

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No.1204 of 2014

Order reserved on: 6-9-2017

Order delivered on: 5-10-2017

Shireen Bano, W/o Shri Saifuddin Qamar Ali, Aged about 68 years,
R/o Lalpur, Raipur Shop No. 17 (Old No. 16), Hazrat Fateh Shah
Majaar & Masjid Trust Committee, Police Line Tikrapara Raipur
Civil & Revenue Distt. Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.278 of 2014

Salim Gauri, S/o Late Usmaan Gauri, Aged about 63 years, R/o
'Salim Cotton Works', Mahavir Mandir Road, Gandhi Ward No.16,
Dongergarh, P.S. City Kotwali, Dongergarh, Distt. Rajnandgaon
C.G. Civil & Revenue Distt. Rajnandgaon.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.

4. Mutwalli, Jama Masjid Trust Committee, Gol Bazar, Dongergarh, District Rajnandgaon, C.G.

---- Respondents

WPC No.572 of 2013

Smt. Shweta Seth, W/o Suresh Seth, Aged about 35 years, Shop No. 10 (Old No.8), Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Dist Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.578 of 2013

Kishore Soni, S/o Maniklal Soni, Aged about 42 years, R/o Sadar Bazar, Raipur, Shop No.7 (Old No.5), Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.1203 of 2014

Abdul Hameed, S/o Shri Mohammed Saeed, Aged about 60 years, R/o Lalpur, Raipur Shop No. 36 (Old No. 30), Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara Raipur Civil & Revenue Distt. Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through Its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.1205 of 2014

Ali Asgar, S/o Shri Saifuddin Qamar Ali, Aged about 38 years, R/o Lalpur, Raipur Shop No. 44/2 (Old No. 40) Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara Raipur Civil & Revenue Distt. Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.1206 of 2014

Shireen Bano, W/o Shri Saifuddin Qamar Ali, Aged about 68 years,

R/o Lalpur, Raipur Shop No. 44/1 (Old No. 39), Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara Raipur Civil & Revenue Distt. Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.1207 of 2014

Khuzema, S/o Shri Saifuddin Qamar Ali, Aged about 41 years, R/o Lalpur, Raipur Shop No. 82/1 (Old No. 3), Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara Raipur Civil & Revenue Distt. Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.1208 of 2014

Fakhruddin S/o Shri Saifuddin Qamar, Ali Aged about 48 years R/o Lalpur, Raipur Shop No. 18 (Old No. 17) Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara Raipur Civil & Revenue Distt. Raipur, C.G.

---- Petitioner

Page 5 of 22

Versus

1. State of Chhattisgarh, Through the Secretary, Ministry of Minorities Welfare / Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.1209 of 2014

Ali Asgar S/o Shri Saifuddin Qamar Ali Aged about 38 years, R/o Lalpur, Raipur Shop No. 16 (Old No. 15) Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara Raipur Civil & Revenue Distt. Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary Ministry of Minorities Welfare / Wakf Mantralaya Mahanadi Bhawan, Capital Complex, Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner (Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

WPC No.1210 of 2014

Farid, S/o Late Ashique Hussain, Aged about 35 years, (Bore Blasting) Shop No. 6 (Old No. 4), Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line Tikrapara Raipur Civil & Revenue Distt. Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary Ministry of Minorities

Welfare / Wakf Mantralaya Mahanadi Bhawan, Capital Complex,
Naya Raipur, C.G.

2. The Sub Divisional Officer & Assistant Survey Commissioner
(Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive
Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee,
Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

AND

WPC No.1211 of 2014

Abdul Hameed, S/o Mohammad Saeed, Aged about 60 years, 'Taj
Steel Trunk', Shop No. 8 (Old No.6), Hazrat Fatesh Shah Majaar &
Masjid Trust Committee, Police Line Tikrapara, Raipur, Civil &
Revenue Distt Raipur, C.G.

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary Ministry of Minorities
Welfare / Wakf Mantralaya Mahanadi Bhawan, Capital Complex,
Naya Raipur, C.G.
2. The Sub Divisional Officer & Assistant Survey Commissioner
(Wakf) Raipur, C.G.
3. Chhattisgarh State Wakf Board, Raipur Through its Chief Executive
Officer Sector 3C/12, Devendra Nagar, Raipur, C.G.
4. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee,
Police Line Tikrapara, Raipur, Distt. Raipur, C.G.

---- Respondents

For Petitioners: Mr. B.P. Sharma, Mr. Raza Ali, Mr. Manay Nath
Thakur and Mr. Manish Thakur, Advocates.

For State/Respondents No.1 and 2: -

Mr. Prasun Kumar Bhaduri, Govt. Advocate.

For Respondent No.3: Mr. Prateek Sharma, Advocate.

For Respondent No.4: Mr. Ali Asgar and Mr. Surfaraj Khan, Advocates.

For Respondent No.4 in W.P.(C)No.278/2014: -

Mr. B.P. Singh, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. In this batch of matters, common question of law and fact is involved, therefore, they were heard analogously and are being disposed of by this common order.
2. Invoking the jurisdiction of this Court under Article 226/227 of the Constitution of India, the petitioners have called in question the order dated 16-1-2012 passed by the Chief Executive Officer, Chhattisgarh State Wakf Board and also the consequential order dated 25-6-2014 directing the petitioners to deliver the vacant possession of the subject shops to the Mutwalli, Hazrat Fatehshah Mazar and Masjid Trust Committee, Tikrapara, Raipur. The said Mutwalli, Hazrat Fatehshah Mazar and Masjid Trust Committee filed an application under Section 54 of the Waqf Act, 1995 (unamended) for removal of encroachment from the wakf property in which the petitioners appeared and filed reply that they are lessees of the suit shops and the said lease has also been renewed from time to time, they are not encroachers and they are tenants as such, and prayed that the application filed under Section 54 of the Waqf Act, 1995 pertaining to removal of encroachment from waqf property deserves to be rejected.
3. The Chief Executive Officer, Chhattisgarh State Wakf Board by its impugned order after framing issues allowed the application holding that the petitioners are encroachers and they are in unauthorised occupation since 1994 and, therefore, they are liable to pay damages right from 1994. After final order of eviction,

notices have also been issued for delivering vacant possession which has also been challenged.

4. Mr. B.P. Sharma, learned counsel for the petitioners, would vehemently submit that the petitioners are not encroachers and they are admittedly lessees of the suit shops duly granted by the said Committee, therefore, by virtue of the provisions contained in Section 7 read with Section 85 of the Waqf Act, 1995 (unamended), jurisdiction to evict the tenant would be with the civil court as held by the Supreme Court in the matter of **Ramesh Gobindram (Dead) Through LRs v. Sugra Humayun Mirza Wakf**¹ followed by the Supreme Court in the matter of **Faseela M. v. Munnerul Islam Madrasa Committee and another**². He would further submit that dismissal of civil suit for want of prosecution would not attract the principle of *res judicata* and relied upon a Constitution Bench decision of the Supreme Court in the matter of **Sheodan Singh v. Daryao Kunwar**³. He would also submit that time barred rent, if any, cannot be recovered for more than three years.
5. Mr. Prateek Sharma, learned counsel appearing for respondent No.3, would submit that the impugned order is strictly in accordance with law, as the lease was for a period not exceeding three years, there was no lease at all and even if the lease is there, i.e. the contravention of Section 56 of the Waqf Act, 1995,

1 (2010) 8 SCC 726

2 (2014) 16 SCC 38

3 AIR 1966 SC 1332

therefore, it has no effect at all, and as such, the Chief Executive Officer, Chhattisgarh State Wakf Board is absolutely justified in granting the application for removal of unauthorised encroachment by the petitioners over the wakf property.

6. Mr. Prasun Kumar Bhaduri, learned Government Advocate appearing on behalf of the State/respondents No.1 and 2, would submit that in the instant dispute, the jurisdiction lies with the civil court to determine tenancy.
7. Mr. Surfaraj Khan, learned counsel appearing for respondent No.4, would support the impugned order and submit that the order passed by the Chief Executive Officer, Chhattisgarh State Wakf Board, is strictly in accordance with law and all the writ petitions are liable to be dismissed.
8. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
9. On due consideration, it appears that the question that falls for consideration in this batch of writ petitions is whether the petitioners, who are claiming to be the tenants of Hazrat Fatehshah Mazar and Masjid Trust Committee and having claimed to have entered into tenancy with Mutwalli of the said Committee, can be evicted from the suit property under the authority and in exercise of power under Sections 54 and 55 of the Waqf Act, 1995 by the Chief Executive Officer of the Chhattisgarh State Wakf Board and the ancillary question would be whether the Chief Executive Officer

can revise and re-fix the rent qua the petitioners with regard to the subject property.

10. In order to decide the question so arises for consideration, it would be appropriate to the notice and set-out Section 54 of the Waqf Act, 1995 which provides removal of encroachment from wakf property.

“54. Removal of encroachment from wakf property.

—(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf.”

11. On a focused glance of sub-section (1) of Section 54 of the Waqf Act, 1995, it would appear that whenever it appears to the Chief Executive Officer after due application of mind either on a complaint made by any individual person or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and which is duly registered under the Act, upon service of notice to the encroacher specifying the particulars of encroachment and after serving show-cause notice for removal of encroachment in a prescribed manner and after considering the objection, if any, filed and after conducting enquiry as may be prescribed, if he (Chief Executive Officer) is satisfied that the property in question is wakf property and that there has been encroachment on any such wakf property, he may direct the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the Mutwalli of the wakf. Sub-section (1) of Section 54 of the Waqf Act, 1995 states that whenever the Chief Executive Officer considers ... It contains the word “considers”.
12. According to Longman Dictionary of Contemporary English (New Edition), “consider” means,
 1. To think about something carefully especially before making a choice or decision.
 2. To think of someone or something in a particular way or to have a particular opinion.
 3. To think about an important fact relating to something when

making a judgment.

13. The word 'consider' has also been defined by the Supreme Court in the matter of **R.P. Bhatt v. Union of India and others**⁴ with reference to Rule 27 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Their Lordships of the Supreme Court held that the word 'consider' in Rule 27(2) implies 'due application of mind' and it casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof. **R.P. Bhatt** (supra) has been followed subsequently by the Supreme Court in the matter of **Ram Chander v. Union of India and others**⁵ while considering the word 'consider' employed in the Railway Servants (Discipline and Appeal) Rules, 1968 with reference to Rule 22(2) by holding that the word 'consider' has different shades of meaning and must in Rule 22 (2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision.
14. The word 'encroachment' has not been defined under the Waqf Act, 1995 (unamended) and thus, a duty is cast upon the Chief Executive Officer to serve notice in the prescribed form and to conduct enquiry with regard to two facts, firstly, as to whether the property in question is wakf property and secondly, there has been encroachment on such wakf property. Thus, the aforesaid two factors have to be considered and it has to be recorded firstly that

4 (1986) 2 SCC 651

5 (1986) 3 SCC 103

there is encroachment on any land, building, space or other property and it is the wakf property, and thereafter, order under Section 54 (3) of the Waqf Act, 1995 can be passed by the Chief Executive Officer directing the encroacher to remove such encroachment and deliver possession of the land, building etc., encroached upon to the Mutwalli of the wakf, and that finding has to be recorded after making enquiry in such manner as may be prescribed.

15. The Madhya Pradesh Wakf Rules, 2000 have been framed providing procedure for the proceedings under Section 54 of the Waqf Act, 1995. Rule 15 of the said Rules provides procedure for initiating proceedings under Section 54 of the Act which reads as under: -

“15. Manner of Inquiry to be held by Chief Executive Officer.—The inquiry under sub-section (3) of section 54 shall be held by the Chief Executive Officer in the following manner: -

(a) The Chief Executive Officer after serving the show-cause notice to the person concerned shall call for written statement duly supported by any documentary proof. If necessary the Chief Executive Officer shall record the oral evidence tendered by the contending parties. The Chief Executive Officer shall also receive such documentary evidence as may be produced in the course of Inquiry;

(b) The Chief Executive Officer shall prepare a case file containing following particulars: -

(i) minute of proceedings;

(ii) report or information on which the proceeding has been started;

(iii) show-cause notice and its reply;

(iv) evidence (oral and documentary) received at the enquiry;

(v) order.”

16. The above-stated Rule clearly provides a complete procedure for enquiry to be held by the Chief Executive Officer under sub-section (3) of Section 54 of the Waqf Act, 1995. The aforesaid Rule does not provide for framing of any issue or for conducting any full-fledged enquiry, though he is under an obligation to receive documentary and oral evidence in the enquiry. The order passed by the Chief Executive Officer under Section 54 can be questioned by an aggrieved party by filing a suit in a Tribunal to establish about his right, title or interest in the property. Section 6-A as amended by the Wakf (Madhya Pradesh Amendment) Act, 1994 empowers Tribunal to determine dispute regarding wakfs. Further consideration would show that the legislature in its wisdom has provided a summary procedure before the Chief Executive Officer under Rule 15 of the Madhya Pradesh Wakf Rules, 2000, while a full-fledged enquiry has been provided before the Tribunal to decide the dispute between the parties as per Rule 35 of the Rules, 2000 and Rule 36 provides for framing and determination of issues. The proceedings before the Tribunal are akin to civil suit and while considering the controversy in the suit, the Tribunal is under an obligation, under Rule 36, to frame and determine all the issues. Section 83 of the Act provides constitution of Tribunals for determination of any disputed question or other matter relating to a Wakf or Wakf property under the Wakf Act, so for all the purposes

Wakf Tribunal is Civil Court and has been vested with the power of Civil Court under sub-section (5) of Section 83 of the Act. Thus, the scope of enquiry under Section 54 of the Waqf Act, 1995 is limited one and the Chief Executive Officer was to determine only encroachment on wakf property. He has no jurisdiction, authority and competence to decide the right, title and interest in the property. Enquiry by the Chief Executive Officer is confined and as envisaged under Section 54 of the Waqf Act, 1995 read with Rule 15 of the Madhya Pradesh Wakf Rules, 2000, to remove encroachment on the wakf property. The Chief Executive Officer has not been conferred with the adjudicatory function to decide the status of a person as to whether he is a tenant or a lessee in the wakf property. He has only jurisdiction and authority to remove encroachment on the wakf property, if it appears prima facie in a summary enquiry that the property is wakf property and encroachment has been made by the person in possession in the capacity of encroacher. If right, title and interest is claimed in the suit land then the Chief Executive Officer of the Wakf Board has no competence to adjudicate the issue as the jurisdiction lies elsewhere to decide the said issue.

17. The jurisdiction to direct removal of encroachment lies with the Chief Executive Officer in a case where encroachment is either admitted or prima facie established from the material available on record, but where on the record it is otherwise established, then he cannot proceed to adjudicate the matter. According to Section 105

of the Transfer of Property Act, 1882, a lease of immovable property is a transfer of a right to enjoy such property and a lease creates right or an interest in immovable property in enjoyment of the demised property and a tenant is entitled to remain in possession of the demised property until the lease is duly terminated and eviction takes place in accordance with law. (See Jaswantsingh Mathurasingh and another v. Ahmedabad Municipal Corporation and others⁶.)

18. A Division Bench of the Madhya Pradesh High Court in the matter of Asif Ansari and others v. Wakf Mahal Umrao Jehan and another⁷ has clearly held that the scope of enquiry under Section 54 of the Waqf Act, 1995 is limited one and Chief Executive Officer was to determine only encroachment on wakf property. He was not required to decide the right, title and interest in the property, but the scope of enquiry was limited as envisaged under Section 54 of the Act to remove the encroachment on the wakf property.
19. This would bring me to the facts of the present case in which the petitioners have claimed that they are tenants of Hazrat Fatehshah Mazar and Masjid Trust Committee and have also claimed to have entered into tenancy with the Mutawalli of the said Committee and the learned Chief Executive Officer has directed the petitioners to be evicted from the suit property in exercise of power conferred under Section 54 of the Waqf Act, 1995 and documents showing renewal of tenancy have also been placed on record.

⁶ 1992 Supp (1) SCC 5

⁷ 2009(4) M.P.L.J. 61

20. It appears that the petitioners are lessees of the wakf property.

Therefore, the Chief Executive Officer of the Wakf Board is denuded with the power to cause eviction from wakf property or revision/re-fixation of rent, as the said authority is only available with the jurisdictional civil court. On the other hand, the Wakf Board has justified the order under challenge stating that the Chief Executive Officer has full competence, jurisdiction and authority to evict the petitioners from the premises. The stand of the Wakf Board is that the petitioners are encroachers, therefore, the Chief Executive Officer has jurisdiction under Section 54 of the Waqf Act, 1995 to direct for removal of encroachment. Thus, the question would be whether the Chief Executive Officer of the Wakf Board is empowered or authorised to adjudicate the status of the petitioners or to decide the right, title and interest of the petitioners in the wakf property in purported exercise of jurisdiction under Section 54 of the Waqf Act, 1995, or it is only the civil court that may decide the legal status of the petitioners, as to whether they are encroachers or tenants of Hazrat Fatehshah Mazar and Masjid Trust Committee.

21. The petitioners have heavily relied upon the judgment of the Supreme Court in the matter of **Ramesh Gobindram** (supra) wherein Their Lordships of the Supreme Court while dealing with the Wakf Act, 1995 have clearly held that the Wakf Act, 1995 does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in

occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. Their Lordships observed in paras 16, 32 and 35 as under: -

“16. A plain reading of sub-section (5) of [Section 6](#) (supra) would show that the civil court's jurisdiction to entertain any suit or other proceedings stands specifically excluded in relation to any question referred to in sub-section (1). The exclusion it is evident from the language employed, is not absolute or all pervasive. It is limited to the adjudication of the question (a) whether a particular property specified as wakf property in the list of wakfs is or is not a wakf property, and (b) whether a wakf specified in such list is a Shia wakf or a Sunni wakf. The Board or the mutawalli of the wakf or any person interested in the wakf is competent to institute a suit in a Tribunal for a decision on the above question or questions, which decision shall then be final provided that no such suit can be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

32. There is, in our view, nothing in [Section 83](#) to suggest that it pushes the exclusion of the jurisdiction of the civil courts extends (sic) beyond what has been provided for in [Section 6\(5\)](#), [Section 7](#) and [Section 85](#) of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the civil courts stands completely excluded by reasons of such establishment.

35. In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a 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.”

22. The decision of the Supreme Court in **Ramesh Gobindram** (supra) was followed with approval by Their Lordships of the Supreme

Court in the matter of **Bhanwar Lal and another v. Rajasthan Board of Muslim Wakf and others**⁸ in which it has been held that when suit is for cancellation of sale deed, rent and possession thereof, it has to be tried going by the ratio of **Ramesh Gobindram** (supra) and the said relief can only be given by the civil court. The Supreme Court has formed a question for determination, whether the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 was competent to entertain and adjudicate upon disputes regarding eviction of the appellants who are occupying different items of what are admittedly wakf properties and held as under in paragraph 23: -

“23. The suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleading in the suit are not filed before us and, therefore, exact nature of relief claimed as well as averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs civil suit would be competent. Going by the ratio of Ramesh Gobind Ram (AIR 2010 SC 2897) (supra), suit for possession and rent is to be tried by the civil court. However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal. In so far as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by [Section 6](#) or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decided such an issue. Moreover, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issue of sale deed and possession and inextricably mixed with each other. We have made these observations to clarify the legal position. Insofar as present case is concerned, since the suit was filed much before the Act

8 AIR 2014 SC 758

came into force, going by the dicta laid down in Sardar Khan case (AIR 2007 SC 1447), it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and civil court would be competent to decide the same.”

23. In the matter of **Haryana Wakf Board v. Mahesh Kumar**⁹, the Supreme Court has held that it is only when nature of property is in dispute i.e. as to whether the property is wakf property or not, it is only then that the Wakf Tribunal has jurisdiction.
24. Subsequently, in the matter of **Faseela M. v. Munnerul Islam Madrasa Committee and another**¹⁰, Their Lordships of the Supreme Court after discussing **Ramesh Gobindram** (supra) and **Bhanwar Lal** (supra) have conclusively held that the suit for eviction against the tenant relating to a wakf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Wakf Act, 1995. Their Lordships concluded in paragraph 16 as under: -

“16. The matter before us is wholly and squarely covered by Ramesh Gobindram (supra). The suit for eviction against the tenant relating to a wakf property is exclusive triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act.”

25. Reverting back to the facts of the case, the petitioners have categorically shown that they are the tenants of Hazrat Fatehshah Mazar and Masjid Trust Committee and their tenancy has been renewed. It is not the case of admitted encroachment on the wakf property by the petitioners, though the property is wakf property

9 AIR 2014 SC 501

10 (2014) 16 SCC 38

and the root dispute is tenancy and fixation of rent, and not the nature of property whether it is wakf property or not, therefore, adjudication cannot be done by the Chief Executive Office of the Chhattisgarh State Wakf Board in exercise of power under Section 54 of the Waqf Act, 1995, and jurisdiction for adjudication of fixation of rent also lies only with the civil court, not with the Chief Executive Officer as held by the Supreme Court in **Ramesh Gobindram** (supra), **Mahesh Kumar's** case (supra) and **Faseela M.** (supra). It is the civil court alone that can adjudicate the legal status of the petitioners and to cause their eviction and direct for payment of rent and damages.

26. The Chief Executive Officer has also calculated and directed for payment of damages since 1994 for illegally damaging the suit property. Sub-section (3) of Section 54 of the Act Waqf Act, 1995 only empowers the Chief Executive Officer to direct removal of encroachment on the wakf property. It nowhere authorises the said authority to levy damages for alleged use of wakf property and that too for last 17 years; that too is without jurisdiction and without authority of law. Even the landlord either under relevant rent law or under general law cannot enforce recovery of time barred arrears of rent in view of Article 52 of the Limitation Act, 1963. (See **Kamala Bakshi v. Khairati Lal**¹¹ and **Mankunwarbai and others v. Sunderlal Jain**¹².)

27. Therefore, in my considered opinion, the Chief Executive Officer of

11 (2000) 3 SCC 681

12 AIR 1978 MP 165

the Chhattisgarh State Wakf Board has grossly and legally erred in holding that he has jurisdiction over the matter and further legally erred in holding that the petitioners are encroachers, not the tenants, as the province to adjudicate the fact of tenancy and consequent eviction lies with the jurisdictional civil court.

28. As a fall out and consequence of aforesaid discussion, the impugned orders passed by the Chhattisgarh State Wakf Board as well as the notices issued for delivery of possession are quashed, as the same are without jurisdiction and without authority of law. However, this will not bar the Chief Executive Officer, Chhattisgarh State Wakf Board to proceed in accordance with law.
29. The writ petitions are allowed to the extent sketched herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge