vendor of the writ petitioner—Ramalingeswara Rao filed declaration under Urban Land Ceiling Act (for short "ULC Act") apart from respondents 4 and 5. On rejection of the claim of respondents 4 and 5 by ULC authorities, they filed an appeal and the matter was remanded for fresh determination. In the year 1985, proceedings under Section 145 Cr.P.C. were initiated by the R.D.O, who by order dated 23-11-1988 held that the land was in possession of respondents 4 and 5 and it is not a Wakf Property and delivered back the possession to them and since then they are in possession of the property. The Wakf Board filed O.S.No.45 of 1994 against respondents 4 and 5, but failed to obtain temporary injunction and ultimately the suit was dismissed for default. In the application filed by the Wakf Board, after concluding the proceedings under Section 145 Cr.P.C.,

it was found that the Wakf Board has no right to the property, which was rightly set aside by the learned single Judge.

The findings recorded by the Land Grabbing Court in L.G.C.No.151 of 1996, which is filed to declare respondents

4 and 5 and others as land grabbers, is binding on the parties, where the Land Grabbing Court held that the claim of the Wakf Board that the Aurangazeb gifted the schedule property is not true and there is no evidence that the mosque was constructed during the period of Aurangazeb and that the mosque will be called as "*Alamgiri Mosque*" and Mirza Khasim Saheb was the owner and Pattedar of the property is not true. Notice of registration of the Wakf was not published on 22-10-1988 nor any application has been filed for registration of the

property as required under Section 25(8) of the Wakf Act, 1995 (for short “Wakf Act”). The Special Court in L.G.C.No.151 of 1996 also observed that it is doubtful whether the Wakf Nama—Ex.A1, dated 14-07-1959; Towliat Nama—Ex.A3, dated 11-01-1967 and Declaration in favour of Managing Committee of the Mosque—Ex.A5, dated 28-05-1977 were filed before the Wakf Board on 25-06-1987 and which were not in the custody of the Managing Committee of the Mosque. The Wakf Board, though a party before the R.D.O. under the proceedings of Section 145 Cr.P.C. failed to produce all the material relied on by it before the Land Grabbing Court and Mirza Khasim Saheb was the Pattedar of the property was invented for the purpose of the case. Non-issuance of notice before registering the property as Wakf Property is against the principles of natural justice and dismissal of LGC filed by the Wakf Board itself shows that it (Wakf Board) is not in possession of the property. Once it is recorded that D’Costa and her legal heir, Col.Cox, were in possession of the property, Wakf Board failed to prove its right and title in the property. Respondents 4 and 5 purchased the property from Ramalingeswar Rao after obtaining permission from the Tahsildar. Therefore, the Wakf Board cannot be permitted to withdraw the writ petition nor can be permitted to withdraw L.G.C.No.151 of 1996. In view of the same, Writ Appeal and Writ Petition filed by the Wakf Board are liable to be dismissed.

Sri P.Srinivas, learned counsel for the 3rd respondent while adopting the arguments of Sri S.Ramachandra Rao contends that Wakf Act came into force with effect from 01-01-1996 and if any question arises, whether a particular property is specified as Wakf Property in a list of Wakfs, any other person interested therein must apply to the Tribunal constituted under Section

83 of the Wakf Act having jurisdiction in relation thereto, has to be referred to the Tribunal. Therefore, no suit or other legal proceedings shall lie in any civil court in respect of any dispute, question or other matters relating to any Wakf Property which are required by or under this Act to be determined by the Tribunal. The Wakf Board filed L.G.C.No.151 of 1996 on 28-08-1996. By that time the Wakf Tribunal was not constituted, hence the Wakf Board rightly filed LGC before the Special Court. Therefore, any dispute that arises in respect of Wakf Board insofar as allegation of land grabbing shall be tried only by the Special Court or the Special Tribunal constituted under Section 7 of the Act, in view of bar of jurisdiction of the civil court in respect of land grabbing cases and its activity which was specifically taken away from the jurisdiction of the civil court under the Act. During the pendency of the case before the Special Court the State Government constituted Wakf Tribunal with effect from 01-07-1997. In the absence of any provision in the Wakf Act or in the Act to transfer the pending cases before various civil courts or the Special Court to the Wakf Tribunal, when the parties to L.G.C.No.151 of 1996 adduced evidence and marked the documents before the Special Court accepting its jurisdiction and having filed I.A.No.197 of 2001 before the Special Court to transfer the L.G.C.No.151 of 1996 to the Wakf Tribunal which was dismissed by the Special Court granting liberty to withdraw LGC, the Wakf Board has not challenged the order made in I.A.No.197 of 2001, dated 29-03-2001 nor withdrew the matter. Hence, they are bound by the findings recorded by the Special Court and precluded to raise the jurisdiction of the Special Tribunal to try the dispute.

He also contends that no *suo motu* enquiry was held by the Wakf Board under Section 27 of the Wakf Act and the application has to be filed within three months from the commencement of the Wakf Act.

Therefore, Wakf Board cannot receive application to register the properties in view of bar contained under Section 25(8) of the Wakf Act. In the absence of any suo motu enquiry held by the Wakf Board, the learned single Judge found Abdul Khadir said to have submitted the application ante dated.

No opportunity was given to the Society to participate in the enquiry before notification of the property as Wakf property, only to get over the proceedings under Section 145 Cr.P.C. the above notification came to be issued by the Board. The same is not binding on the Society. The learned single Judge rightly allowed the writ petition. The Wakf Board lost L.G.C.No.151 of 1996, the Society and other interested persons validated their documents under the provisions of Section 5-A of ROR Act and the writ petition filed by the Wakf Board i.e. W.P.No.22099 of 1996 challenging Section 5-A proceedings has been dismissed as withdrawn apart from civil suit—O.S.No.45 of 1994 filed for permanent injunction. Hence, the Wakf Board has no right or title over the suit schedule property. In support of his submissions reliance is placed on the following judgment.

M.P.WAKF BOARD v. SUBHAN SHA (D) BY LRS.[4].

In the light of the above submissions, referred to above, the following points arise for consideration in this batch of appeals.

1. Whether the learned single Judge is justified in setting aside the notification and giving a finding with regard to title of the property in a proceeding under Article 226 of the Constitution, which are summary in nature?
2. Whether the Special Court under Land Grabbing Act is *coram non-judice* on constitution of Wakf Tribunal and is justified in proceeding with the matter instead of relegating the parties to agitate their rights before the Tribunal constituted under the Wakf Act, 1995?
3. Whether the findings recorded by the Special Court with regard to

title of the Wakf Board vis-a-vis respondents/applicants in L.G.C.No.155 of 1999 can be sustainable or not?

Point No.1:

Petitioner in W.P.No.23792 of 1995 sought for a Mandamus to declare the notification published by the Government in the A.P. Gazette dated 29-12-1988 on the basis of alleged entry made in the books of Endowment of A.P. State Wakf Board and the proceeding of the Wakf Board pursuant to the said notification was published in respect of Ac.19.26 gts. in Sy.Nos.1 to 9 of Guttala Begumpet as Wakf property as illegal, arbitrary and violation of principles of natural justice.

The learned Judge observed that the Tribunal has vested with the jurisdiction to decide the disputes relating to the Wakf Property under Section 85 of the Act, but when it is the case of the writ petitioners that the action was *mala fide* and that the notification was in contravention of Section 25 apart from violation of principles of natural justice, it cannot be said still dispute has to be adjudicated before the Tribunal. Under the said circumstances, it has to be necessarily declared that the application as filed by the 5th respondent and the registration of the Wakf basing on such belated application is wholly illegal, incompetent and without jurisdiction, apart from being in gross violation of the principles of natural justice and allowed the writ petition stating that the registration of the Wakf and it is property in question in the Book of Endowments maintained by the Wakf Board as illegal and without jurisdiction.

Sri Shafiq Rahaman Mahajir, learned counsel for the Wakf Board was emphatic in his submission, when the notification issued is under challenge, learned Judge has to set aside the notification but cannot go whether it is properly registered Wakf property or not which has to be dealt with under the Wakf Act for the said purpose.

Learned counsel for the Wakf Board by placed reliance on the following judgments of the Supreme Court.

1. ***BOARD OF MUSLIM WAKFS v. RADHA KISHAN***[5]
2. ***KARNATAKA WAKF BOARD v. STATE OF KARNATAKA***[6]
3. ***BOARD OF MUSLIM WAKFS v. HADI BEGUM***[7]
4. ***M. GOVINDA RAO v. A. P. STATE WAKF BOARD, HYDERABAD***[8]
5. ***ANDHRA PRADESH WAKF BOARD, HYDERABAD v. S. SYED ALI MULLA***[9]
6. ***SAYYED ALI v. ANDHRA PRADESH WAKF BOARD, HYDERABAD***[10]
7. ***MOHD. QUTUBUDDIN v. M. MALLA REDDY***[11]

He contends that the Commissioner of Wakf is empowered to make a survey and report to Government and the persons who are interested in the Wakf property; list published under Section 5(2) of the Wakf Act can be challenged by a writ petition only where the order of the Wakf Commissioner under Section 4 suffers from want of jurisdiction and notification published as Wakf properties will be final; whether grantor was Muslim or professed other religion is immaterial and Wakf property allows to work including service imams.

On the other hand, learned counsel for the respondents, Sri P.Srinivas, placed reliance on the following judgments.

1. ***RADHAKISHAN v. STATE OF RAJASTHAN***[12]
2. ***A.R.S.KHADRI v .DISTRICT JUDGE***[13]
3. ***ABDUL KAREEM V. SPECIALOFFICER WAKFS***[14]
4. ***BANGALORE MUNICIPALITY v. BOARD OF WAKFS***[15]
5. ***PARVATHI BAI v. WAKF BOARD, CIRCLE NO. 1, HYDERABAD, ANDHRA PRADESH***[16]

6. ***BOARD OF MUSLIM WAKFS v. RADHA KISHAN*** [17]

7. ***SHAH MANZOOR PEER DARGAH v. STATE OF KARNATAKA*** [18]

8. ***PUNJAB WAKF BOARD v. GRAM PANCHAYAT, GRAM SABHA*** [19]

9. ***B. GOWRA REDDY v. GOVT. OF A. P. REVENUE DEPARTMENT, HYDERABAD*** [20]

10. ***KARNATAKA BOARD OF WAKF v. GOVERNMENT OF INDIA*** [21]

11. ***ABDUL RAIS v. MADHYA PRADESH WAKF BOARD*** [22]

12. ***A. P. STATE WAKF BOARD, HYDERABAD v. MAVURU SUNDARAMMA*** [23]

13. ***A.P. STATE WAKF BOARD v. SYED AMANULLA HUSSAINI*** [24]

He contends that Wakf Commissioner cannot adjudicate a particular property is a Wakf property, but he can adjudicate only with the matters i.e. issuance of notice to the persons interested before notifying the property as Wakf property.

It is now fairly well settled that the Mandamus jurisdiction is available under any public authority. The duty that may be enjoined by Mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law and it is only the person whose rights have been infringed may apply for Mandamus.

The High Court in exercise of jurisdiction under Article 226 of the Constitution cannot grant relief excess than what is prayed for in the writ petition. (See ***CHANDIGARH ADMN. v. LAXMAN ROLLER FLOUR MILLS (P) LTD.*** (1998) 8 SCC 326)

This Court in ***SYED KUZIM BAHADUR V. DISTRICT COLLECTOR, R.R.DISTRICT*** [25] categorically held Article 226 cannot be meant to establish rights but meant to established rights. Where complicated questions of fact are involved, which has to be established by leading oral and documentary evidence and the High Court cannot declare title in a summary manner under Article 226.

Keeping in view of the above principles, we shall now examine the correctness of the judgments under appeals.

According to the writ petitioners, Lt. Col. Cox. was the owner of land measuring Ac.93.11 gts. in Sy.Nos.1 to 9 of Guttala Begumpet village having purchased under a registered sale deed dated 08-05-1963 and he sold the said land to one B.Ramalingeswara Rao, who in turn gifted an extent of Ac.90.00 under an unregistered gift deed in favour of the Society and accordingly they were put in possession on 05-10-1973. The said gift deed has been validated by the Mandal Revenue Officer under Section 5-A of ROR Act that has become final. When the matter stood thus, proceedings Section 145 Cr.P.C. were initiated under against K.S.N.Murthy—2nd petitioner in W.P.No.23792 of 1995 and some others in respect of the land in Sy.Nos.6 and 7. The Mandal Revenue Officer while disposing of the proceedings under Section 145 Cr.P.C. confirmed the order over an extent of 1,000 square yards to the Wakf Board.

On appeal preferred by the Wakf Board, the matter was remanded to the Mandal Revenue Officer for fresh enquiry.

On such remand, the Mandal Revenue Officer again confirmed the title of Col. Cox and B.Ramalingeswara Rao and held that the Wakf Board was in possession of only 1,000 square yards.

The Wakf Board in a suit—O.S.No.44 of 1995 filed by it for permanent injunction disclosed about the notification issued declaring the property as Wakf Property. Questioning the said notification the present writ petition under appeal i.e. W.P.No.23792 of 1995 is filed. The said suit i.e. O.S.No.44 of 1995 was withdrawn and thereafter, the

Wakf Board filed L.G.C.No.151 of 1996 against the writ petitioners in W.P.No.23792 of 1995 and also others including their vendors under whom it seeking title. If that is the case, when the comprehensive suit is pending, it is not open for the High Court to enquire into and gave a finding with regard to the rights of either parties, whether the claim of the Wakf Board to register it as a Wakf is genuine or not, except issuance of notification notifying the property as Wakf Property. Admittedly, in the case on hand there is dispute among the writ petitioners, Wakf Board and others before the M.R.O. under Section 145 Cr.P.C. with regard to possession of the property and it went against the Wakf Board. The M.R.O. confirmed that the Wakf Board is in possession of only 1,000 square yards and that the writ petitioners are in possession of the remaining land covered by the owners which is only Ac.10.00 and the rest of the survey numbers are not the subject mater of enquiry before the Mandal Revenue Officer under Section 145 Cr.P.C.

Once it is established that before notifying the property as Wakf no notice as such was issued to the persons, whose rights are likely to be affected, they can always maintain the writ petition questioning the notification.

It is now well settled that notification issued under sub-section (1) of Section 6 of Wakf Act making list as final and conclusive between the Wakf Board and the Muttawalli and the persons interested in the Wakf and not to extend its scope to the persons who are not persons interested in the Wakf. Therefore, the right, title and interest of a stranger, a non-Muslim to the Wakf in a property cannot be put in jeopardy merely because that property is included in the list of Wakfs. (See ***BOARD OF MUSLIM WAKFS v. RADHA KISHAN*** (1979) 2 SCC 468).

The Supreme Court in ***PUNJAB WAKF BOARD v. GRAM PANCHAYAT***[26] and ***SAAYYED ALI v. A.P.WAKF BOARD, HYDERABAD***[27] reiterated that the persons who are not served with any notice can file the writ petition challenging the notification.

In view of the same, quashing notification on the ground that persons, who are likely to be affected by such notification, have not been served with any notice is justified. The rest of the finding recorded by the learned single Judge with regard to claim of the Wakf Board to notify the property as Wakf Property and title of the writ petitioners vis-à-vis Wakf Board, the learned Judge was not justified in deciding the said issue, which is dealt with in point Nos.2 and 3.

Point No.1 is accordingly answered.

Point No.2

On allowing W.P.No.23792 of 1995, the Wakf Board filed W.A.No.215 of 2002 and also filed W.A.M.P.No.3350 of 2002 seeking suspension of the order passed by the learned single Judge. This Court by order dated 04-04-2002 while suspending the operation of the order dated 04-12-2001 passed in W.P.No.23792 of 1995 made it clear that the Land Grabbing Court can proceed with the hearing of the arguments and dispose of the matters pending before it without reference to the pendency of the writ appeals.

The Wakf Board filed L.G.C.No.151 of 1996 pleading that the application schedule property consists of Old Alamgiri Mosque, Idgah and graveyard. The Moghal Emperor Aurangazeb gifted the lands in

the above survey numbers for the effective management and maintenance of the Mosque, Idgah and graveyard, which has been maintained by the successive rulers without any interference, where the Muslims are offering their regular prayers in Alamgiri mosque and burying the Muslim dead bodies in the graveyard. The Wakf Board is the owner of the application schedule property. One Mirza Khasim Saheb was recorded as Pattedar in the Sethwar of 1958 and 1960 whose name was struck down without any authority. He executed a Towliath Nama in favour of one Shaik Imam as Muttawalli, who in turn constituted a Committee headed by Shaik Abdul Khader and submitted an application for registration of the Wakf property under Section 25 of the Wakf Act. The Board on receipt of application issued a notification in newspapers calling objections. Since no objections were received, the same was published in the A.P.Gazette dated 29-12-1988. The name of Mirza Khasim Saheb was struck down in the Sethwar in respect of Sy.Nos.4 and 5, but his name was appeared in Pattedar column. After striking down the name of Mirza Khasim Saheb, Miss D.Costa's name was entered in the year 1959. The classer was prepared in 1342 Fasli and the names of Pattedar in respect of Sy.Nos.11 to 9 are not clearly known as the script is in modi language. The respondents 4 and 5 claiming property under an agreement of sale alleged to have been executed by B.Ramalingeswara Rao—2nd respondent in respect of Sy.Nos.4 and 5, 5 and 6 respectively. The stamps were purchased on
18-10-1957 and 19-09-1957, but the agreements were executed in April, 1964.

The 1st respondent filed a counter in the said case stating that originally the application schedule property belongs to one Lt.

Col.Cox which is evident from the Khasra Pahanis of 1954-55, 1960-1961, 1962-1963 and *kist vasul baki register*, All India Survey and Settlement Sethwar Pahanis recorded.

Col. Cox was the Pattedar and Possessor of the application schedule property. He sold the same in 1963 to one B.Ramalingeswar Rao—2nd respondent under a registered sale deed dated 08-05-1963 after obtaining permission under Sections 47 and 48 of A.P. Tenancy Act by proceedings No.A3/19222/162 dated 19-03-1963. After mutating the name of the 2nd respondent on 12-04-1964, his name was recorded from the year 1964 to 1971. Ramalingeswara Rao—2nd respondent gifted an extent of Ac.90.00 under an unregistered gift deed 05-10-1973 to the 3rd respondent—Society which was accepted by it. The Collector collected the stamp duty under Section 4(1) of the Stamp Act. The said gift was validated by the Mandal Revenue Officer under the provisions of ROR Act on

10-09-1993 after conducting enquiry. Against the order passed by the Mandal Revenue Officer appeal was preferred by the persons aggrieved, which was confirmed by the Joint Collector in proceedings dated 24-06-1991 rejecting the claim of other claimants. Questioning the order of the Joint Collector the aggrieved persons filed W.P.Nos.8543, 8544, 8617 of 1991 and 1196 of 1992. The High Court by order dated 08-07-1992 set aside the same and remitted the matter for fresh enquiry.

On such remand, the Mandal Revenue Officer confirmed the title and right of the respondents 2 and 3 to an extent of Ac.62.00 as valid in proceedings No.C/75/92, dated 10-09-1993 and accordingly validation certificates were issued in Form No.13-B. Aggrieved by the said order the interested persons preferred appeal before the Revenue Divisional Officer, who in turn confirmed the same by order dated 29-04-1995 and on such conformation the order of the Mandal Revenue Officer became final. Later the Sub-Divisional Magistrate and Revenue Divisional Officer initiated proceedings under Section 145 Cr.P.C. to which the Wakf Board is a party. The Mandal Revenue Officer confirmed the title of Lt. Col.Cox and respondents 2 and 3 under Section 145 Cr.P.C. proceedings. The Wakf Board claim was confirmed in respect of 1,000 square yards. The appeal preferred by the Wakf Board before the District and Sessions Judge, Ranga Reddy District was allowed and the matter was remitted to the Mandal Revenue Officer for fresh enquiry. In the fresh enquiry the Mandal Revenue Officer again confirmed its earlier order. Later, the Wakf Board filed O.S.No.45 of 1994 for permanent injunction before the II Additional Sub-Judge, Rangareddy District but no injunction was granted, as Wakf Board filed a notification. Questioning the notification, notifying the property as Wakf property, W.P.No.23792 of 1995 was filed. The High Court in W.P.No.1645 of 1995 held that application schedule property is exempted from the provisions of U.L.C. Act by order dated 20-04-1995. Against which W.A.No.1715 of 1995 was filed by the Government. Later, the Muslim Minority Front filed public interest litigation in respect of the same property which was dismissed by the High Court. Later, the lay out was approved.

The 3rd respondent—Society filed a counter contending that the application schedule property is not a Wakf Property and Lt. Col. Cox was the owner, who sold Ac.93.11 gts. by order dated 08-07-1992 after obtaining permission under Sections 47 and 48 of A.P. Tenancy Act. The 2nd respondent—B.Ramalingeswara Rao in turn gifted Ac.90.00 to the 3rd respondent—Society in the year 1970 under a gift deed dated 05-10-1973 which was validated after collection of deficit

stamp duty and since then the 3rd respondent is in possession of the said property. The 2nd respondent has no title from 1970 onwards. The Land Ceiling Tribunal, Gudiwada computed standard holding of the 2nd respondent as 3.2037 and called upon him to surrender 2.2037 standard holding. Against which he filed L.R.A.No.2 of 1979 before the Land Reforms Appellate Tribunal, Krishna District at Machilipatnam. The Appellate Tribunal by order dated 23-05-1979 excluded the property gifted to the 3rd respondent—Society. Against the order of the Appellate Tribunal, the Authorized Officer filed C.R.P.No.5192 of 1979. The High Court by order dated 20-02-1980 remanded the matter to the Land Reforms Tribunal for fresh disposal. On such remand, the Tribunal passed an order in C.C.No.2379/KKL/75 dated 25-08-1980 observing that the lands in question are the Urban Agglomeration and the provisions of the Land Ceiling Act are not applicable. Further, it was held that the 2nd respondent is not holding any excess land and some of the respondents in L.G.C. claimed rights in certain extents in Sy.Nos.2 to 9 and claims title from the 2nd respondent. The Mandal Revenue Officer, Serilingampalli vide proceedings No.B1/1233/89 dated
12-12-1989 validated the respective documents of some of the respondents and some others in which the 2nd respondent is not party to the said proceedings under Section 5-A of ROR Act. Aggrieved by the orders of Mandal Revenue Officer, revision was preferred before the Joint Collector, who in turn by order dated 24-06-1991 acknowledged the gift made by the 2nd respondent in favour of 3rd respondent—Society by confirming the order of Mandal Revenue Officer. Aggrieved by the said order of the Joint Collector, 4th respondent and others filed W.P.Nos.8543, 8544, 8575 and 8817 of

1991 and 1196 of 1992, which were allowed and matter was remitted to the Mandal Revenue Officer for fresh disposal. On such remand, the Mandal Revenue Officer by order dated 10-09-1993 confirmed the gift made to the 2nd respondent to an extent of Ac.62.00 as under:

Survey Number	Extent Acs. Gts.
2 PART	06.22
3 PART	14.05
4 PART	01.02
5 PART	01.11
6 PART	10.27
7 PART	08.19
8 PART	08.21
9 PART	11.13
TOTAL	62.00

The third respondent's possession is conclusive in respect of Ac.62.00 apart from that it is also claiming balance of Ac.28.00. The second respondent on filing declaration under Section 6(1) of the ULC Act has not disclosed the property covered by gift deed, but the Special Officer and Competent Authority included Ac.93.11 gts. to the holding of 2nd respondent and on issuing draft statement under Section 8(1) on 07-06-1991 and final statement under Section 9 of the ULC Act on 31-05-1993, notification under Section 10(1) was issued on 22-01-1994 and the same was published in the A.P. Gazette. On second respondent filing appeal against the draft statement, the third respondent—Society filed an application to implead it and also filed an application to condone the delay in filing the appeal, which was dismissed, consequently the appeal was also dismissed. Questioning the same the 2nd respondent—Ramalingeswara Rao filed W.P.No.20090 of 1994 in which the 3rd respondent—Society impleaded as party.

Therefore, the proceedings initiated by the ULC authorities in respect of Ac.62.00 held by the 3rd respondent—Society was totally misconceived and without jurisdiction on the date of commencement of ULC Act i.e. 17-02-1976. The property was not covered by master plan and the provisions of the said Act have no application. The master plan was issued on 29-09-1980 and the Society filed W.P.No.1645 of 1995 questioning the proceedings issued by the Special Officer in proceedings No.E/24084/76 dated 22-01-1994 and the consequential order under Section 10(1) of the ULC Act dated 17-11-1994. The High Court allowed the said writ petition on 12-04-1995 holding that the property covered by the gift deed should be excluded from the computation and others properties of the 2nd respondent—Ramalingeswara Rao should be adjudicated. Since there was law and order problem, Section 145 Cr.P.C. proceedings, as referred earlier, were initiated by the Revenue Divisional Officer, Chevella. The 3rd respondent—Society transferred Ac.8.00 in favour of respondent No.9; Ac.7.13 gts. in favour of respondent No.15; Ac.5.00 in favour of respondent No.14; Ac.8.00 in favour of respondent No.12; Ac.8.00 in favour of respondent No.10; Ac.7.27 gts. in favour of respondent No.11 —Balaramrai
Co-operative Housing Society and Ac.8.00 in favour of respondent No.13—Addagutta Co-operative Housing Society; in all 52 acres and the unregistered sale deeds were validated. Respondents 9 to 15 entered into development agreement with the 1st respondent and lay out plan was sanctioned by HUDA.

Respondents 4 and 5 filed a counter contending that Lt. Col Cox sold Ac.94.17 gts. in Sy.Nos.1 to 9 of Guttala Begumpet village to the 2nd respondent—Ramalingeswara Rao under a sale deed dated

06-05-1963 after obtaining permission under Section 47 and 48 of A.P. Tenancy Act. The 2nd respondent sold Ac.15.00 to the 4th respondent in Sy.Nos.4 and 5 under an agreement of sale with possession dated 11-04-1964; he also sold Ac.14.00 to the 5th respondent in Sy.Nos.5 and 6 under an agreement of sale with possession on 20-05-1964 and ever since they are in possession of the said property. The 4th respondent filed O.S.No.138 of 1981 and 5th respondent filed O.S.No.137 of 1981 against the 2nd respondent for declaration of their right, title and for injunction before the District Munsif, West and South, R.R. District and the said suits were decreed on 29-06-1981 which have become final. They (Respondents 4 and 5) also filed application before the Mandal Revenue Officer, Serilingampalli under Section 5-A of ROR Act. The 3rd respondent—Society also filed similar application.

The Mandal Revenue Officer disallowed the claim of the respondents 4 and 5 while allowing the claim of the 3rd respondent—Society. Aggrieved by the same, the respondents 4 and 5 filed a revision before the Joint Collector, who in turn dismissed the revision. Against the said order they filed W.P.No.8543 of 1991 and batch which were allowed on

08-07-1992 setting aside the order of the Joint Collector and Mandal Revenue Officer and remanded the matter to the Mandal Revenue Officer for fresh enquiry. After remand, the Mandal Revenue Officer allowed the claims of respondents 4 and 5 by order dated 10-09-1993 and issued certificate in Form No.13B and 13C regularizing the unregistered sales and the said order has been confirmed by the Revenue Divisional Officer, Chevella dismissing the appeal preferred by some of the respondents which has become final. The respondents

4 and 5, out of 23 acres purchased by them, sold Ac.3.00 to Balamrai Cooperative Housing Society—11th respondent and Ac.1.00 to the 18th respondent. The 2nd respondent—Ramalingeswara Rao filed W.P.No.1645 of 1995 in which the High Court held that the lands in Sy.Nos.1 to 9 of Guttala Begumpet Village are agricultural lands and do not come under the provisions of the ULC Act. The 2nd respondent filed a memo adopting the counter of respondents 4 and 5.

The 6th respondent filed a counter affidavit through his General Power of Attorney—respondent No.18 stating that the Revenue Divisional Officer, Chevella by order dated
23-11-1988 held that the Wakf Board has no right, title over the application schedule property except an extent of 1,000 square yards and the Mandal Revenue Officer, Serilingampalli by order dated 10-09-1993 validated the sale in favour of the 6th respondent.

The respondents 16 and 17 filed separate counter reiterating about purchase made by respondent No.2 from Col.Cox and the proceedings issued under Section 145 Cr.P.C. They stated that the 2nd respondent—Ramalingeswara Rao sold Ac.6.00 to the 16th respondent through registered sale deed in Sy.Nos.7 and 8 of Guttala Begumpet village, who filed suit—O.S.No.161 of 1981 and obtained a decree on 30-07-1981 against the 2nd respondent from the District Munsif, West and South, Hyderabad. The decree has been validated under the ROR Act to an extent of Ac.1.00 in Sy.No.9 and they are in possession. The respondents 16 and 17 adopted the counter filed on behalf of respondents 4 and 5.

The respondent No.18 filed a counter reiterating that respondents 4 and 5 purchased the land from the 2nd respondent—Ramalingeswara Rao and their rights have been validated under Section 5-A of ROR Act. He purchased Ac.1.00 in Sy.Nos.4, 5 and 6 from the respondents 4 and 5 on 21-08-1993.

The respondent No.19 filed a separate counter, reiterating the same facts as stated by other respondents, stating that he purchased the land under an unregistered document from the 2nd respondent and obtained a decree in O.S.No.140 of 1981 in respect of Ac.2.07 gts. in Sy.No.2 and the same has been validated by Mandal Revenue Officer, Serilingampalli on 13-09-1993.

The twentieth respondent filed a separate counter stating that the 2nd respondent, who was the owner of application schedule property, gifted the said property to the 3rd respondent and the Revenue Divisional Officer granted patta pass book to an extent of Ac.62.00 in favour of 3rd respondent and other respondents. The gift made in favour of respondent No.3 was to use the land philanthropic purposes and 3rd respondent is not authorized to sell the property and the sale made by S.Arulappa, Archbishop and Chairman of the 3rd respondent is illegal.

The respondents 9 to 15, who purchased the property from the possession of 3rd respondent—Society over an extent of 52 acres, referred to above, filed a separate counter adopted the counter filed by respondent No.3. They also filed additional counter affidavit denying that they have grabbed the application schedule property without any rightful entitlement and prayed for recovery of possession from them. The Wakf Board has no right to recover the possession.

A rejoinder was filed by the Wakf Board stating that all the civil court decrees obtained by the respondents are product of fraud and collusive and not binding on it. The Mandal Revenue Officer is not competent authority to regularize the gift and he cannot decide the validity of the gift under ROR Act.

The application schedule property claimed by the 19th respondent is contrary to decree in O.S.No.140 of 1981 and is estopped on the principle of estoppel by conduct.

Respondents 4 and 5 in L.G.C.No.151 of 1996 filed L.G.C.No.155 of 1996 against the Wakf Board with similar pleas taken in L.G.C. No.151 of 1996 stating that on publishing notification dated 12-06-1989 all the unregistered alienations with respect to agricultural lands shall be validated under Section 5-A of A.P. Record of Rights in Land and Pattedar Pass Books Act. They filed applications before the Mandal Revenue Officer, Serilingampalli under Section 5-A of the said Act. Similarly respondent No.3—Society filed application stating that B.Ramalingeswara Rao gifted the property under un-registered gift deed dated 05-10-1973 in respect of an extent of 90.00 acres which was validated by M.R.O. In the W.P.No.1645 of 1995 filed by the vendors of B.Ramalingeswara Rao, the High Court held the application schedule properties are agricultural lands and they do not come under the purview of ULC Act and basing on the self-serving statements, Wakf Board claims the properties belonging to it and they have no right to take it.

The Wakf Board filed its counter similar to the pleas taken in L.G.C.No.151 of 1996 that the alleged sale deed dated
06-05-1963 in favour of B.Ramalingeswara Rao is fabricated and

collusive document and B.Ramalingeswara Rao was not competent to sell Ac.15.00 in Sy.Nos.4 and 5 to the first applicant and similarly the document in favour of the 2nd applicant dated 20-05-1964 are not binding on the Wakf Board. Filing of suits—O.S.Nos.138 of 1981 and 137 of 1981 by the applicants 1 and 2 against B.Ramalingeswara Rao and obtained judgment and decree are the result of fraud played by them. The said collusive documents are obtained in collusion with B.Ramalingeswara Rao etc.

Learned counsel appearing for the Wakf Board by placing reliance on the judgment of the Supreme Court in ***UNITED BANK OF INDIA v. ABHIJIT TEA CO. (P) LTD.*** (3 supra) contended that Land Grabbing Court cannot decide the title and ought to have returned the LGC with liberty to approach Wakf Tribunal for appropriate relief.

In ***P. RAMA RAO's case*** (2 supra) Justice *P.Venkatrama Reddi* (as he then was) speaking for the Bench while upholding the circular issued by the High Court after the constitution of the Tribunal to all the Tribunal to all the civil courts in the State not to entertain the suits relating to Wakf property and return all the plaints to present them before the Wakf Tribunal held suit filed prior to the constitution of the Wakf Tribunal are maintainable and the jurisdiction of the civil court is not ousted in respect of said suits in the light of Section 85 of the Wakf Act.

The ratio of the above Bench has been followed and approved by this Curt in ***BADARLA SURYAKUMARI v. BADARLA VAMANA MURTHY***[28].

Recently the Supreme Court in ***RAMESH GOBINDRAM (DEAD) BY L.Rs. v. SUGRA HUMAYN MIRZA WKF***[29] considering the jurisdiction of the

Wakf Tribunal to order eviction of the tenants which answered in the affirmatively by the Wakf Tribunal and confirmed by the High Court following its earlier judgments in ***T.SHIVALINGAM v. A.P.WAKF TRIBUNAL, HYDERABAD*** (1999 (3) ALD 646); ***P.RAMA RAO v. HIGH COURT OF A.P. REP. BY REGISTRAR (VIGILANCE)*** (2 supra); ***JAI BHARAT COOPERATIVE HOUSING SOCIETY LTD. v. A.P.STATE WAKF BOARD, HYDERABAD*** (2000 (5) ALD 743) and ***SYED MUNEER v. CHIEF EXECUIVE OFFICER*** (2001(4) ALD 430), wherein this court taken a view that the Tribunal established under Section 83 of the Wakf Act is competent to entertain and adjudicate upon all kinds of disputes so long as the same relate to any Wakf property and dismissed the revision. On appeal the Supreme after considering the Bar of jurisdiction of Civil Court under Section 85 of the Wakf Act held though Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of Civil Courts even under Section 85 is not absolute. It is limited only to matters that are required b y the Act to be determined by a Tribunal. So long as the dispute or question raised before the Civil Court does not fall within four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred. Therefore, the view taken by the High Court of Andhra Pradesh that the jurisdiction of the Civil Court is barred in respect of disputes that concerns with any Wakf or Wakf property, drawing support for that conclusion from Section 83 of the Wakf Act, 1995 which does not deal with exclusion of the jurisdiction of the Civil Courts to entertain civil suits generally or suit of any particular class or category. The exclusion of Civil Court's jurisdiction is dealt with by Section 6(5) and Section 85 of the Act. To interpret Section 83 as a provision that excludes the jurisdiction of the Civil Courts is not, therefore, legally correct, or that provision deals with constitution of

Tribunals, the procedure which the Tribunal would follow and matters relating thereto. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal. Since the case at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. a suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound and to the extent they run counter to what said by the Supreme Court stand overruled.

Admittedly, in the present case, LGCs were filed to declare respondents are land grabbers and for their eviction prior to constitution of the Wakf Tribunal; L.G.C.No.151 of 1996 on 28-8-1996, whereas the Wakf Tribunal was constituted with effect from 01-07-1997. Therefore, the Special Court under Land Grabbing Act will have jurisdiction to proceed with the matter.

Point No.2 is accordingly answered.

Point No.3

The pleadings, as referred to, in extenso, are: the Wakf Board is claiming the property stating that Mogul Emperor Aurgangazeb gifted the application schedule property and the successive rulers maintained the sanctity of the Wakf, but not filed any document

showing the gift of application schedule property. According to the evidence of P.W.1, the gift of the application schedule property is an oral one and Alamgiri Mosque was constructed during the period of Aurangazeb, but there is no evidence to establish that the mosque was constructed during the regime if Aurangazeb and it was called as Alamgiri Mosque. The title of the Wakf Board begins with Memorandum of Wakf (Ex.A1) in the name of Mirza Khasim Sahib, English Translation of which is Ex.A2l Twilit Nama dated 11-01-1967 executed by Mirza Khasim Sahib in favour of Shaik Imam is Ex.A3, English translation of which is Ex.A4; original declaration of Shaik Imam in favour of Managing Committee of Masjid Alamgiri Idgah is Ex.A5 dated 28-05-1977, English translation of which is Ex.A6; the application submitted by Shaik Abdul Quadri to register the application schedule property as Wakf Property is Ex.A7, dated 26-06-2007, paper publication of the same is Ex.A8, dated
22-10-1988; gazette notification is Ex.A10, dated 29-12-1988 and the said gazette notification has been set side by this Court in W.P.No.23792 of 1995 which was discussed in Point No.1.

The earliest document under which the Wakf Board claims title is Memorandum of Wakfnama under Ex.A1, whereas the claim of respondents/applicants in LGC.No.155 of 1999 starts from 1963 viz. Ex.B28—original registered sale deed executed by Lt. Col.G.E.Cox in favour of B.Ramalingeswara Rao dated 06-05-1963 and the permission issued under Sections 48 and 49 of Hyderabad Tenancy Act for transferring of the lands and various documents submitted by it. Whereas Exs.C1 to C31 marked by the Court starts from 1352 Fasli onwards.

According to the respondents, the property originally belongs to late Col.Cox whose name was recorded as Pattedar and possessor with respect to Sy.Nos.1 to 9 over an extent of Ac.91.00 of Guttala Begumpet Village in the Khasra Pahanies of 1954-55, 1960-61, 1962-63, who in turn sold the same in the year 1963 to one B.Ramalingeswara Rao under a registered sale deed dated 06-05-1963 after obtaining permission under Sections 47 and 48 of A.P. Tenancy (Telangana Area) and Agricultural Lands Act, 1950 vide proceedings No.3/19222/162 dated 19-03-1963 Ex.B29.

The Supreme Court as early as in 1974 in ***SHIKHARCHAND JAIN v. DIGAMBER JAIN PRABAND KARINI SABHA***[30] held Khasra is a record of right according to Section 45 (2) of the Central Provinces Land Revenue Act, 1917. Section 80 (3) of that Act provides that entries in a record of rights shall be presumed to be correct unless the contrary is shown.

In ***UNION OF INDIA v. VASAVI CO-OPERTIVE HOUSING SOCIETY LTD***.[31] Justice *B.Sudershan Reddy* (as he then was) speaking for the Bench after considering about nature and importance of entries made in settlement record held transfer of a patta would amount to transferring of all that is necessary to effectually transfer agricultural land and vest a title in the person to whom it is transferred. Transfer of patta is thus nothing but a transfer of title itself. It is thus clear that patta is nothing but a title itself so far as the agricultural land is concerned in Telangana area of State of Andhra Pradesh. The Division Bench in ***SYED JALAL v TARGOPAL*** (AIR 1970 AP 19) while construing various provisions of the land Revenue Act and the scheme of the act observed that "indubitably, the patta of agricultural land itself is a evidence of right of the holder, a transfer of which is also deemed to be a permanent alienation.” After considering evidentiary value of the entries made in Pahanis it was held the Hyderabad Record of Rights in Land Regulation, 1358 Fasli (for short 'the 1358 Fasli Regulation') is the law relating to the preparation and maintenance of record of rights in land in Hyderabad State. It is applicable to the Hyderabad area (Telangana Area) of State of Andhra Pradesh until its repeal by the Andhra Pradesh Rights in Land and Pattedar Pass Books Act, 1971. After considering various provisions of the 1358 Fasli Regulations it was held it is thus clear that columns 1 to 19 of the Pahani Patrika correspond to Form I, which is nothing but a Record of Rights. The entries made in Columns 1 to 19 in Pahani patrika shall be deemed to be the entries relating to the record of rights prepared and maintained under the regulations and it was concluded that the entries made in the Record of Rights carry with them a very great evidentiary value, provided the Record of Rights is prepared and maintained under the provisions of the relevant statutes or the regulations, as the case may be, and further provided that the entries therein are made after holding public enquiries. Sometimes, they constitute the only evidence available in order to establish one's title to the lands. The entries made in Columns 1 to 19 of the Pahani Patrikas shall be deemed to be the record of Rights prepared and maintained by a public servant in discharge of his official duties.

The report submitted by the Mandal Revenue Officer, Serilingampally Mandal, dated 09-12-1997 under Rule 6(2) and (3) of the Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 also discloses that as per the old pahanies of the year 1949-50, Sy.Nos.1 to 9 stands in the name of Col. Cox. and continued to be in his name upto 1963-64 and as per the Fasli year 1963-64, Sy.Nos.1 to 9 measuring

Ac.93.11 gts., i.e. full extent in Sy.Nos.1 to 8 and an extent of Ac.11.13 gts. out of total extent of Ac.12.13 gts. in Sy.No.9, have been transferred in the name of B.Ramalingeswara Rao—2nd respondent and whose name has been recorded as Pattedar against Sy.Nos.1 to 9 for total extent of Ac.94.11 gts. instead of 93.11 gts. i.e. one acre excess than owned by him. The Forensic Science Laboratory Officers have taken the names recorded in possession column in respect of Sy.Nos.1 to 9 by rounding off the names with red pencil and marked as Q-1 to Q-108 in the Pahanies from the year 1967-68 to 1980-81 as per the statement enclosed to it.

The registered sale deed executed by Col.Cox in favour of B.Ramalingeswara Rao dated 06-05-1963 under Ex.B28 after obtaining permission under Section 47 and 48 of the A.P. Tenancy Act. Ex.B29 dated 19-03-1963 shows that the name of Col.Cox was recorded as Pattedar and Possessor in the Khasra Pahanies 1954-55 and continues to show his name as Pattedar till 1963 and basing upon the said record, the M.R.O. granted permission for sale of the property.

According to the respondents/applicants in L.G.C.No.155 of 1999, the 2nd respondent—Ramalingeswara Rao sold Ac.15.00 to the 4th respondent in Sy.Nos.4 and 5 under an agreement of sale dated 11-04-1964 and Ac.14.00 of land to the 5th respondent in Sy.Nos.5 and 6 under an agreement of sale dated 20-05-1964, they submitted applications for mutation and their names were recorded as possessors by the proceedings of the Tahsildar dated 19-02-1981 Ex.B65 and out of total extent of Ac.23.00, respondents 4 and 5 sold Ac.3.00 to Balamrai Co-operative Housing Society—11th respondent and Ac.1.00 to B.Srinivas—18th respondent. Respondent No.4 filed O.S.No.138 of 1981 and respondent No.5 filed O.S.No.137 of 1981 against the 2nd respondent for declaration of title and injunction. After obtaining decrees, they filed applications before the Tahsildar for mutation. The 16th respondent, who purchased Ac.6.00 of land from the 2nd respondent under a registered sale deed dated 30-04-1966, filed a suit and obtained decree and the same has been validated under Section 5(A) of A.P. Rights in Land and Pattedar Pass Book Act. The Revenue Divisional Officer under Ex.B21 initiated Section 145 Cr.P.C. proceedings. In Ex.A1, the name of Mirza Khasim was shown as Pattedar but it does not mention that Aurangazeb declared the property as Wakf Property.

One Col.Cox. was recorded as Pattedar from whom B.Ramalingeswar Rao said to have been purchased the property and filed declaration under Agricultural Land Ceiling Act.

The Wakf Board filed Ex.A5 showing that Mirza Khasim Saheb appointed Shaik Immam as Muttawalli by executing Touliatnama in respect of Wakf Property in Sy.Nos.1 to 9, English translation of which is Ex.A6. The said exhibits would show as on 11-01-1967 Shaik Immam was in possession of application schedule property. But a perusal of Exs.A1, A3 and A5 show that Mirza Khasim Saheb never claimed that he was the owner and Pattedar of the application schedule property and it is not mentioned in Ex.A1 that Emperor Aurgangazeb had endowed the property as a Wakf property. The evidence produced by the Wakf Board showing Mirza Khasim Saheb is the Pattedar of Sy.Nos.1 to 9 of Guttala Begumpet Village is improvement and development. After referring to Ex.C28—Commissioner’s report in extenso it was observed that when the Wakf board claims Mirza Khasim Saheb was Pattedar in Sy.Nos.1 to 9 as shown in Exs.C3 and C4, in the absence of any evidence that Mirza

Khasim Saheb was married and non-examination of his family members is vital to the contention of the Wakf Board about his recording his name as Pattedar in Exs.C3 and C4 and the applicant failed to explain why the father's name was not written in Exs.A1 and A3 and in corroboration of Exs.C3 and C4 no evidence has been produced by the applicant; therefore, Exs.A1 and A3 has not been proved and mere production of documents does not amount to proving the contents of those documents. After referring to proceedings under Section 145 Cr.P.C. under Exs.B21 and B27 initiated proceedings only 10 acres in Sy.Nos.6 and 7 of Guttala Begumpet Village; total extent of which is Ac.19.36 that Wakf Board failed to prove that they were in possession of the land on the date of preliminary order on the other hand. Further, the notice issued by the Wakf Board under Ex.B103 to the 4th respondent calling upon to furnish the title documents and also infers that the applicant/Wakf Board did not know anything about the application schedule property. The order of the Commissioner of Survey, Settlement and Land Records dated 23-03-1994 shows that Guttala Begumpet village is Sarfekas village and it was under the administrative control of the Sarfekas Authority before 1949 which was originally surveyed in the year 1339 Fasli and revision survey was announced in the year 1351 Fasli (1941) showing that Miss D.Costa applied for grant of patta in view of her continues possession and enjoyment of old Sy.No.13 for an extent of Ac.78.37 gts. the Sarfekas Authorities granted patta for an extent of 30 Bigas (22 ½ acres) and recorded the same land as Loani Izafa in the Paisalpatti of 1336 Fasli, which clearly shows that D.Costa was in possession of the land in Guttala Begumpet Village even by 1926. The Tahsildar in his report stated about his spot inspection on 24-09-1967 and observed that late Sultan-Ul-Mulk was undoubtedly having possession over the entire land of Ac.78.37 gts. and that he was utilizing a portion of this land for cultivation purpose and also for construction of structures, road, culvers etc., proved beyond doubt that late Sultana-Ul-Mulk was in possession and enjoyment of the land and he recorded the statement of several persons including Col. Cox, who is the sole heir of Miss D.Costa The above statement discloses that D.Costa was in possession of Guttala Begumpet village and her heir was Col.Cox. Once 30 Bigas mentioned in Ex.A49 was purchased by Sultana-Ul-Mulk and others purchased from D.Costa and produced the sale deeds which proves that D.Costa purchased 30 Bigas but sold only Ac.7.10 gts. Exs.49 and 50 shows that D.Costa owned property in Guttala Begumpet village and the Tahsildar recorded the statement of Col.Cox sole heir of Miss D.Costa.

The learned Land Grabbing Court relying upon the findings of the High Court held that the claim of the 3rd respondent—Society is that B.Ramalingeswara Rao gifted Ac.19.17 gts. in Sy.No.1 to 9 to it in the year 1970 and gift deed was executed on 05-10-1973 which was validated and deficit stamp duty was collected by the District Registrar on 06-02-1989. Pursuant to the said gift deed possession was delivered to the 3rd respondent—Society.

It is not in dispute that the 2nd respondent filed a declaration under the provisions of A.P. Tenancy Act and also filed an affidavit stating that he gifted the land to the 3rd respondent—Society in 1970; therefore, 2nd respondent—Ramalingeswara Rao has no title over the property from 1970 onwards. The Tribunal declared standard holding of 2nd respondent—Ramalingeswara Rao as 3.2037 and directed him to surrender 2.2037 standard holding against which he filed Appeal No.2 of 1979 before the Land Ceiling Appellate Tribunal. The Appellate Tribunal excluded the property gifted to the 3rd respondent—Society. Aggrieved by the same the Authorized Officer filed C.R.P.No.5192 of 1979. The High Court by order 20-02-1980 set aside the order and remanded the matter to the Tribunal for fresh disposal. On remand, the Land Ceiling Tribunal passed an order dated 25-08-1980 in C.C.No.2379/KKL/75 observing that the lands in question are in the Urban Agglomeration and the provisions of the ULC Act are not applicable to the 2nd respondent—Ramalingeswara Rao and it is not having any excess land as stated by the 3rd respondent--Society.

Section 17 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (for short "Land Reforms Act") prohibits alienation of holding, which reads as under:

17 Prohibition of alienation of holding: -

(1) No person whose holding, and no member of a family unit, the holding of all the members of which in the aggregate, is in excess of the ceiling area as on the 24th January, 1971 or at any time thereafter, shall on or after the notified date, alienate his holding or any part thereof by way of a sale, lease, gift exchange, settlement, surrender, usufructuary mortgage or otherwise, or effect a partition thereof, or create a trust or convert an agricultural land into non agricultural land, until he or the family unit, as the case may be, has furnished a declaration under Section 8, and the extent of land, if any, to be surrendered in respect of his holding or that of his family unit has been determined by the Tribunal and an order has been passed by the Revenue Divisional Officer under this Act taking possession of the land in excess of the ceiling area and a notification is published under Section 16; and any alienation made or partition effected or trust created in contravention of this section shall be null and void and any conversion so made shall be disregarded.

(2) For the purpose of determining whether any

> transaction of the nature referred to in sub section (1) in relation to a land situated in this State, took place on or after the notified date, the date on which the document relating to such transaction was registered shall, notwithstanding anything in Section 47 of the Registration Act, 1908, be deemed to be the date on which the transaction took place, whether such document was registered within or outside the State.
>
> (3) The provisions of sub section (1) shall apply to any transaction of the nature referred to therein in execution of a decree or order of a civil court or of any award or order of any other authority.

Respondent No.3—Society filed W.P.No.1645 of 1995 and 2nd respondent—Ramalingeswara Rao filed 20090 of 1994 before this Court questioning the proceedings of the Special Officer and Competent Authority claiming that the exclusion of Guttala Begumpet village as excess as per the provisions of ULC Act, as the land is peripheral area as on the date of commencement of the Act i.e. 17-02-976 which was gifted to the 3rd respondent—Society by the 2nd respondent—B.Ramalingeswara Rao, which was validated by the M.R.O. under Section 5(A) of ROR Act and the same was confirmed by the original authority by order dated 24-06-1991. On filing W.P.Nos.8544, 8575, 8817 of 1991 and 1196 of 1992 the matter was remanded. After remand the orders have been passed on 10-09-1993 upholding the claim of the 2nd respondent—Ramalingeswara Rao only to the extent of Ac.62.00 as against Ac.90.00, which was claimed by the 3rd respondent—Society. Whereas the 3rd respondent—Society, who is the original owner of the property, filed W.P.No.20090 of 1994 that area of Ac.62.00 has to be deleted from the computation. This Court by common order dated 23-04-1995 set aside the order passed by the Competent Authority holding that an area of 4,13,863 square meters at Guttala Begumpet village is taken out of the computation of

the petitioner therein and the 2nd respondent—Commissioner of Land Reforms shall deal with the appeal pending before him without reference to any delay and adjudication; W.P. No.1645 of 1995 was allowed holding that the area of Ac.62.00 in peripheral area not covered by master plan and only covered by the extended master plan dated
29-09-1980 and set aside the order of the authorities, which has been confirmed in W.A.No.1715 of 1995.

It is well settled that mere extension of master plan will not become the agricultural land into vacant land, which will depend upon the declaration of utility either commercial or residential zone. Therefore, unless the said land is declared as vacant land under the ULC Act the provisions of Land Reforms Act alone will apply. In the absence of any evidence adduced by the parties to the effect that it is declared as vacant land, any gift by Ramalingeswara Rao in favour of 3rd respondent—Society, which is validated under ROR Act, is void *abinitio* in view of statutory bar contained under Section 17 of the Land Reforms Act, referred to above. The Land Grabbing Court has not considered the statutory bar contained under Section 17 of the Land Reforms Act and upheld the validation made under Section 5(A) of ROR At in favour of respondents 3, 4 and 5. Therefore, no title will pass to the 3rd respondent—society or 4th and 5th respondents under the invalidated gift deed dated 05-10-1973 and unregistered agreements of sale with possession dated 11-04-1964 and 20-04-1964, which were subsequently validated under Section 5-A of the ROR Act and on the basis of the decrees obtained in the suits. Since Ramalingeswara Rao sold the property under a registered sale deed —Ex.B49 to respondents 16 and 17 in the year 1963 i.e. much prior to coming into force of Land Reforms Act and ULC Act, they will acquire tile to the property and they will not be held to be land grabbers. Once the LGC 155 of 1996 filed by respondents 4 and 5 to declare them as owners of the application schedule property and to declare the other respondents as land grabbers held to be not maintainable, recording the findings in favour of the applicants does not arise. Suffice it to say the Wakf Board failed to establish the element of land grabbing to invoke the jurisdiction for their eviction; therefore, the parties are at liberty to work out their remedies with regard to declaration of their title to the property in an appropriate Forum. Therefore, the findings recorded by the Land Grabbing Curt cannot be upheld. The title of either parties will be subject to declaration made by a competent court in a properly constituted suit or other proceeding.

Point No.3 is accordingly answered.

For the conclusions reached by us, the LGC filed by the Wakf Board is liable to be dismissed on the ground that it failed to establish that the respondents are land grabbers as there is dispute with regard to title.

In the result, W.A.No.215 of 2002 filed by the Wakf Board and W.A.Nos.578 and 625 of 2002 filed by the 6th respondent and respondents 1 to 3 in W.P.No.23792 of 1995 respectively are partly allowed only to the extent of setting aside the finding with regard to title. W.P.No.26553 of 2003 filed by the Wakf Board is disposed of in the light of findings on point Nos.2 and 3. In view of disposal of writ petition, Contempt Case No.401 of 2008 is closed. In the circumstances of the case, there shall be no order as to costs.

A.GOPAL REDDY, J.

B.CHANDRA KUMAR,J.

03-12-2010

Murthy

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[1] 2004 (5) ALD 77

[2] 2000 (1) ALD 298

[3] (2000) 7 SCC 357

[4] (2006)10 SCC 696

[5] (1979) 2 SCC 468

[6] (2003) 5 SCC 555

[7] 1993 Sppl. (1) SCC 192

[8] 2008 (2) ALD 188 (DB)

[9] AIR 1985 AP 127

[10] (1998) 2 SCC 642

[11] 2004(5) ALD 77

[12] AIR 1967 Rajasthan 1

[13] AIR 1972 MYSORE 96

[14] AIR 1972 MADRAS 8

[15] AIR 1973 MYSORE 189

[16] 1969 (2) An.W.R.265

[17] AIR 1979 SC 289

[18] AIR 1980 Karnataka 118

[19] (2000) 2 SCC 121

[20] 2002 (3) ALT 439

[21] (2004) 10 SCC 779

[22] 2005 AIR SCW 73

[23] 2007(5) ALD 267 (DB)

[24] Unreported Judgment in W.A.No.772 of 2007

[25] 2002 (3) ALD 507 (DB)

[26] (2000) 2 SCC 121

[27] (1998) 2 SCC 642

[28] 2010 (4) ALT 909 (FB)

[29] 2010 (6) ALD 76 (SC)

[30] AIR 1974 SC 1178 = (1974) 1 SCC 675

[31] 2002 (5) ALT 370 (DB)