

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.11727 of 2016

ORDER :

THE BRIEF FACTS :

The petitioner herein is an Association registered in the year 1964 under the Societies Registration Act, 1860 to manage the affairs of Dargah of Sri Hazarath Ameer Sha Vali (**for short, 'Dargah'**) situated at Naidupet, S.P.S.R. Nellore District. It conducts the annual *urs* every year for three days.

2. The A.P. State Wakf Board is the 2nd respondent. It issued proceedings dt.22.10.1988 appointing a Managing Committee for the said Wakf headed by one S. Peer Mohiddin Saheb, but prior thereto the petitioner-Society has filed an application on 07.10.1988 stating that it was managing the affairs of the said Dargah since 1964. Without considering the petitioner's application, the 2nd respondent appointed another Committee on 22.10.1988.

3. The petitioner filed W.P.No.16806 of 2008 wherein initially interim orders were granted. Later it was disposed of on 10.08.1999 directing that a specific notice be given to petitioner-society before making appointment of Members to the Committee to manage the said Dargah, having regard to the fact that petitioner was safeguarding the property of the Dargah and was genuinely interested in the proper management of the properties of the Dargah.

4. Thereafter, the 2nd respondent issued notice on 20.12.1989 to petitioner to file objections for the constitution of a Committee for management of affairs of the said Dargah. The petitioner sent objections thereto on 20.01.1990.

5. But without considering the same, the 2nd respondent issued proceedings dt.19.03.1990 again constituting a Committee to manage the affairs of the said Dargah stating that objections were received after the period stipulated, and that they were time-barred. It then constituted a Committee for a period one year, i.e., from 22.10.1989 to 21.10.1990.

6. The petitioner then filed WP.No.4172 of 1990 before this Court, and this Court suspended the operation of the proceedings issued by 2nd respondent on 28.03.1990. Ultimately, the said Writ Petition was disposed of as infructuous on 25.01.2000 on the ground that the term of the Managing Committee appointed by 2nd respondent in the impugned proceedings had ended by 21.10.1990 itself, and the cause in the Writ Petition did not survive for adjudication.

7. Even thereafter, when the 2nd respondent attempted to interfere with the affairs of the Dargah without any authority of law, the petitioner filed O.S.No.177 of 1996 on the file of the Junior Civil Judge, Sullurpet against the 2nd respondent seeking a declaration that the plaint schedule Dargah and its property would not vest in the 2nd respondent herein, and for a consequential permanent injunction

restraining it from interfering with the ownership, management and control of the plaint schedule property by the plaintiff / petitioner herein.

THE DECREE IN O.S.No.177 of 1996

8. The said suit was decreed on 03.11.1999 declaring that the plaint schedule Dargah and its property do not vest in the 2nd respondent herein and the 2nd respondent was restrained by permanent injunction from in any way interfering with the ownership, management and control of the plaint schedule property by the plaintiff.

9. The plaint schedule property in the suit was an extent of Ac.0.69 cents and constructions thereon in Survey No.322 / 2 of Vinnamala Village, Naidupet Mandal, S.P.S.R. Nellore District.

10. The decree of the Civil Court in O.S.No.177 of 1996 became final and no appeal was preferred by 2nd respondent or any other person and binds the 2nd respondent.

11. But in the Revenue Records, the above land along with another Ac.0.02 cents in the same Survey Number was classified as Muslim Burial Ground Poramboke. The petitioner complained to the District Collector and sought a change of classification. He issued proceedings R.Dis.12890/68 dt.30.12.1969 approving the change of classification from 'Muslim Burial Ground Poramboke' to 'Dargah Poramboke', and directed the Tahsildar, Sullurpet to give effect to the change in the

related Village and Taluq Records. The Tahsildar, Sullurpet then issued a memo dt.11.03.1979 making the change of classification for Ac.0.69 cents as Dargah Poramboke, and directed the Revenue Inspector, Naidupet to implement the said change.

THE NOTIFICATION DT.05.10.2015

12. A notification vide F.No.01/Regn./NLR/2014/Z-IV/Suppl dt.05.10.2015 was issued by 2nd respondent and was published in Eenadu Daily Telugu Newspaper, Nellore District, local edition dt.08.10.2015, stating that the Ac.0.69 cents in Survey No.322/2 and Ac.0.02 cents in Survey No.322/1 with shop rooms (25 in number) is proposed along with the Dargah to be kept under the Mutawalliship of the 2nd respondent under Section 36 of the Wakf Act, 1995 and interested persons may file objections thereto.

13. The petitioner got issued a detailed notice dt.13.10.2015 through its Advocate in response to the notification dt.8.10.2015 informing the 2nd respondent about the Civil Court decree and stating that 2nd respondent cannot interfere with the right, title and possession of petitioner in respect of the property of the Dargah situated in Survey No.322/2 in Vinnamala Village and requested the 2nd respondent to withdraw the said proposal to register the Dargah and its attached properties.

14. The 2nd respondent issued a memo dt.12.01.2016 asking the petitioner to furnish supporting documents of the said Dargah in one week.

15. The petitioner sent copies of all relevant documents including the copy of the decree dt.03.11.1999 in O.S.No.177 of 1996 of the Junior Civil Judge, Sullurpet to respondent nos.2 and 3 and to the District Collector, Nellore on 10.02.2016, through registered post.

THE MUNTHAKHAB DT.12.2.2016

16. Without conducting any inquiry and without considering petitioner's objections, the 2nd respondent issued Munthakhab F.No.01/Regn./NLR/2014/Z-IV/Suppl dt.12.2.2016 stating that the Ac.0.69 cents in Survey No.322/2 and Ac.0.02 cents in Survey No.322/1 are registered under S.36 of the Wakf act,1995, that the Mutawalli is the 2nd respondent and the Wakif is one Shaik Subhani.

17. This action of the 2nd respondent in registering the said Daragah as a Wakf u/s.36 of the Act and the Munthakhab issued on 12.2.2016 are questioned in this Writ Petition by the petitioner.

PETITIONER'S CONTENTIONS

18. The petitioner contends *inter alia* that the said notification cannot over-ride the decision of the Civil Court rendered on 03.11.1999 in O.S.No.177 of 1996; that prior to issuing the said notification, the 2nd respondent, who is fully aware that petitioner is the person administering the Dargah affairs, should have issued notice

to petitioner as contemplated under sub-Section (7) of Section 36 of the Wakf Act, 1995; and no enquiry was conducted.

19. The petitioner contends that in view of the Civil Court decision, the said Munthakhab is null and void; that the impugned Munthakhab states that one Shaik Subhani is the Wakif, but the proceedings of the District Collector, Nellore and that of the Tahsildar, Sullurpet referred to above, and also the Civil Court decree, state that the property in question belongs to Government, and there was therefore no question of endowing of the said property by Shaik Subhani since neither the said person or his predecessors or any other person was not the owner of the property who could endow the same to the Wakf; that the property covered by the Civil Court decree in O.S.No.177 of 1996 including the Dargah cannot be called as a Wakf as the ingredients of a Wakf are not attracted in this case; and therefore, the Munthakhab dt.12.02.2016 has no validity in law.

THE INTERIM ORDER DT.12.8.2016

20. On 12.08.2016, this Court admitted the Writ Petition and suspended the impugned Munthakhab after hearing Sri K. Ramakanth Reddy, counsel for 2nd respondent.

THE IMPLEAD APPLICATION

21. The said Shaik Subhani, who is named as Wakif in the Munthakhab dt.12.2.2016, filed WPMP.No.16644 of 2016 to implead

him as a party to the Writ Petition, and the said application was allowed on 26.08.2016.

RESPONDENT'S CONTENTIONS

22. The respondent nos.2 and 3 filed a counter-affidavit and also an additional counter-affidavit.

23. In the counter-affidavit filed by respondent nos.2 and 3, they admitted the filing of and the orders passed in WP.No.16806 of 1988 and WP.No.4172 of 1990 as well as the decree in O.S.No.177 of 1996. It is also stated that an Appeal (S.R.) No.35475 of 2000 was filed against the judgment dt.03.11.1999 in O.S.No.177 of 1996 along with an application for condonation of delay, but the said appeal was dismissed. It is contended that the Wakf Act came into force with effect from 22.11.1995 by repealing the Wakf Act, 1954 and that after such Wakf Act, 1954 came into force disputes regarding Wakf Institutions or properties have to be resolved or adjudicated by an aggrieved person by instituting a suit only in the Wakf Tribunal within the period of one year from the date of publication of the list, and since the petitioner did not file the suit before the Wakf Tribunal and instead filed it before the Junior Civil Judge, Sullurpet, the said Court had no jurisdiction to entertain Wakf disputes or matters and so the judgment in O.S.No.177 of 1996 is *non est* and without jurisdiction. It is contended that pursuant to the decree in the said suit, the petitioner had not filed execution petition for its enforcement within a period of twelve years and, as such, the said decree is barred

under Section 136 of the Limitation Act, 1963. Certain decisions of the Jharkhand High Court and Madras High Court are also cited and reliance is also placed under Section 108-A inserted with effect from September, 2013. It is alleged that that petitioner obtained patta behind the back and without notice to the Wakf Board mischievously from the Revenue Authorities and has grabbed the land which was Muslim Burial Ground by misrepresenting facts to Revenue Authorities. Reliance is also placed on a letter of the Tahsildar, Sullurpet dt.22.03.2016 classifying the extent of Ac.0.71 cents in Survey No.322, Vinnamala Village as Muslim Burial Ground on the basis of R.S.R. of the Village. It is further contended that in the Adangal, however Ac.0.02 cents in Survey No.322/1, is classified as patta land and Ac.0.69 cents in Survey No.322/2 is classified village site poramboke. It is alleged that the petitioner constructed shops in the above land and is enjoying the rents without accounting properly for it or paying wakf fund, and that the petitioner is an encroacher under Section 3 (ee) as introduced by Amendment Act 27 of 2013, and is liable for prosecution under Section 52-A of the Act. It is stated that the notification dt.05.10.2015 was issued by the 2nd respondent invoking Section 36 of the Act for registration of the subject Wakf Institution and its attached properties. It was denied that the procedure contemplated under Section 36 of the said Act was not followed. It is stated that the 4th respondent submitted a Munthakhab in respect of the subject Wakf Institution and the same was enquired into and thereafter, the said Wakf Institution was registered as Wakf property

along with the attached properties; and that petitioner cannot avail the remedy under Article 226 of the Constitution of India since he has an effective remedy under Section 83 of the Wakf Act, 1995 before the Wakf Tribunal.

24. In the additional counter-affidavit, filed by respondent nos.2 and 3, it is stated that for the notification published by 2nd respondent on 08.10.2015, the petitioner through its Advocate, submitted objections, but did not produce any record, and that a memo was issued on 12.01.2016 to petitioner to furnish supporting documents within one week, but the petitioner did not furnish the documentary evidence within the time except the *ex parte* decree obtained by him; and that at the time when the judgment was delivered on 03.11.1999, the 2nd respondent did not register the property as Wakf and now that it is registered under Section 36 of the Wakf Act, and no objection can be taken to it.

25. The 4th respondent supported the stand of respondent nos. 2 and 3 and contended that petitioner has no *locus standi* to question the impugned Munthakhab; and any Wakf Institution such as Dargah, Mosque and Ashwarkhan is Wakf by user as per Section 3 (r) of the Wakf Act, and such Wakf by user is deemed to be registered and the 2nd respondent would have superintendence and control over such institution. According to him the registration of the Durgah in question by the Munthakhab dt.12.02.2016 does not in any way change the nature of the Wakf Institution.

26. I have noted the submissions of both sides.

27. From the above contentions of the parties, the following points arise for consideration :

(a) *Whether the petitioner has locus to file the Writ Petition challenging the Munthakhab dt.12.02.2016 ?*

(b) *Whether the judgment of the Civil Court rendered in O.S.No.177 of 1996 on 03.11.1999 is without jurisdiction ?*

(c) *Whether the Writ Petition should be dismissed on the ground that the petitioner has an effective alternative remedy under Section 83 of the Wakf Act ?*

(d) *To what relief ?*

Point (a) :

28. There is no dispute that it is the petitioner who obtained the judgment and decree dt.03.11.1999 in O.S.No.177 of 1996 from the Junior Civil Judge, Sullurpet against the 2nd respondent-Board. In that judgment, it was declared that the extent of Ac.0.69 cents in Survey No.322/2 of Vinnamala Village with the constructions thereon containing the Dargah has not vested in the 2nd respondent and the 2nd respondent was restrained by way of permanent injunction from in any way interfering with the ownership, management and control of the plaint schedule property.

29. Since the impugned Munthakhab dt.12.02.2016 issued under Section 36 of the Act affects the rights of the petitioner in respect of the Dargah obtained under the above decree of the Civil Court, the petitioner cannot be said to be not having *locus* to challenge the said Munthakhab in this Writ Petition. This point is answered accordingly in favour of the petitioner and against the respondents.

Point (b) :

30. There is no dispute in the present case that O.S.No.177 of 1996 was filed on 11.07.1996 before the Junior Civil Judge, Sullurpet and it was decided on 03.11.1999.

31. No doubt, the Wakf Act, 1995 came into force on 1.1.1996. It provided for constitution of a Tribunal under Section 83 of the Act to decide disputes or questions or other matters relating to a Wakf or Wakf property under the Act and empowered any Muthawali / person interested in a Wakf or any other person aggrieved by an order made under the Act to make an application before the Tribunal for determination of any dispute, question or other matter relating to the Wakf. The State Government, under sub-Section (1) of Section 83, was empowered to issue a notification in the Official Gazette constituting such Tribunal to determine the said questions.

32. It is not in dispute that vide G.O.Ms.No.88, Minorities Welfare Department dt.20.06.1997 w.e.f., 01.07.1997, the State Government constituted the Wakf Tribunal in the State of Andhra Pradesh. A

judicial officer of the rank of a District Judge was posted sometime later and the Tribunal is functioning since then.

33. So O.S.no.117 of 1996 had been filed by the petitioner before the Junior Civil Judge, Sullurpet *after* the Wakf Act, 1995 came into force, but *before* the constitution of the Wakf Tribunal under Section 83 of the Act by the State Government on 01.07.1997.

34. The question as to what would happen to suits or other proceedings (such as the one in the present case) initiated in a Civil Court between 01.01.1996 and 30.06.1997 was considered by a Division Bench of this Court in **P. Rama Rao and others v. High Court of Andhra Pradesh, rep. by Registrar (Vigilance) and others¹**.

35. The Bench observed that though under Section 85 of the Act there is a bar against entertainment of a suit by the Civil Court on and from the date of commencement of the Act, and the bar operates *prima facie* from the moment the Act came into force, since the basis for Section 85 is that the Wakf Tribunal should be a substitute for the Civil Courts, the intention of the Legislature appears to be that the obliteration of the jurisdiction of the Civil Court *and* the creation of the Tribunal to take over the exclusive jurisdiction confided to it under the Act, is a simultaneous process. No vacuum or hiatus could have been intended by the Legislature and it would not have foreseen that there would be delay in the constitution of the Tribunal. It

¹ 2000 (1) ALT 210 [D.B.]

therefore held that the Legislature could not have intended that the existing remedy or recourse to Civil Court should be extinguished as a first step, and that the remedy should be made available only when the Wakf Tribunal is set up. It noted that the State Government had constituted the Wakf Tribunal 1 ½ years after the Act came into force, and if aggrieved persons or institutions are left without any remedy to move the Court or a judicial body during this period, absurd and unintended results would follow which would be manifestly contrary to the legislative intention. It held that in such event, even Section 85 would be vulnerable to attack on the ground of infringement of Article 14 of the Constitution of India inasmuch as a particular class of litigants would be left without remedy to prevent invasion of their rights recognized by law on account of sheer delay in constitution of the Tribunal. It therefore, held that such construction should be avoided and a purposive construction which preserves the Constitutionality of the provision, should be adopted. It held that the absence of a provision in the Act for transfer of cases from Civil Court to Wakf Tribunal is a pointer to the legislative intention that the suits filed earlier to the constitution of the Tribunal shall continue to be dealt with by the Civil Court.

36. In view of this binding precedent, the contention of the respondent nos.2 and 3 that the judgment of the Civil Court in O.S.No.177 of 1996 is one without jurisdiction since the petitioner ought to have approached only the Wakf Tribunal in 1996, cannot be

accepted. Therefore, the said judgment is valid, effective and operative and binds the 2nd respondent.

37. The further contention of 2nd respondent that the judgment dt.3.11.1999 was granted ex parte and therefore would not be binding on the 2nd respondent is also without any merit.

38. It is settled law that in an ex parte decree, all grounds of attack in respect of the actual claim made and all matters inconsistent with the plaintiff's claim which might and ought to have been raised by the defendant will be deemed to be directly and substantially in issue in the suit and to have been heard and finally decided. [See **Bhoom Reddi and others v. Hyderabad State and another**² and **B.V. Prakash Reddy v. B.V. Pulla Reddy and others**³]

39. A judgment on contest or passed ex parte binds both parties, and its binding nature is not dependent on whether it is rendered on contest or not.

40. Admittedly, the 2nd respondent had even filed an appeal SR.No.35475 of 2000 with an application for condonation of delay and the said appeal was also dismissed. Being a party to the decision of the Civil Court, it is not open to the 2nd respondent to raise any plea that the decision of the Civil Court is invalid, ineffective or inoperative.

² AIR 1955 Hyd 232 (D.B.)

³ 1968 (2) An.W.R. 522 (D.B.)

41. The further plea that the petitioner, having obtained the decree from the Civil Court, had not executed the same, and therefore there is a bar under Section 136 of the Limitation Act, 1963, is equally without merit. The decree obtained by petitioner is one of declaration that the properties which are subject matter of the suit do not vest in the 2nd respondent and an injunction restraining the 2nd respondent from interfering with the ownership, management and control of the property by the petitioner. By its very nature, declaratory decrees of this nature are not capable of execution, but that does not mean that they are not effective and binding. The Limitation Act, 1963 does not contain Section 136. Even assuming that the 2nd respondent intended to refer to Article 136, the said Article states specifically “*provided that an application for enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation*”. Therefore, even reliance on this Article by 2nd respondent is misplaced.

42. The 2nd respondent contended that provisions of the Andhra Pradesh Co-operative Societies Act, 1964 or provisions of the Trust Act, are not applicable to Wakf properties or institutions, and the claim of the petitioner, who was registered under the Andhra Pradesh Co-operative Societies Act, 1964 to manage the affairs of the Dargah cannot be entertained. The petitioner is not registered under the said statutes but under the Societies Registration Act, 1860. In any event, the decision of the Civil Court obtained by the petitioner cannot be

nullified on the ground that the Society like the petitioner cannot have any role in the administration of Wakfs. This contention is also accordingly rejected.

43. The counsel for 2nd respondent also relied on Section 108 – A inserted in the Wakf Act, 1995 by the Wakf (Amendment) Act, 2013. This amendment of 2013 has been repealed wholly by the Repealing and Amending (Second) Act, 2015 [No.19 of 2015] vide Notification No.23 dt.14.05.2015. Even assuming for the sake of argument without conceding that the said provision applies, it merely gives over-riding effect to the provisions of the Wakf Act, 1995 notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act. It does not over-ride any decision of a competent Civil Court. It does not specifically state that decrees of competent Civil Court, passed after the Act of 1995 has come into force, are nullified.

44. Therefore, this point is answered in favour of petitioner and against the respondents.

Point (c) :

45. The counsel for 2nd respondent contended that the petitioner ought to approach the Wakf Tribunal constituted under Section 83 of the Act to challenge the impugned Munthakhab and that a Writ Petition under Article 226 of the Constitution of India is not

maintainable. Strong reliance was placed on the decision in **Board of Wakf, West Bengal v. Anis Fatma Begum and another**⁴ and **Allauddin charities and Zakath Wakf v. Hameed Ali and others**⁵.

46. In **Anis Fatma Begum** (4 supra), a civil suit was entertained after the coming into force of the Wakf Act, 1995 when the Wakf Tribunal constituted under the Act was functioning. In that context, the Supreme Court opined that in all matters pertaining to Wakfs, person aggrieved should approach the Wakf Tribunal and the Civil Court should not entertain any matter. There is no doubt an observation by the Court in that case that the person aggrieved cannot straight away approach the High Court also, but the said issue had not arisen for consideration in that case at all.

47. As long back as in 1998, the Supreme Court in **Whirlpool Corporation v. Registrar of Trademarks, Mumbai and others**⁶, had declared that existence of alternative remedy would not operate as a bar to entertainment of a Writ Petition under Article 226 of the Constitution of India where (i) the Writ Petition has been filed for enforcement of any of the Fundamental Rights or (ii) there has been a violation of principles of natural justice or (iii) the order or proceedings are wholly without jurisdiction and (iv) *vires* of an Act is challenged.

⁴ 2011 (1) ALD 61 (SC)

⁵ 2002 (1) ALD 67 [D.B.]

⁶ (1998) 8 SCC 1

48. In **C.I.T v. Chhabil Dass Agarwal**⁷ also the Supreme Court declared:

“It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226....

The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted.”

49. In **Syed Maqbool Ali v. State of U.P**⁸, the Supreme Court had held:

*“When a writ petitioner makes out a case for invoking the extraordinary jurisdiction under Article 226 of the Constitution, the High Court would not relegate him to the alternative remedy of a civil court, merely because the matter may involve an incidental examination of disputed questions of facts. The question that will ultimately weigh with the High Court is this: whether the person is seeking remedy in a matter which is primarily a civil dispute to be decided by a civil court, or whether the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action. (See the decisions of this Court in **ABL International Ltd. v. Export Credit Guarantee Corpn.***

⁷ (2014) 1 SCC 603

⁸ (2011) 15 SCC 383

*of India Ltd.*⁹ and *Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers*¹⁰.)”

50. In the present case, having suffered a judgment in the competent Civil Court which has attained finality, the 2nd respondent, has taken recourse to Section 36 of the Wakf Act, 1995 to over-ride and over-rule the said decision of the Civil Court. It practically amounts to overruling a judicial verdict by an executive act. When even the Legislature cannot over-turn a judgment (it can only take away the basis of a judgment¹¹), it is not open to the 2nd respondent, a statutory body, to claim such a power. Similar view has been taken by this Court in **Syed Ameen and another v. Andhra Pradesh State Wakf Board, Hyderabad**¹². Undoubtedly, therefore, the action of the 2nd respondent is high-handed, arbitrary and contrary to fundamental principles of law and this Court is therefore justified in entertaining the Writ Petition instead of relegating the petitioner to the remedy under Section 83 of the Wakf Act, 1995.

51. Moreover, under sub-Section (7) of Section 36, it is incumbent on the part of the 2nd respondent to make enquiries as to the genuineness and validity of the application made by the 4th respondent to treat the subject property as Wakf property. While it did issue a notification dt.05.10.2015 inviting objections, and the petitioner filed objections on 13.10.2015 (specifically mentioning about the Civil

⁹ (2004) 3 SCC 553

¹⁰ (2008) 12 SCC 500

¹¹ Virender Singh Hooda v. State of Haryana ... (2004) 12 SCC 588

¹² 2014 (6) ALD 411

Court decree in O.S.No.177 of 1996 obtained by petitioner against the 2nd respondent), without considering the said objections, the impugned Munthakhab has been issued by 2nd respondent. Thus, the 2nd respondent has clearly violated sub-Section (7) of Section 36 of the Act. On this ground also, this Writ Petition is maintainable.

52. In **Allauddin Charities** (5 supra), though the Division Bench took the view that the High Court cannot entertain a Writ Petition and permit a party to by-pass statutory remedy under Section 83 of the Act, the said observation was made in the context of the facts of that case where disputed questions of fact relating to title arose and a Writ of Prohibition was sought to stall proceedings before the Wakf tribunal. In the present case, there is no such dispute having regard to the Civil Court decree obtained by the petitioner. Therefore, the said decision is clearly distinguishable.

53. In view of the above reasons, I hold that the Writ Petition is maintainable and the petitioner need not be relegated to the remedy under Section 83 of the Wakf Act, 1995. Point (c) is answered accordingly.

Point (d) :

54. Having regard to the decision of the Civil Court which is binding on the 2nd respondent, it is not open to it to contend that the petitioner is an encroacher liable for prosecution under Section 52-A of the Act.

55. Even according to the counter of respondent nos.2 and 3, the land admeasuring Ac.0.69 cents in Survey No.322/2 in respect of which the petitioner had obtained the Civil Court decree, is classified as Village Site poramboke in the Adangal. The 2nd respondent admits that the petitioner has even obtained a ryotwari patta under Section 11(a) of the Andhra Pradesh Estates Abolition and Conversion into Ryotwari Act, 1948.

56. Therefore, the contention of the 2nd respondent that the 4th respondent submitted a Munthakhab in respect of the Dargah on the basis of which the impugned Munthakhab was issued, cannot be countenanced.

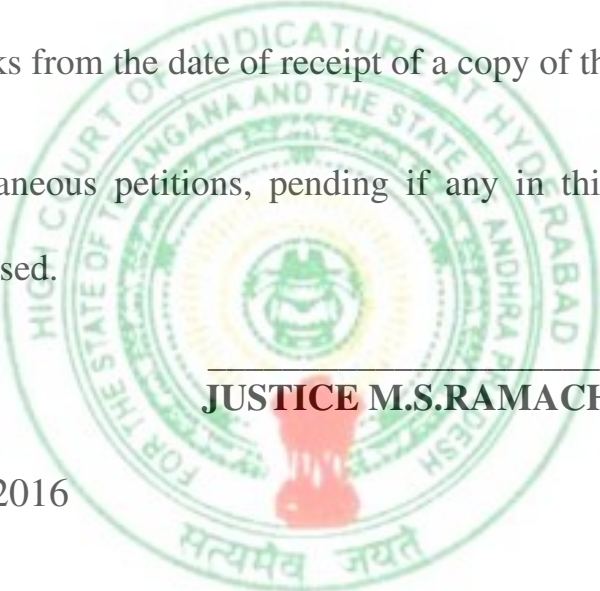
57. It is also shocking that in the impugned Munthakhab, the 4th respondent was shown as the Wakif because a “*Wakif*” is defined in Section 2(r) of the Act “*as a person making permanent dedication of immovable property for any purpose recognized by Muslim Law as pious, religious or charitable*’. When 4th respondent had no ownership of the property in question at any point of time, it is un-understandable how he could have dedicated it to the Dargah as a Wakif. This shows that the enquiry conducted by the 2nd respondent is not *bona fide*. Consequently, the Munthakhab issued on the basis of such enquiry cannot be sustained.

THE RESULT

58. In this view of the matter, the Writ Petition is allowed and the impugned Munthakhab, insofar as it relates to the extent of Ac.0.69

cents in Survey No.322/2 of Vinnamala Village and constructions therein which are covered by the judgment and decree dt.03.11.1999 in O.S.No.177/1996, is set aside and the 2nd respondent's decision to register the subject Dargah located in this land as a Wakf under Section 36 of the Act is declared as illegal and unsustainable. Consequently, the 2nd respondent is directed to delete the entries made in the Book of Endowment Volume No.1, Andhra Region at Page No.109, Serial No.4 of Andhra Pradesh State Wakf Board. The 2nd respondent shall also pay costs of Rs.5,000/- to the petitioner within four (04) weeks from the date of receipt of a copy of this order.

59. Miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 28-09-2016

Ndr/*