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

**CIVIL REVISION APPLICATION NO.114 OF 2016**

Jitendra s/o Shantilal Mutha,  
Age: 49 years, Occ: Business,  
R/o. Shree Apartments, Jalna Road,  
Seven Hills, Aurangabad. ..APPELLANT

VERSUS

1. Managing Committee Graveyard,  
S No 777, Kranti Chowk  
Aurangabad  
Through its Secretary  
Sk Anees s/o Sk Dilawar Khan,  
Age: Major, Occ: Business,  
R/o. Samtanagar, Aurangabad

2. Sk Jilani s/o Sk Ahemad  
Deceased through L.Rs.

2/1 Rehana Begum Sk Jilani,  
Age: Major, Occ: Household,

2/2 Sk Naser s/o Sk Jilani,  
Age: Major, Occ: Business,

2/3 Sk Naveed s/o Sk Jilani,  
Age: Major, Occ: Household,

2/4 Rizwana Begum d/o Sk Jilani,  
Age: Major, Occ: Household,

2/5 Sameera Begum s/o Sk Jilani,  
Age: Major, Occ: Household,

2/6 Shanno Begum d/o Sk Jilani,  
Age: Major, Occ: Household,

All r/o S.T. Colony, Fazilpura,  
Aurangabad. ..RESPONDENTS

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Mr A.R. Vaidya, Advocate for appellant;  
Mr S.S. Kazi, Advocate for respondent No.1

**CORAM : N.W. SAMBRE, J.**

**DATE : 3<sup>rd</sup> JULY, 2017**

**ORAL ORDER :**

Present applicant is tenant in wakf suit which was for recovery of possession of the suit property, perpetual injunction restraining the present respondents-defendants from making further construction and creating third party interest over the suit property or from alienating the suit property. The suit came to be decreed on 30<sup>th</sup> March, 2016. As such, this civil revision application.

2. Mr. Vaidya, learned Counsel for the applicant, while questioning the judgment of the wakf tribunal, would urge that in the wake of background of dispute between the parties, wakf tribunal has no jurisdiction. According to him, jurisdiction of wakf tribunal is ousted in relation

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to landlord and tenant dispute and power in the backdrop of Section 81, 83 and 85 of the Wakf Act contemplates that it is civil Court who has its domain over the dispute in question. So as to substantiate his contention, he has invited attention of this Court to the judgment of Apex Court in the matter of **Ramesh Gobindram (dead) through L.Rs. vs Sugra Humayun Mirza Wakf**, reported in **A.I.R. 2010 SC 2897**, particularly paragraph-10 thereof, which reads thus :

"10. It is clear from sub-section(1) above that the State Government is empowered to establish as many Tribunals as it may deem fit for the determination of any dispute, question or other matter relating to a wakf or wakf property under the Act and define the local limits of their jurisdiction. Sub-section (2) of Section 83 permits any mutawalli or other person interested in a wakf or any person aggrieved of an order made under the Act or the rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to the wakf. What is important is that the Tribunal can be approached only if

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the person doing so is a mutawalli or a person interested in a wakf or aggrieved by an order made under the Act or the rules. The remaining provisions of Section 83 provide for the procedure that the Tribunal shall follow and the manner in which the decision of a Tribunal shall be executed. No appeal is, however, maintainable against any such order although the High Court may call for the records and decide about the correctness, legality or propriety of any determination made by the Tribunal.

There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends 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. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section

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83(1) also appears in Section 85 of the Act. 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. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

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

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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. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed."

3. According to him, in written statement, the issue of jurisdiction was raised and it was the duty of the tribunal to frame issue and answer the same. He would then urge that the judgment is without jurisdiction, as such, liable to be quashed and set aside.

4. Per contra, Mr. Kazi, learned Counsel for respondent-plaintiff, relying upon the judgment of the Apex Court in the matter of **Board of Wakf, West Bengal and another vs Anis Fatma Begum and**

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**another** reported in **(2010) 14 Supreme Court Cases 588**, would urge that the tribunal has every jurisdiction to decide the issue as was brought before it in the wakf suit. According to him, if the judgment impugned, particularly in the backdrop of respective pleadings of parties, if analyzed, it is amply clear that while answering issue No.4D, the tribunal has recorded findings that the defendant No.3 to the suit i.e. wakf board has no right to lease out wakf property and as such, bar of entertaining the suit would not operate. He would urge that in any case, suit is decided after amendment to the provisions of Section 85 of the Wakf Act and as such, judgment is very much legal and does not call for interference.

5. In addition, he would invite attention of this Court to the judgment of this Court in Civil Revision Application No. 143 of 2004 (Shaikh Shafiq s/o Shaikh Osman vs Kishan Laxman Waghmare and others) decided on 30<sup>th</sup> August, 2004, particularly paragraph-11 thereof, which reads thus :

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"11. The intention of the legislature, therefore, is to put restrictions on the Board for grant of lease or sub-lease. This section has also employed the phraseology, "notwithstanding anything contained in the deed or instrument of Wakf and or any other law for the time being in force". It is provided that, even one cannot resort to provision laid down in the instrument of Wakf itself, or no one can resort to the provision of any other law and claim any protection. In my view, the non-obstante clause is important and the same is inserted with an intention to preserve and protect the wakf property. The contention of the learned counsel for the petitioner regarding Section 116 of Transfer of Property Act, cannot be isolatedly considered and accepted. The provision laid down under Section 56 of the Act of 1995, has to be considered while assessing the rights under Section 116 of the Transfer of Property Act. In other words, Section 116 of the Transfer of Property Act, is not having overriding effect in relation to Section 56 of the Wakf Act, 1995. The provision laid down under Section 56 of the Wakf Act being a special legislation, it shall prevail and will have to be taken into consideration. In this view of the matter,

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in my considered view, there is no substance in the contention raised on behalf of the petitioner that the petitioner is the tenant holding over and entitled to retain possession so long as rent is being regularly paid."

6. In the aforesaid background, the issue as is sought to be canvassed by Mr. Vaidya, learned Counsel for the applicant, if appreciated, initially it was noticed by this Court that there appears some substance, particularly in the backdrop of law laid down by the Apex Court in the matter of **Rameshesh Gobindram (dead) through L.Rs** (supra). The Apex Court in the said judgment in clear terms has held that civil suit will be a proper remedy as the matter between landlord and tenant raised jurisdiction of civil Court and the judgment of the civil Court in such eventuality is not excluded.

7. The said judgment had fallen consideration before the Apex Court in the matter of **Board of Wakf, West Bengal and another**, cited supra. While

dealing with the said judgment, the Apex Court has held in paragraph-17 as under.

"17. Learned counsel for the respondent, however, relied on the decision of this Court in Ramesh Govindram v Sugra Humayan Mirza Wakf. In the aforesaid decision it was held that eviction proceedings can only be decided by the civil court and not by the Wakf Tribunal. The dispute in the present case is not an eviction dispute. Hence, the aforesaid decision in Ramesh Gobindram case is distinguishable."

8. As such, it is to be noted that the Apex Court in subsequent judgment of Board of Wakf, West Bengal and another, cited supra, has not upset the findings of the Apex Court as regards availability of jurisdiction of the civil court in relation to wakf property excluding the jurisdiction of tribunal.

9. However, what is required to be appreciated from the dispute as is involved in the case in hand, admittedly the suit property is wakf

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property and the property in question was given on lease to the defendant on yearly basis.

10. The findings are recorded by the tribunal that wakf board is beyond their statutory right of leasing property in question to the defendant. Once such findings are recorded, the objection of jurisdiction as is raised by learned Counsel for the applicant, in my opinion, is required to be overlooked.

11. The suit, as such, is required to be treated to be simplicitor for possession as the applicant appears to be stranger party.

12. In the above referred background, in my opinion, the tribunal has every right to entertain the suit in question.

13. No other issue is canvassed before this Court. Civil Revision Application lacks merit, stands dismissed.

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14. At this stage, prayer is made by learned Counsel for the applicant that the applicant be granted liberty to apply wakf board for renewal of lease in view of amendment to the provisions of Section 56 of the Wakf Act. It shall be open for the applicant and wakf board may decide the same in accordance with law.

**(N.W. SAMBRE, J.)**

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