

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14622 of 2017

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1. Md. Wasiur Rahman, son of Late Haji Moliur Rahman, Motwalli of Waqf Estate No. 1052, situated at Mehsaul Chowk, Police Station- Sitamarhi Town, District- Sitamarhi.
 2. Haji Md. Sagher, son of Late Haji Waris Imam, Secretary of Mosque situated at Mehsaul Chowk, Police Station- Sitamarhi Town, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Collector, Sitamarhi.
2. The D.C.L.R., Sitamarhi, District- Sitamarhi.
3. The Circle Officer, Block- Dumra, Sitamarhi, District- Sitamarhi.
4. The Executive Officer, Municipal Corporation, Sitamarhi.
5. The District Auqaf Committee, At+ P.O.- Sitamarhi, District- Sitamarhi.
6. The Presiding Officer, Bihar Waqf Tribunal, Near Haj Bhawan, Patna.
7. Bihar State Sunni Waqf Board through its Chairman, Haj Bhawan, 34, Ali Imam Path, Patna.
8. The Chairman, Bihar State Sunni Waqf Board, Haj Bhawan, 34, Ali Imam Path, Patna.
9. The Chief Executive Officer, Bihar State Sunni Waqf Board, Haj Bhawan, 34, Ali Imam Path, Patna.
10. Md. Neyaz Ahmad, son of Sah Md. Hassan, Mauze- Khelafat Bag, P.O.- Sitamarhi, Police Station- Town Than, District- Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Adv.
Mr. Syed Firoz Raza, Adv.
Md. Shamimul Hoda, Adv.
For the Waqf Board : Mr. Helal Ahmad, Adv.
For Respondent No.10 : Mr. Ashhar Mustafa, Adv.
Mr. Murad Ashraf, Adv.
Mr. Talib Mustafa, Adv.
Mr. Ashish Ranjan, Adv.
Mr. Vikash Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-04-2018

Heard Mr. Rajendra Narayan, learned senior advocate for the petitioner, Mr. Helal Ahmad, learned advocate appearing for Bihar State Sunni Waqf Board and Mr. Ashhar Mustafa, learned advocate appearing on behalf of the respondent no. 10.



2. Being aggrieved by registration of the properties of *Masjid Ahle Hadees* situated at Mehsoul chowk, Thana No. 315, Tauzi No. 8287, Ward No. 22(old), Ward No. 28 (new), Sitamarhi in the Bihar State Sunni Waqf Board (for short 'Board') on 20.12.2016 vide W.E. No. SI/2662 and consequent rejection of Waqf Appeal No. 01 of 2017 by the Bihar Waqf Tribunal (for short 'Tribunal') vide judgment dated 11.09.2017, the instant writ petition has been filed by the petitioner under Article 226 of the constitution of India.

3. The petitioner no. 1 herein is Mutwali of W.E. No. 1052 whereas petitioner no. 2 is his brother-in-law. They have sought to challenge the impugned registration and judgment of the Tribunal on the ground that mosque, which has been registered in W.E. No. 2662, is actually part of W.E. No. 1052, which was earlier registered in the year 1961 on the basis of the waqfnama created by the great grand-father of petitioner no. 1 Late Sk. Haji Jan Ali in the year 1920.

4. On the other hand, the case of respondent no. 10 is that the plots including the mosque, which have been registered in W.E. No. 2662 on 20.12.2016 are different, mutually distinct, separate and unrelated to the properties described in the waqfnama of 1920 created by the great grand father of petitioner no.1. They are at far distance from each other and there is absolutely no relation or connection, howsoever remote, between the two. All the four plots in W.E. No.



2662 have been registered on the strength of unimpeachable documentary evidence. Merely because there is also a reference of mosque at Rajopatti in the waqfnama of 1920, a mischief has been played to suggest that it is the same mosque which exist at plot no. 124, 125k whereas in the waqfnama itself, it is duly explained that the mosque is situated within the waqf property. The plot nos. 124, 125k are neither part of W.E.No. 1052 nor they are situated adjacent to the house of the waqif or to the Waqf property. Nazri map, which was filed before the Tribunal clarifies that all the properties of W.E. No. 1052 are situated towards east of the National Highway No. 77 whereas *Masjid Ahle Hadees* is situated at plot no. 124, 125k, which is quite away towards west of the highway.

5. Mr. Rajendra Narayan, learned senior advocate submitted that the Tribunal has recorded its findings and dismissed the appeal vide impugned judgment dated 11.09.2017 without calling for the entire records of W.E. No. 1052. The Tribunal passed the order in utter haste without affording adequate opportunity of hearing to the petitioners. He submitted that it was never the case of the petitioners that the mosque was property of W.E. No. 1052, but the Tribunal erroneously held that since the registration certificate issued by the Board does not relate to the property of the waqf estate created by Sk. Jan Ali bearing W.E. No. 1052 and hence the appeal has no



merit. He argued that the Tribunal also failed to appreciate that the Chief Executive Officer of the Board had violated the provisions of Section 36 read with Section 3(o)(i)(ii) of the Waqf Act, 1995 while issuing the registration certificate whereby he illegally declared the nature of the mosque as *Ahl-e-Hadees*.

6. On the other hand, Mr. Ashhar Mustafa, learned counsel appearing for respondent no. 10, apart from other submissions made in support of the decision of the Tribunal, also raised a preliminary objection that in view of the alternative statutory remedy of revision in terms of proviso to Section 83(9) of the Waqf Act, 1995 the instant writ petition filed under Article 226 is not maintainable. He submitted that the High Court of Shimla in *Mumtaz Ahmed and ors. Vs. State of H.P. and ors.* 2017(1) ShimLC 338]; the High Court of Gujarat in *Zubedaben Mohammedmiya and Ors. Vs. Gujarat State Waqf Board and ors.* decided on 16.12.2015 in Special Civil Application No. 18852 of 2014, the High Court of Andhra Pradesh in *Md. Abdul Kareem and Anr. Vs. Andhra Pradesh State Waqf Board and Ors.* [2004(3) ALT 254] and the High Court of Karnataka vide judgment dated 26.08.2017 in *Syed Asadulla Hussaini Vs. The Karnataka State Board of Wakfs Darul Awkaf* have held that in terms of proviso to sub-section (9) of Section 83 of the Waqf Act, 1995 no writ petition shall lie against any decision or order passed by the



Tribunal. In this regard, he has also placed reliance on the judgment of the Supreme Court in *Sadhana Lodh Vs. National Insurance Co. Ltd. [(2003) 3 SCC 524]*.

7. Mr. Helal Ahmad, learned advocate appearing for the Board submitted that in view of the proviso to sub-Section (9) of Section 83 of the Waqf Act, 1995 undoubtedly a revision petition would be maintainable before this Court. However, he submitted that writ petitions are being entertained by this Court against the judgment of the Tribunal since long and no objection has been raised by any party at any point of time in past. He submitted that such petitions are being filed either under the extraordinary jurisdiction of this Court under Article 226 or under supervisory jurisdiction under Article 227 of the Constitution of India.

8. In reply, Mr. Rajendra Narayan, learned senior advocate submitted that though there is no ambiguity in the language of the proviso to sub-section (9) Section 83 of the Waqf Act, 1995, a writ petition against the judgment of the Tribunal would be maintainable. He submitted that under Article 226 of the Constitution of India, the High Court having regard to the facts of the case has a discretion to entertain a writ petition inspite of availability of alternative statutory remedy. He submitted that against the decisions and orders passed by the Tribunal, writ petitions are filed since long without any objection



and in such petitions even the orders passed by this Court have attained finality. Thus, accordingly to him, the objection raised by the respondent no.10 in this regard is not justified.

9. Mr. Ashhar Mustafa, learned advocate for respondent no.10, in reply to the submission made by Mr. Rajendra Narayan, learned senior advocate, submitted that it is not the case of the petitioners that the fundamental rights of the petitioners have been violated or the judgment has been passed by the Tribunal in violation of the principle of natural justice or the Tribunal had no jurisdiction to decide the case and thus the argument that the availability of alternative remedy to the petitioners would be no bar in entertainment of the writ petition is meritless.

10. I have carefully considered the submissions made on behalf of the parties.

11. In view of the preliminary objection raised by respondent no.10 regarding maintainability of the writ petition, at this stage the issue posed before this Court is as to whether or not the instant writ petition preferred under Article 226 of the Constitution of India against the judgment of the Tribunal is maintainable.

12. In order to find out the answer to the question, the relevant provisions of the Waqf Act, 1995, which came into force with effect from 01.01.1996 and provides for establishment of Waqf



Tribunal to determine disputes regarding waqfs have to be looked into.

13. Under Section 6 of the Waqf Act, 1995 if any dispute arises in respect of waqf property, the Board or the mutwalli of the waqf or any person aggrieved may institute a suit in Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter would be final provided that no such suit can be entertained by the Tribunal after expiry of one year from the date of publication of the list of waqfs.

14. Under Section 7 of the Waqf Act, 1995 the Tribunal is constituted and is inter alia empowered to determine questions relating to waqf property arising after commencement of the Act.

15. The term 'Tribunal' has been defined in Section 3(q) of the Waqf Act, 1995 as under :-

“3(q) 'Tribunal', in relation to any area, means the Tribunal constituted under sub-section (1) of Section 83, having jurisdiction in relation to that area”.

16. Section 83 of the Waqf Act, 1995 provides for constitution of Tribunals for determination of any dispute, question or other matter relating to a waqf or waqf property.

17. For the purpose of better appreciation Section 83 of the Waqf Act, 1995, which bears direct relevance to the question herein



may at this stage be extracted :-

“83. Constitution of Tribunals, etc.- (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a Wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf.

(3) Where any application made under sub-section (1) relates to any Wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction of the mutawalli or any one of the mutawallis of the Wakf actually and voluntarily resides, carries on business or personally works for gain, and where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter;

Provided that the State Government may, if it



is of opinion that it is expedient in the interest of the Wakf or any other person interested in the Wakf or the Wakf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such Wakf or Wakf property, transfer such application to any other Tribunal having jurisdiction , and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding any thing contained in the code of Civil Procedure, 1908(5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil



court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal.

Provided that a High court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying it self as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such order as it may think fit.”

(emphasis mine)

18. By Wakf (Amendment) Act, 2013, which was brought into force on 01.11.2013, in Section 83 of the Wakf Act, 1995 for sub-section (1), following sub-section has been substituted :-

“(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local



limits and jurisdiction of such Tribunals.”

19. Similarly for sub-section (4), following sub-sections have been substituted :-

“(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed.”

20. Thus, in view of the amended sub-section (4) of Section 83, every Tribunal shall consist of three members out of whom one person shall be a member of the State Judicial Service holding a rank, not below the rank of a District, Sessions or Civil Judge, Class I, who shall be the Chairman, one person shall be an officer from the State Civil Services equivalent in rank to that of the Additional District



Magistrate and one person having knowledge of Muslim law and jurisprudence, as members.

21. Sub-section (2) of the Section 83 permits any mutwalli or other person interested in a waqf or any person aggrieved of an order made under the Act or Rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to waqf. Sub-section (5) of the said Section stipulates that the Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908. Sub-section (7) of Section 83 of the Waqf Act, 1995 accords finality to the decision of the Tribunal and makes it binding upon the parties and has been given the force of a decree made by a civil court. Sub-Section (9) of Section 83 provides that no appeal shall lie against any decision or order made by the Tribunal.

22. However, the proviso to sub-section (9) of Section 83 of the Waqf Act, 1995 not only gives jurisdiction to the High Court on its own motion or on the application of the Board or any person aggrieved, to call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination but also provides for remedy to the Board or any person aggrieved by any determination made by the



Tribunal to question the correctness, legality or propriety of such determination and the High Court after satisfying itself may confirm, reverse or modify such determination or pass such other order as it may think fit. The said proviso has been couched in such term that it leaves no room for doubt that the High Court has been vested with the revisional jurisdiction against the order or decision of the Tribunal.

23. In the matter of *Sadhana Lodh* (Supra) on which reliance has been placed by the respondent no.10, a three-Judge Bench of the Supreme Court was dealing with a case in which the insurer had filed a writ petition against the order of the Motor Accidents Claims Tribunal, which had awarded a sum of Rs.3,50,000/- for the death of appellant's son. The said order was challenged by the insurer by way of filing a writ petition under Article 226 and 227 of the Constitution of India before the High Court, which was dismissed by the Single Judge. Being aggrieved, the insurer preferred a letters patent appeal before the Division Bench of the High Court. The claimant took an objection before the Division Bench that since petition under Articles 226/227 is not maintainable, the appeal is totally misconceived. However, the Division Bench overruling the objection allowed the appeal preferred by the insurer and reduced the compensation from Rs. 3,50,000/- to Rs.3,00,000/-. The same was challenged before the Supreme Court in appeal. The



appellant urged before the Apex Court that in view of Section 173 of the Motor Vehicles Act, 1988 a remedy by way of appeal to the High Court is available to the insurer against an award given by the Tribunal, therefore, the filing of a petition under Article 227 of the Constitution was misconceived and deserved dismissal and the High Court ought not to have entertained and decided the writ petition on merit. However, an argument was advanced on behalf of the respondents that since an insurer has limited grounds available under Section 173 of the Motor Vehicles Act, it is open to an insurer to file a petition under Articles 226/227 of the Constitution.

24. Repelling the argument advanced on behalf of respondents in *Sadhana Lodh* (Supra), the Supreme Court held as under:-

“The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Article 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an insurer to take any plea other than those provided under Section 149(2) of



the Act (see National Insurance Co. Ltd, v. Nicolletta Rohtagi 2002(7) SCC 456). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. **Where a statutory right to file an appeal has been provided for, it is not open to High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 of CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution.** As a matter of an illustration, where a trial Court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 C.P.C., in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State legislature has barred a remedy of filing a revision petition before the High Court under Section 115 C.P.C., no petition under Article 226 of the Constitution would lie for the reason that



a mere wrong decision without anything more is not enough to attract jurisdiction of High Court under Article 226 of the Constitution.”

(emphasis mine)

25. Thus, in *Sadhana Lodh* (Supra), the Supreme Court has held that where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for, the remedy against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision is expressly barred, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution.

26. As has been set out in the above binding precedent, I find force in the submission of Mr. Ashhar Mustafa, learned advocate for respondent no.10 that where the legislature has provided for a remedy of revision before the High Court against any decision or order of Tribunal, only such jurisdiction can be invoked and a petition under Article 226/227 of the Constitution of India under such circumstances would be impermissible. Even a wrong decision would not be enough to attract jurisdiction of the High Court under Article 226 of the Constitution.



27. Hence, in view of the binding precedent of the Supreme Court in *Sadhana Lodh* (Supra), when a statutory right to file a revision has been given to the person aggrieved under the proviso to sub-section (9) of Section 83 of the Waqf Act, 1995, it would not be open to this Court to entertain a petition under Article 226 or 227 of the Constitution of India. Merely because petitions under Articles 226/227 of the Constitution of India have been entertained in past, such petition cannot be held to be maintainable in law. It has not been brought to my notice by the petitioner or on behalf of the Board that the issue of maintainability of a petition under Articles 226/227 of the Constitution of India against the decision or order of Tribunal has ever been considered and decided by this Court. If the objection regarding maintainability of such petition has not been raised and the relevant provisions of the Act have not been considered while entertaining the petition, it will always be open for the Court to examine the issue of maintainability of such petition. Moreover, while examining such issue of maintainability, this Court cannot ignore the terms of statute and the binding precedent of the Supreme Court. Thus, I find no merit in the submissions of the learned counsel for the petitioner and the Board that since such petitions are being entertained before this Court and several decisions have been given in past which have attained finality, a petition under Article 226/227 of



the Constitution of India would be maintainable against the decision or order of the Tribunal.

28. In ***Md. Abdul Kareem*** (Supra), the High Court of Andhra Pradesh held : “...*the jurisdiction of the High Court in disputes relating to Waqfs can be invoked only when an aggrieved party files a revision petition under Sub-section (9) of Section 83 of the Act and a writ petition would not be maintainable*”.

29. In ***Syed Asadulla Hussaini*** (Supra) a Division Bench of Karnataka High Court in writ appeal set aside the impugned order passed by the Single Judge in writ petition filed against the decision of the Tribunal with liberty to the aggrieved party to take remedy available under sub-section (9) of Section 83 of the Waqf Act, 1995.

30. In ***Zubedaben Mohammedmiya*** (Supra), the High Court of Gujarat held as under :-

“6. From the provision in Section 83(9) itself and from what is laid down in the decisions considered hereinabove, it has to be ruled that when against any determination or order by the Waqf Tribunal, the statutory prescription of remedy is revisional power and revisional jurisdiction, only revisional jurisdiction of the High Court could be invoked. The proceedings ought to have been registered as a Revision Application. When the nature of two jurisdictions, namely revision jurisdiction and writ



jurisdiction are quite different in their width and sweep, the submission could be countenanced that the petition under Article 227 of the Constitution could not have been filed. There is a substance when it is contended that permitting filing of a petition under Article 227 would amount to enlarging the jurisdiction against the statutory provision under Section 83(9) of the Waqf Act, 1995. Therefore it may not be a mere question of different nomenclature as sought to be suggested by learned advocate for the petitioner. In the present case the position is admitted that the order impugned is under Section 83 and what is invoked for challenge the said order is sub-section (9) of Section 83, which is the remedy as per the provision.”

31. In *Mumtaz Ahmed* (Supra), a Division Bench of the High Court of Himachal Pradesh while considering a bunch of petitions framed the following question for determination - “*Whether regular First Appeal or Civil Revision or petition under Article 227 of the Constitution of India would lie against the order passed by the Waqf Tribunal.*” After examining the issue in detail, the Division Bench held that writ petition or appeal is not maintainable against the order of a Tribunal since sub-section (9) of Section 83 of the Waqf Act, 1995 provides an efficacious alternative remedy to the aggrieved party to invoke the revisional jurisdiction of the High Court.



32. The following passages from the decision in *Mumtaz Ahmed* (Supra) in this regard are apposite :-

“30. Sub Section 9 of Section 83 of the Act provides that no appeal shall lie against any decision or order whether interim or otherwise, passed by the Tribunal established under the Act. Still, it is astonishing that Writ Petitions and Regular First Appeals are being preferred by the aggrieved parties before this Court challenging the decisions rendered by the Tribunals constituted under the Act. It is also not understandable how such appeals or writ petitions are being entertained once there is specific bar in terms of Section 83(9) of the Act that no appeal will lie against the order of the Tribunal. We were told that it is a practice in this Court and the decisions have been made and such decisions have attained finality.

31. We may make it clear that we are not giving findings viz. a viz. those judgments which have attained finality. It is also made clear that this judgment is prospective in nature and will not, in any way, have retrospective effect.

32. In terms of proviso to Sub Section (9) of Section 83 of the Act, any person aggrieved by the orders of the Tribunals can invoke the revisional jurisdiction of the High Court. Thus, remedy is provided to the aggrieved person by way of filing revision petition and not by the medium of appeal. The Act contains the mechanism for filing revision petition, thus, providing efficacious



alternative remedy to the aggrieved party, rendering the writ petition not maintainable against the orders passed by the Tribunal. This view has been taken by this Court in case titled as **M/s Indian Technomac Company Ltd. versus State of H.P. & others**, being CWP No.4779 of 2014, decided on 4th August, 2014, and restated in plethora of judgments.

In a similar case, the High Court of Andhra Pradesh in case titled as Mohd. Abdul Kareem And Anr. vs. Andhra Pradesh State Wakf Board, 2004(2) ALD 345, held that the jurisdiction of the High Court in disputes pertaining to Wakfs can be invoked by way of filing revision petition and not by the medium of a writ petition. It is apt to reproduce paragraph 13 of the said decision hereunder:

“13. As seen from the above, the jurisdiction of the High Court in disputes relating to Wakfs can be invoked only when an aggrieved party files a revision petition under Sub-section (9) of Section 83 of the Act and a writ petition would not be maintainable. In view of the binding precedents, this Court is not inclined to go into the merits of the contentions on other two questions raised by the learned Counsel for respective parties. These are left open to be decided at an appropriate stage in appropriate proceedings”.

33. This Court finds itself in complete agreement with the views expressed by the High Courts of Andhra Pradesh, Karnataka,



Gujarat and Himachal Pradesh in the decisions noted above.

34. In the result, this Court is of the considered opinion that a petition under Article 226/227 of the Constitution of India against the judgment or order passed by a Tribunal constituted under the Waqf Act, 1995 is not maintainable.

35. Accordingly, the instant writ petition is dismissed as not maintainable. However, the petitioners would be at liberty to invoke the proviso to sub-section (9) of Section 83 of the Waqf Act, 1995 for the redressal of their grievance.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30-04-2018
Transmission Date	

