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HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 535 of 2017**

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant**Versus**

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. 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 And Revenue District- Raipur (CG) (Writ petitioner)

---- Respondents**WA No. 21 of 2018**

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant**Versus**

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. 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 And Revenue District Raipur (CG) (Writ Petitioner).

---- Respondents

WA No. 35 of 2018

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant**Versus**

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. 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 And Revenue District Raipur Chhattisgarh (Writ Petitioner).

---- Respondents**WA No. 36 of 2018**

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant**Versus**

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. Khujema S/o Shri Saifuddin Qamar Ali R/o Lalpur Raipur Shop No. 82 /1, (Old No. 3) Hazrat Fateh , Shah Majaar & Masjid Trust Committee Police Line Tikrapara Raipur Civil And Revenue District Raipur Chhattisgarh. (Writ Petitioner).

---- Respondents

WA No. 38 of 2018

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant**Versus**

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. Abdul Hameed S/o Mohamamd Saeed, Aged About 60 Years, Taj Steel Trunk, Shop No. 8, (Old No. 6), Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur Civil And Revenue District Raipur Chhattisgarh. (Writ Petitioner).

---- Respondent**WA No. 41 of 2018**

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant**Versus**

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. 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 District Raipur Chhattisgarh (Writ Petitioner)

---- Respondent**WA No. 42 of 2018**

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant

Versus

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. 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 And Revenue District Raipur Chhattisgarh (Writ Petitioner).

---- Respondents

WA No. 44 of 2018

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant

Versus

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. 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 And Revenue District Raipur Chhattisgarh (Writ Petitioner).

---- Respondents

WA No. 49 of 2018

- Chhattisgarh State Wakf Board,raipur Through Its Chief Executive Officer , Sector 3c/12, Devendra Nagar Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Ministry Of Minorities Welfare/ Wakf , Mantralaya Mahanadi Bhawan Capital Complex Naya Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. The Sub Divisional Officer And Assistant Survey Commissioner (Waqf) , Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
3. Mutwalli , Hazrat Fateh Shah Majaar And Masjid Trust Committee Police Line Tikrapara Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. 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 And Revenue District Raipur Chhattisgarh (Writ Petitioner).

---- Respondents

WA No. 55 of 2018

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant

Versus

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. Farid S/o Late Ashique Husain, Aged About 35 Years (Bore Blasting) Shop No. 6. (Old No. 4), Hazrat Fateh Shah Majaar & Masjid Turst Committee, Police Line Tikrapara, Raipur Civil And Revenue District Raipur Chhattisgarh. (Writ Petitioner)

---- Respondents

WA No. 57 of 2018

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant

Versus

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)

2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. Salim Gauri S/o Late Usmaan Gauri, Aged About 65 Years R/o Salim Cotton Works, Mahavir Mandir Road, Gandhi Ward No.16, Dongargarh P.S. City Kotwali, Dongargarh, District Rajnandgaon (CG) Civil & Revenue District Rajnandgaon (Writ Petitioner).

---- Respondents

WA No. 85 of 2018

- Chhattisgarh State Wakf Board Raipur Through Its Chief Executive Officer, Sector 3C/12, Devendra Nagar, Raipur, District Raipur (CG)

---- Appellant

Versus

1. The State Of Chhattisgarh Through The Secretary, Ministry Of Minorities Welfare/ Wakf, Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur (CG)
2. The Sub Divisional Officer & Assistant Survey Commissioner (Waqf), Raipur District Raipur (CG)
3. Mutwalli Hazrat Fateh Shah Majaar & Masjid Trust Committee, Police Line, Tikrapara, Raipur District Raipur (CG)
4. Smt. Shweta Seth, W/o 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, District Raipur (CG) (Writ Petitioner).

---- Respondents

For Appellant	:	Shri Prateek Sharma, Advocate
For Respondent Nos.1 & 2	:	Shri R.S. Baghel, Dy. Adv. General
For Respondent No.4	:	Shri B.P. Sharma, Advocate.

Hon'ble Shri Prashant Kumar Mishra, Ag.Chief Justice

Hon'ble Shri Parth Prateem Sahu, J

Order on Board

Per Prashant Kumar Mishra, Ag. CJ

27/03/2019

1. Chhattisgarh State Waqf Board, Raipur has preferred these writ appeals against the impugned order passed by writ Court in a batch of writ petitions involving similar facts and question of law.

2. Indisputably, the subject premises are waqf property under the control of appellant Chhattisgarh State Waqf Board. Original order assailed before the writ Court was passed by appellant Waqf Board on 16.1.2012 allowing application filed by the Mutwalli of Hajrat Fateh Shah Majar & Masjid Trust, Tikrapara, Raipur under Section 54 of the Waqf Act, 1995 (for short 'the Act of 1995') for eviction of tenants/writ petitioners from the subject premises, which are the shops owned by the Waqf- Hajrat Fateh Shah Majar & Masjid Trust, Tikrapara, Raipur. Said application was moved on the allegation that writ petitioners are possessed off shops belonging to the Waqf without paying any rent and that there does not exist any document or instrument in the nature of lease or otherwise duly approved by the Waqf Board allowing the writ petitioners to occupy the subject premises. The Waqf Board allowed the application on a finding that writ petitioners are in possession of the shops for a period of more than three years without there being any duly executed lease in their favour. It is also held that the erstwhile Mutwalli was hand-in-gloves with writ petitioners allowing them to occupy subject premises without paying any rent to the Waqf, therefore, the writ petitioners are not tenants over the subject property. The Waqf Board also referred to the provisions contained in Section 56 of the Act of 1995 providing for restrictions on power to grant lease of waqf property to hold that any lease for a period of more than three years is by itself void, therefore, the writ petitioners being in possession for a period of more than three years without there being any lease in their favour cannot be treated as tenants.

3. Learned Single Judge has allowed the writ petitions mainly on the strength of law laid down by Hon'ble Supreme Court in the matter of **Ramesh Gobindram (Dead) Through LRs. v. Sugra Humayun Mirza Wakf**

reported in **(2010) 8 SCC 726**. In the said matter the Hon'ble Supreme Court held in Para-35 that a suit seeking eviction of the tenants from what is admittedly waqf property could, therefore, be filed only before the civil court and not before the Tribunal.

4. Shri Prateek Sharma, learned counsel appearing for the Waqf Board would challenge the order passed by learned Single Judge on the ground that removal of encroachment from waqf property is within the exclusive jurisdiction of the Waqf Board under Section 54 of the Act of 1995, therefore, the Waqf Board was perfectly within its jurisdiction to order removal of writ petitioners from their occupation of the premises belonging to the waqf.
5. Though there can be no controversy as to the application of Section 54 of the Act of 1995 in relation to encroachment of a trust property, what appears to us is that in the order passed by the Waqf Board there is no finding that writ petitioners are 'encroachers'. Finding in respect of writ petitioners is to the effect that they are not tenants. Opposite to this finding, writ petitioners have come-out with an agreement executed by erstwhile Mutwalli. Whether or not said Mutwalli has executed said agreement or was competent in law at the relevant point of time to execute any such agreement in relation to waqf property is a question which can only be gone into in a duly constituted suit unless said Mutwalli himself appears and says that he had never executed any such instrument.
6. In the case at hand, one Mohammed Basheer was functioning as Mutwalli at the time of execution of agreement. Even the impugned order of Waqf Board would refer to Mohammed Basheer as Ex-Mutwalli. Therefore, if

the agreement was executed by Mutwalli, who later on became incapacitated to hold the office by efflux of time or otherwise, the instrument itself would not be rendered illegal. If writ petitioners were inducted at the inception by Mutwalli or their possession was later on regularized by Mutwalli by executing lease agreement, they cannot be branded as 'encroachers' so as to bring them within the purview of Section 54 of the Act of 1995. Once the status of writ petitioners was not that of encroacher, the Waqf Board had no jurisdiction to pass order under Section 54 of the Act of 1995. It may be possible that because of non-renewal of agreement, the writ petitioners would become tenants by sufferance but for eviction of such tenants also appropriate forum in law would be the jurisdictional civil Court. Learned Single Judge has already granted liberty to maintain duly constituted civil suit which can be availed for evicting the writ petitioners in accordance with law.

7. Accordingly, for the above stated reasons, we do not find any error in the impugned order passed by learned Single Judge, therefore, all the writ appeals deserve to be and are hereby dismissed.

Sd/-
(Prashant Kumar Mishra)
Ag. Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-