

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 05.03.2019

Delivered on : 30.04.2019

WEB COPY

CORAM:

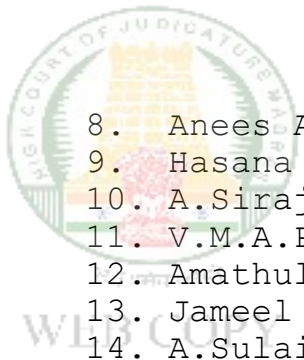
**THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM****AND****THE HONOURABLE MRS. JUSTICE S. THARANI****W.A. (MD) No. 7 of 2016****and****C.M.P. (MD) Nos. 3772, 5603 and 8687 of 2018****against****WP (MD) No. 10034 of 2015**

Nawab Wallajah Sahib Pallivasal,  
represented by its Secretary,  
Door No. 31, Cheranmahadevi Road,  
Pettai, Tirunelveli 620 004.

... Appellant/Petitioner

Vs.

1. The Commissioner of Land Administration / Board of Revenue,  
Chepauk,  
Chennai 600 005.
2. The Assistant Settlement Officer,  
Tirunelveli District at Tirunelveli.
3. The District Collector,  
Tirunelveli District at  
Tirunelveli.
4. The Tamil Nadu Wakf Board,  
represented by the Chief Executive Officer,  
No. 1 Jaffer Syrang Street,  
Chennai 600 001.
5. The Member Secretary,  
Local Town Planning,  
Palayamkottai,  
Tirunelveli.
6. The District Registrar,  
Tirunelveli District,  
Tirunelveli.
7. The Second Sub Registrar,  
Tirunelveli District, Pettai,  
Tirunelveli 627 004.



8. Anees Aysha
9. Hasana
10. A.Siraj Mohideen
11. V.M.A.Peer Mohamed
12. Amathul Hameeda
13. Jameel Fathima
14. A.Sulaika
15. Sowdha Ammal
16. Thowheth Ammal
17. I.Ahamed Ibrahim
18. Mohamed Ismail
19. Mohamed Gani Beevi
20. Ayshathul Munavara Beham
21. Amathul Natheera

... Respondents

**PRAYER:** Writ Appeal is filed under Clause 15 of the Letters Patent against the order of this Court, dated 30.10.2015 made in W.P.(MD). No.10034 of 2015.

**Prayer in WP(MD). 10034/ 2015 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue a Writ of Certiorarified Mandamus, or any other appropriate writ or order or direction on the above 2nd respondent, calling for the records dated 21st september 1961 pertaining to the taking away of the landed properties belonging to the above wakf Pallivasal, and issuing Ryotwari patta to the encroachers of the above Wakf Properties, and quash the same.

|                         |                                                                  |
|-------------------------|------------------------------------------------------------------|
| For Appellant           | : Mr.S.Parthasarathy, Senior counsel<br>for Mr.S.Balasubramaniam |
| For R1 to R3 , R5 to R7 | : Mr.Aayiram K.Selvakumar<br>Additional Government Pleader       |
| For R4                  | : Mr.M.Mohaboob Athiff                                           |
| For R8 to R21           | : Mr.M.Vallinayagam, Senior counsel<br>for Mr.D.Nallathambi      |

**J U D G M E N T**

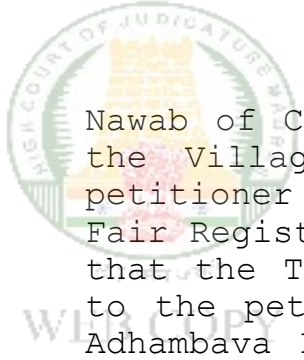
(Judgment of the Court was delivered by **K. KALYANASUNDARAM, J.**)

This appeal has been preferred assailing the order of the learned single Judge passed in W.P.(MD).No.10034 of 2015, dated 30.10.2015.

2. The writ petitioner is the appellant. One Mohamed Musthafa, S/o. Hassan Sahib filed the writ petition claiming to be the Secretary of Nawab Wallajah Sahib Pallivasal seeking to quash the records dated 21.09.1961, pertaining to the taking away of the landed properties belonging to the petitioner Pallivasal.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The case of the petitioner is that during the 16<sup>th</sup> century,



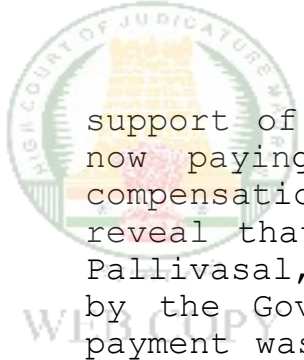
Nawab of Carnatic had dedicated the landed properties comprised in the Village viz, Karuvelankulam in Tirunelveli District to the petitioner Pallivasal which was a religious institution. The Inam Fair Register maintained by Inam Commissioner in the year 1865 shows that the Title Deed No.276 of Karuvelankulam Village was dedicated to the petitioner Pallivasal. While so, during the year 1905, one Adhambava Rawather, Vavukkani Beevi and Mahamedukani Beevi entered into a deed of partition in respect of the subject lands as if those lands belonged to their forefathers. According to the petitioner, the said partition deed is a false document created by them in order to grab the properties of the petitioner Pallivasal. After the enactment of Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, the legal heirs of the said three persons by playing fraud got Ryotwari Pattas in respect of the subject lands.

4. The petitioner further alleged that the second respondent without putting on notice on the petitioner, granted Pattas in their favour in the year 1961. After the present Secretary viz., Mohamed Musthafa took charge as the Secretary of the petitioner Pallivasal in the year 2009, the Committee has been taking steps to set right the property belonging to the petitioner Pallivasal. The sum and substance of the case of the petitioner was that the entire lands in Karuvelankulam was dedicated by Nawab of Carnatic in 16<sup>th</sup> century, however, the private respondents colluding with the second respondent had obtained Patta without notice to the petitioner.

5. The case of the private respondents before the writ Court was that the writ petition filed by Mr.Mohamed Musthafa is not maintainable as no document was produced to establish the fact that he was a Secretary at the time of filing of the writ petition. As per Section 32 (2)(i) of Tamil Nadu Wakf Act, the Tamil Nadu Wakf Board alone is empowered to institute the writ proceedings relating to Wakf properties. Therefore, the Pallivasal has no right to institute writ proceedings relating to Wakf property.

6. It is further stated in the counter that the Wakf Board also cannot initiate any proceedings in respect of a property in the absence of Notification under Section 5(2) of the Act, notifying the said property in the list of Wakf. The lands in Karuvelankulam are admittedly Inam lands and the Inam system was abolished by the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, and as per Section 3 of the Act, the Inam lands were taken away and vested with the Government free from all encumbrance. By a notification issued by the Government, the lands were taken away and not by the order of the second respondent as alleged in the writ petition. Now, there is no Assistant Settlement Officer in Tirunelveli District and hence, the prayer sought for against the second respondent, who is a Non Existing Officer is not maintainable.

7. It is their further case that the Then Ruler Nawab of Carnatic gave only the right to collect usufructs from the lands in



support of and maintenance of the Pallivasal and the Government is now paying transit allowance to the Pallivasal and also paid compensation. Further, the recital in the Fair Inam Register would reveal that the lands in Karuvelankulam has not been given to the Pallivasal, as it has been mentioned that the land has been managed by the Government from fasli 1216 to 1259 and a fixed monthly payment was made for support of the Pettai Mosque. In the Column No.4 of the Pro forma report of the petitioner Pallivasal, the title deeds of the Pallivasal has been given, but the lands in Karuvelankulam has not been shown in the said column. Therefore, even as per the pro forma relating to the petitioner Pallivasal, the lands in Karuvelankulam are not belonging to the petitioner Pallivasal. The counter further proceeds that the title dispute could be only established before the competent Court and the petitioner had filed a suit in O.S.No.209 of 2012 before the Wakf Tribunal, Tirunelveli, showing the private respondents as defendants in the suit. The private respondents filed an application in I.A.No.632 of 2012, to reject the plaint under Order 7 Rule 11 of C.P.C. and the petition was allowed and the matter was taken up to the High Court by way of Civil Revision Petition. The present writ petition filed after lapse of 54 years is liable to be dismissed on the ground of laches. The learned single Judge dismissed the writ petition. Challenging the same, the present appeal.

8. Heard Mr.S.Parthasarathy, learned Senior counsel for the appellant, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader for the respondents 1 to 3, 5 to 7 and Mr.M.Vallinayagam, learned Senior counsel for the respondents 8 to 21.

9. The learned Senior counsel for the appellant would urge that the Inam Fair Register is the material document, which shows that the lands in Karuvelankulam Village were granted to the appellant Pallivasal and once dedication was done in favour of Wakf, private individual cannot claim right over the property, but the private respondents by practising fraud have obtained Patta from the second respondent that too without notice to the petitioner and without proper enquiry, therefore they are liable to be set aside. It is further contended that since material facts have been suppressed at the time of issuance of Patta, it would amount to fraud and any order obtained by playing fraud is nullity and the appellant cannot be non-suited on the ground of delay and laches.

10. The following decisions are relied upon in support of the contentions.

(i) *In (2007) 4 SCC 221 (A.V.Papayya Sastry and others v. Government of Andhrapradesh and others)*, the Hon'ble Supreme Court has held as follows:

"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order --by the first Court or by the final Court-- has to be treated as nullity by



every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

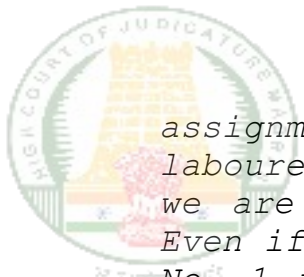
39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior."

(ii) In **(1994) 1 SCC 1 (S.P.Chengalvaraya Naidu (dead) by LRS. v. Jagannath (dead) by LRS and others)**, the Hon'ble Supreme Court has held as follows: :

"6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(iii) In **AIR 2017 SC 2056 (Karunakaran v. V.Padmini)**, the Hon'ble Supreme Court has held as follows:

"9. The learned Single Judge held that the contraventions pointed out by the Appellant/Petitioner did not fall within the ambit of Rule 29(8). This finding was upheld by the Division Bench. Section 96 of the Act clearly envisages that

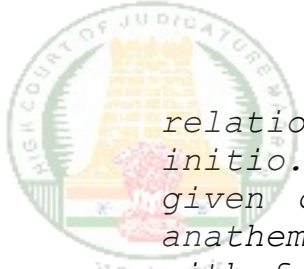


assignment can only be made in favour of landless agricultural labourers or small holders and other landlords. In this case, we are only concerned with landless agricultural labourers. Even if we were to ignore the false claim set up by Respondent No. 1 that she had obtained the tenancy rights on this land from K.P. Gopinathan in the year 1962, admittedly when she was only 10 years old and at that time K.P. Gopinathan was not the owner of the property as his father K.P. Choyi was still alive, yet we cannot ignore the fact that in the year 1988 Respondent No. 1 was having a valid licence to run an aluminium industry and was employing 9 persons. Therefore, Respondent No. 1 cannot claim to fall under the category of "landless agricultural labourer". Therefore, she had obtained the assignment order by totally mis-representing the facts and had played fraud on the authorities. The law is well settled that fraud vitiates all contracts or agreements. This is a case where fraud is writ large. It is evident that assignment was obtained in total contravention of Section 96 of the Act and, therefore, Rule 29(8) was also applicable. Hence, we are not in agreement with the view expressed by the Division Bench of the High Court of Kerala. Accordingly, the appeal is allowed. The judgments of the learned Single Judge and the Division Bench are set aside and the writ petition of the Appellant/Petitioner is allowed. The order of the District Collector cancelling the Assignment Deed dated 22.08.2003 is restored."

(iv) In **CDJ 2005 SC 541 (The State of Andhra Pradesh & Another v. T.Suryachandra Rao)**, the Hon'ble Supreme Court has held as follows:

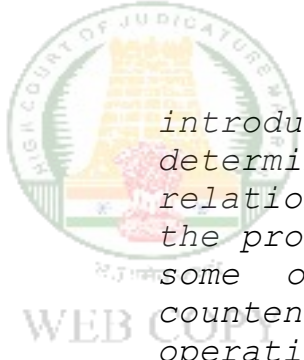
"9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See *S.P. Changalvaraya Naidu v. Jagannath* (1994 (1) SCC 1)).

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in



relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors. (2003 (8) SCC 319).

11. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary "fraud" in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, "fraud" is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Indian Contract Act, 1872 defines "fraud" as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact, which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of fact with knowledge that it was false. In a leading English case i.e. Derry and Ors. v. Peek (1886-90) All ER 1 what constitutes "fraud" was described thus: (All ER p. 22 B-C) "fraud" is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false". But "fraud" in public law is not the same as "fraud" in private law. Nor can the ingredients, which establish "fraud" in commercial transaction, be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in Khawaja v. Secretary of State for Home Deptt. (1983) 1 All ER 765, that it is dangerous to



introduce maxims of common law as to effect of fraud while determining fraud in relation of statutory law. "Fraud" in relation to statute must be a colourable transaction to evade the provisions of a statute. "If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope. Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administration law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. The misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which the power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. "In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain. In public law the duty is not to deceive."

(v) In **AIR 1998 SC 972 (Sayyed Ali v. Andhra Pradesh Wakf Board, Hyderabad)**, the Hon'ble Supreme Court has held as follows:

"14. Lastly, it was contended by learned counsel for the appellant that once patta, under the Inams Act, having been granted in favour of Mokhasadar, it was not open to the High Court to hold that the property was Wakf property. In other words, the argument seems to proceed on the basis that once patta has been granted under the Inams Act to Mokhasadars, the land has ceased to be a wakf property. It may be stated that a wakf is a permanent dedication of property for purposes recognized by Muslim law as pious religious or charitable and the property having been found as Wakf would always retain its character as a Wakf. In other words, once a Wakf always a Wakf and the grant of patta in favour of Mokhasadar under the Inams Act does not, in any manner, nullify the earlier dedication made of the property constituting the same as Wakf. After a Wakf had been created, it continues to be so for all time to come and further continues to be governed by the provisions of the Wakf Act and a grant of patta in favour of Mokhasadar does not affect the original character of the Wakf property. We accordingly find no substance in last argument of learned counsel for the appellant."



(vi) In **AIR 1960 SC 100 (Narayan v. Gopal)**, the Hon'ble Supreme Court has held as follows:

"21. Thus, it was doubly necessary for the appellant to bring before the Court all the documents in which his title was created, recognised or confirmed. He has, however, filed only a selection, and has refrained from bringing into evidence all the material in his possession which as late as 1931 was available to him. We have pointed out above that in 1931 he caused a history of the Sansthan to be published, and it refers to numerous documents, which have not found their way into Court. The learned Judges of the High Court also mentioned this fact, and stated that in view of the failure of the appellant to prove conclusively that a higher title than the one made out before the Inam Commission was available to him, no reliance could be placed upon such documents as had been exhibited. We have to see whether this statement is correct in all the circumstances of this case."

(vii) In **2009 (7) MLJ 335 (Ayyankutty Gounder v. Revenue Divisional Officer)**, this Court has held as follows:

"10. Mr. V. Lakshminarayan appears for the Wakf Board in the three Writ Petitions 44556 to 44558 of 2006 filed by the subsequent purchasers. He referred to decision of the Andhra Pradesh High Court in Andhra Pradesh Wakf Board, Hyderabad - vs. -S. Syed Ali Mulla and others reported in MANU/AP/0194/1985 : AIR 1985 AP 127 wherein another decision of the Andhra Pradesh High Court was cited, viz., R. Doraswamy Reddy - vs. -Board of Wakf reported in (1978)2 APLJ (HC) 399 which relates to service grant and its implication. He referred to the following portion of the decision to state that the legal heirs of the late khazi Abdul Rasheed do not have a right of alienation. The property is a wakf property. In that decision, it is held as follows:-

12. In **Zinyar Jung v. Director of Endowments** MANU/SC/0383/1962 : AIR 1963 SC 985, the Supreme Court observed:

Similarly the Muslim law relating to trusts differs fundamentally from the English law. According to Mr. Ameer Ali.

The Mohammadan law owes its origin to a rule laid down by the Prophet of Islam; and means 'the tying up of property in the ownership of God the Almighty and the devotion of the profits for the benefits of human beings'. As a result, of the creation of a wakf the right of Wakf is extinguished and the ownership is transferred to the Almighty. The manager of the Wakf is the Mutawalli, the Governor, superintendent or curator. But in that capacity he has no right in the property belonging to the wakf; the property is not vested



in him and he is not a trustee in the legal sense.

Therefore, there is no doubt that the wakf to which the Act applies, in essential features is different from the trust-as known to English Law.

In *R. Doraswamy Reddy v. Board of Wakfs* (1978)2 APLJ (HC) 399 Gangadhara Rao, J., dealing with a service grant made for the purpose of celebrating Mohanum festival and for maintaining resting place for fakirs and in repelling the argument that the property does not vest in the Almighty but it vests in the person who is to render service, observed:

It is true that the land was granted to an individual to perform service. But it does not mean that he acquires title to that property. Similarly, if the land can be resumed for non-performance of service and can be re-granted to another person for rendering service, does not mean that the original grantee continues to be the owner of the property. When once the Wakf was created it continues to be Wakf. When the inam is resumed and re-granted it does not mean that there is revocation of the service. It only means that the wakf property is entrusted to another individual to perform the service.

We are in respectful agreement with the aforesaid observations and hold that after 1964 amendment Act, all service grants made for any purpose recognised by the Muslim law as pious, religious or charitable have the effect of constituting the property, subject matter of the grant to be wakf, it is so because the wakf in its basic essential involves the permanent dedication of the property for such a performance.

Paragraph 12 of the said judgment deals with both the situation (i.e.) the nature of dedication of property under Muslim Law and the power to resume the land for the non-performance of service. He, therefore, justified the impugned proceedings. He further submitted that petitioners have no legal right to be heard and therefore, notice is not necessary. The notice, if any, issued previously will not clothe the petitioners with any right to claim patta or to be heard in the proceedings."

(viii) In **2011 (6) MLJ 731 (M.Govindan v. Special Commissioner and Commissioner of Land Administration)**, this Court has held as follows:

"25. There is no time limit to exercise the suo motu powers under the Act. The corrective measures can be taken whenever the fraudulent and irregular order is brought to the notice of the Commissioner of Land Administration. The Act does not provide for any specific time frame. The time limit of sixty days mentioned in Clause 9 of G.O.Ms.No.1300, dated 30.04.1971, is only for an application to be filed by the aggrieved party for not granting patta but not for the suo motu action by the authority. Therefore, the next contention



of the learned counsel for the petitioner that the action of the first respondent in cancelling the patta granted to the petitioner is time barred cannot be sustained."

(ix) In **AIR 2007 SC (Sup) 473 (State of Punjab and others v. Bhatinda District Co-op. Milk P. Union Limited)**, the Hon'ble Supreme Court has held as follows:

"10. The learned counsel appearing on behalf of the appellant, in support of this appeal, inter alia, submitted that the High Court in passing the impugned judgment committed a serious illegality in so far as it failed to take into consideration that no time limit has been fixed for exercise of suo moto jurisdiction of the Revisional Authority. It was further submitted that as it was open to the respondent to raise all contentions before the Revisional Authority itself, it was not a fit case where the High Court should have exercised its power of judicial review.

17. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."

(x) In **1989 (1) SCC 101 (Municipal Corporation of Delhi v. Gurnam Kaur)**, the Hon'ble Supreme Court has held as follows:

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das' case and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavement or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question or not whether any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a PG NO 939 pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p. 153 in these words:

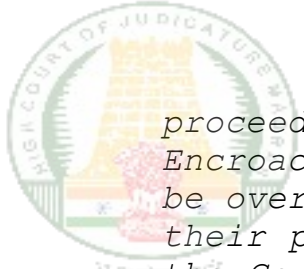
"A decision passes sub silentio, in the technical sense that, has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The Court may



consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

(xi) In **AIR 2010 SC 744 (Mandal Revenue Officer v. Goundla Venkaiah and Another)**, the Hon'ble Supreme Court has held as follows:

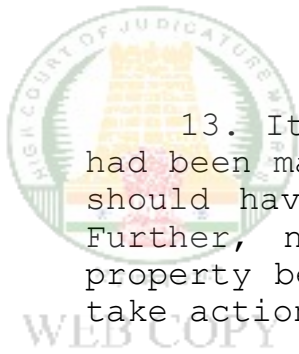
"29. In our view, even though by making reference to the judgment of this Court in *Syed Yakoub v. K.S. Radhakrishnan and others* (supra), the High Court has given an impression that it was aware of the limitations of certiorari jurisdiction under Article 226 of the Constitution of India, a critical analysis of the impugned order makes it clear that the High Court exceeded its jurisdiction and committed serious error by interfering with the well articulated and well reasoned concurrent findings recorded by the Special Tribunal and the Special Court that Gonda Mallaiah had illegally occupied the Government land and after his death, the respondents continued with the illegal possession and as such they were liable to be treated as land grabbers within the meaning of Section 2(d) of the Land Grabbing Act and that they have failed to prove that their possession was open and hostile to the Government so as to entitle them to claim title over the schedule land by adverse possession. The respondents did not produce any affirmative evidence before the Special Tribunal regarding the point of time when Gonda Mallaiah occupied the land and started cultivation. Instead, they relied upon the notices issued under Section 7 of the Encroachment Act and pleaded that the proceedings initiated under that Act will be deemed to have been dropped because no order was passed for eviction of their father by treating him an encroacher of the Government land. The Special Court has considered this issue in detail and assigned cogent reasons for doubting the authenticity of the documents produced by the respondents in support of their plea. The High Court completely overlooked the observations made by the Special Court on this issue and decided the case by presuming that the competent authority had taken a conscious decision to allow Gonda Mallaiah to continue his occupation of the Government land. In our considered view, the approach adopted by the High Court was ex-facie erroneous because absence of final order in the proceedings initiated under the Encroachment Act cannot lead to an inference that the concerned authority had recognized the possession of Gonda Mallaiah over the schedule land. That apart, even if this Court was to presume that the



proceedings initiated against Gonda Mallaiah under the Encroachment Act had been dropped, the said presumption cannot be over stretched for entertaining the respondents' claim that their possession was open and hostile qua the true owner i.e. the Government. The payment of land revenue by Gonda Mallaiah and/or the respondents and making of applications by them to the Government for assignment of the schedule land or regularisation of their possession, completely demolish their case that their possession was open and hostile and they have acquired title by adverse possession. In this context, it is necessary to remember that it is well nigh impossible for the State and its instrumentalities including the local authorities to keep every day vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularized. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the Court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give upper hand to the encroachers, unauthorised occupants or land grabbers.

11. Per contra, it is the submission of Mr.M.Vallinayagam, learned Senior counsel for the private respondents that the writ petitioner has no *locus standi* to file a writ petition and this appeal. Hence, the writ appeal is liable to be dismissed on the ground of maintainability. It is further contended that the petitioner seeks direction to the first respondent to change the revenue records by exercising the power of revision, though there is no prescribed period to exercise the revisional power, however it has to be done within a reasonable period and the prayer to direct the statutory authority to exercise revisional power after the lapse of 54 years is unsustainable and unacceptable.

12. According to the learned Senior counsel, the land in dispute is admittedly inam land and after implementation of Inam Abolition Act, the entire land would vest with the Government. If any one claims right over the same, they shall apply to the concerned authority with relevant documents within the time, but if no application was registered within the stipulated time, they are precluded from challenging the same. He further added that the Act does not contemplate notice to the persons interested, therefore the appeal cannot be put on notice and heard before issuing Patta in favour of the private respondents.



13. It is also contended that even assuming that the dedication had been made in favour of Wakf, proceedings to recover the property should have been initiated by the Wakf and not by an individual. Further, no notification has been issued to the effect that the property belongs to Wakf, and hence even Wakf has no legal right to take action against the respondents.

14. The learned Senior counsel has cited the following judgments in support of his arguments.

(i) In **2002 (1) CTC 561 (Tamil Nadu Wakf Board v. Hathija Ammal (dead) by LRS etc. etc.,)**, the Hon'ble Supreme Court has held as follows:

"6. In the event, any property has been omitted by inadvertence or otherwise, then it is for Wakf Board to take action as provided under Section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any question arises whether a particular property is a wakf property or not it may, after making such enquiry as it may deem fit decide the question and such decision of the Wakf Board shall be final unless revoked or modified by a Civil Court. Such action has not been taken by the Wakf Board in this case.

7. The High Court is justified in holding that the Wakf Board had no right to institute suit for declaration that any property is a wakf property as the scheme of the Act clearly indicates. The High Court further found that as far as the appellant is concerned with regard to title of any property, it must comply with the requirements of Sections 4, 5 and 6 or 27 of the Act, which means that if any property is not published as wakf property as required under Section 5(2) of the Act or the Board has not invoked the special power under Section 27, the Wakf Board cannot file a suit for declaration and possession and on that basis upheld the order made by the Trial Court as affirmed by the First Appellate Court.

8. Ms. Shobha, learned counsel for the appellant, drew our attention to the decision of this Court in Sayyed Ali and Ors. v. A.P. Wakf Board, Hyderabad and Ors., [1998] 2 SCC 642; to contend that wakf property can never lose its character as wakf property once it is shown that it is a permanent dedication of property and once a wakf, it will always be a wakf. The point urged in this Case is that the suit property is a wakf property and hence sought for possession. What was pointed out by the Trial Court, the First Appellate Court and the High Court concurrently is that before filing the suit as provided in law, the Wakf Board should have followed the procedure as required under Section 4, 5 and 6 or 27 of the Act. A finding of fact has been recorded by the Trial Court, and affirmed in appeal, is that the suit properties are not included in the



notification published under Section 5(2) of the Act and therefore, steps should have been taken as provided under Section 27 of the Act. It is only thereafter a suit for possession could have been filed by the appellant. There is no answer to this finding."

WEB COPY

(ii) In **C.R.P. (PD) (MD) .No.1562 of 2012**, dated **11.12.2012** (**Hazarath Khaja Syed Sulthan v. M.V.P.Gunavel**), this Court has held as follows:

"10. At the outset, I would like to fumigate my mind with the following decisions:

(i) Tamil Nadu Wakf Board v. Hathija Ammal (Dead) by Lrs., reported in 2002 (1) CTC 561. Certain excerpts from it, would run thus: "5. Let us now examine the provisions of the Act. Under Section 5(2) of the Act, after a property is notified to be wakf property, a determination is made by a Civil Court whenever any dispute arises after the notification is published by the Wakf Board as to whether a particular property specified as wakf property in a list published is a wakf property or not. Section 6 further provides that the Civil Court shall not entertain any such suit after the expiry of one year after the date of publication of the list by the Board. Such a suit cannot be at the instance of the Wakf Board. Again, the Board may itself collect information regarding any property as provided under Section 27 of the Act and decide whether a particular property is wakf property or not and that decision is final unless it is revoked or modified by a civil court.

6. In the event, any property has been omitted by inadvertence or otherwise, then it is for the Wakf Board to take action as provided under Section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any, question arises whether a particular property is a wakf property or not it may, after making such enquiry as it may deem fit decide the question and such decision of the Wakf board shall be final unless revoked or modified by a civil court. Such action has not been taken by the Wakf Board in this case.

7. The High Court is justified in holding that the Wakf Board had no right to institute suit for declaration that any property is a wakf property as the scheme of the Act clearly indicates. The High Court further found that as far as the appellant is concerned with regard to title of any property, it must comply with the requirements of Sections 4, 5 and 6 or 27 of the Act, which means that if any property is not published as wakf property as required under Section 5 (2) of the Act or the Board has not invoked the special power under Section 27, the Wakf Board cannot file a suit for declaration and possession and on that basis upheld the order



made by the Trial Court as affirmed by the First Appellate Court."

(ii) Ahale Sunnathwal Jamath Jogi Madam and Durga v. Haji Syed Irfan Hussai Sahib reported in 2010 (2) MWN (Civil) 655. An excerpt from it, would run thus:

"10. The perusal of the judgement of the Honourable Apex Court reported in Tamil Nadu Wakf Board v. Hathija Ammal (Dead) by Lrs, etc., 2002(1) CTC 561 (SC):2002 (1) LW 384, leaves no doubt that Sections 4, 5, 6 and 27 of the Wakf Act 1954 (which are in pari materia with Sections 4, 5, 6 and 40 of the Wakf Act, 1995) should necessarily be adhered to before filing a Suit for recovery of possession of the Wakf property. It is beyond doubt that the institutions like the Plaintiff could file a Suit for possession of the Wakf property, but before filing such Suit necessarily the said institution should comply with the aforesaid provisions of law as per the mandate of the Honourable Apex Court."

11. A cumulative reading of the aforesaid precedents would unambiguously and unequivocally highlight and spotlight the fact that if there is any dispute relating to Wakf property as per the provisions of Wakf Act 1955, no suit in civil Court or even W.O.P. before the Tribunal could straightaway be filed. The only remedy which was available for the revision petitioner at the relevant time of presenting the W.O.P. before the Tribunal, was that it ought to have approached the Wakf Board for getting the suit property declared as Wakf property. But indubitably and indisputably, it was not done so. As such, it is crystal clear in view of the decisions of the Honourable Apex Court as well this Court that such presentation of W.O.P. is ab initio void and the subsequent proceedings conducted before the Tribunal in W.O.P. cannot be countenanced as valid.

13. In view of the clear and categorical decision of the Honourable Apex Court in Tamil Nadu Wakf Board v. Hathija Ammal (Dead) by Lrs., reported in 2002 (1) CTC 561, which is squarely applicable to the facts and circumstances of the present case. I am of the considered view that such filing of W.O.P. was ab initio void and accordingly, that ought to have been dismissed.

(iii) In 2015 (2) L.W. 845 (Nagoor Gani Ammal @ Mahaboobal Beevi and others v. Tenkasi Vangaru Muthu Meeran Sahib Worshippers and Jamathars Liagat Ali Khan and others), this Court has held as follows:

"25. It would not be out of place for this Court to refer to the decision of the Hon'ble Apex Court in Tamil Nadu Wakf Board vs. Hathija Ammal (Dead) by Lrs. Etc. [MANU/SC/0518/2001 : 2001 (1) CTC 561] wherein Their Lordships have decided the right of the Wakf Board to



institute a suit. In this regard, paragraphs 6 to 8 of the said judgment are usefully re-produced hereunder:-

Para 6: "In the event, any property has been omitted by inadvertence or otherwise, then it is for Wakf Board to take action as provided under Section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any question arises whether a particular property is a wakf property or not it may, after making such enquiry as it may deem fit decide the question and such decision of the Wakf Board shall be final unless revoked or modified by a Civil Court. Such action has not been taken by the Wakf Board in this case.

Para 7: The High Court is justified in holding that the Wakf Board had no right to institute suit for declaration that any property is a wakf property as the scheme of the Act clearly indicates. The High Court further found that as far as the appellant is concerned with regard to title of any property, it must comply with the requirements of Sections 4, 5 and 6 or 27 of the Act, which means that if any property is not published as wakf property as required under Section 5(2) of the Act or the Board has not invoked the special power under Section 27, the Wakf Board cannot file a suit for declaration and possession and on that basis upheld the order made by the Trial Court as affirmed by the First Appellate Court.

Para 8: Ms. Shobha, learned counsel for the appellant, drew our attention to the decision of this Court in Sayyed Ali and Ors. v. A.P. Wakf Board, Hyderabad and Ors. MANU/SC/0070/1998 : [1998] 2 SCC 642; to contend that wakf property can never lose its character as wakf property once it is shown that it is a permanent dedication of property and once a wakf, it will always be a wakf. The point urged in this Case is that the suit property is a wakf property and hence sought for possession. What was pointed out by the Trial Court, the First Appellate Court and the High Court concurrently is that before filing the suit as provided in law, the Wakf Board should have followed the procedure as required under Section 4, 5 and 6 or 27 of the Act. A finding of fact has been recorded by the Trial Court, and affirmed in appeal, is that the suit properties are not included in the notification published under Section 5(2) of the Act and therefore, steps should have been taken as provided under Section 27 of the Act. It is only thereafter a suit for possession could have been filed by the appellant. There is no answer to this finding."

26. In the above ruling, the Hon'ble Supreme Court has held that the Wakf Board has got no right to institute a suit for declaration that any property is a Wakf property unless the requirements under Sections 4, 5, 6 & 27 of the Act are complied with.



27. In the case on hand, the plaintiffs had not produced the publication of list of Wakf property as contemplated under Section 5 of the Wakf Act nor the Register of Wakfs, which contains particulars of all Wakf properties, all title deeds and documents relating thereto, as provided under Section 37 of the Wakf Act. The absence of publication of the list of properties under Section 5 and the absence of register under Section 37 of Wakf Act would belie the contention of the plaintiffs that Mohammed Ismail intended to dedicate the 1st schedule property to the plaintiffs' Mosque and divested the title in the said property and deliver the same to the plaintiff's Mosque.

(iv) In **AIR 2017 Himachal Pradesh 38 (H.P.Waqf Board v. Khwaja Khallilulla and another)**, the Division Bench of the High Court of Himachal Pradesh has held as follows:

"22. Neither there are pleadings nor there is iota of proof on the record to the effect that the suit property was ever declared as Wakf property or it was notified as such. It is also not known whether the plaintiff-Board had followed the mandate of the provisions of the Wakf Act and also followed the mechanism contained in the Act for declaring the suit property as Wakf property, if any.

24. In the instant case, the plaintiff-Board has made the foundation of the suit on the basis of alleged Wakfnama, Ext. PW-2/B, which contains the description of the property i.e. house No. 109 (five storeyed) and house No. 109/1 (two storeyed), situated in Ladakhi Mohalla, Shimla, house No. 58 (four storeyed) situated over the Mall, Shimla, and shops No. 2, 3, 4 and 5 situated in Gali No. 5, near Shiv Divala, Middle Bazar, Shimla. The plaintiff-Board has not filed the suit regarding all the properties mentioned in the alleged Wakfnama, except shops No. 2, 3, 4 and 5 situated in khasra No. 218(new) and 200(old). The said Wakfnama does not even contain the detailed description of the suit property, only shop numbers, without khasra numbers, have been mentioned in the said Wakfnama.

25. The plaintiff-Board has also failed to plead and prove that the suit property, being the Wakf property, was in its possession at any point of time. There is no averment in the plaint or evidence led by the plaintiff to the effect that the suit property had ever remained in its possession.

27. The mutation stands effected on 20th February, 1992 in terms of which, defendant No. 1 is shown to be owner in possession and, admittedly, as per the pleadings, is in possession of the shops. The plaintiff has not questioned the said mutation till today, thus, has attained finality. It also shows that the defendants were in possession of the suit property.

<https://hcservices.ecourts.gov.in/hcservices/>

29. If any revenue entry had cast cloud on the title of the plaintiff-Board, it had to file a suit within the time



frame prescribed by the statute. Section 6 of the Act prescribed the limitation for filing a suit in regard to the Wakf properties. It is apt to reproduce the relevant portion of Section 6 of the Act hereunder:

"6. Disputes regarding wakfs :- (1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person aggrieved may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final.

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

....."

31. In view of the above discussion, coupled with the averments contained in the plaint and the evidence led by the plaintiff, one comes to inescapable conclusion that the plaintiff has failed to prove that it was owner in possession of the suit property. Viewed thus, the learned Tribunal has rightly made discussion and determined issue No. 1 against the plaintiff/revision petitioner. The said findings are upheld.

Issue No. 1(a)

"Whether the plaintiff is entitled for declaration as alleged? OPP"

38. Another aspect of the case is that the defendants purchased suit property comprised in Khasra No. 218, apart from other property, vide sale deed dated 15th February, 2007, from the Government of Himachal Pradesh. The said sale deed has been proved on record as DW-2/A. The plaintiff-Board has not questioned the said sale deed Ext. DW-2/A, which also relates to Khasra No. 218 over which the shops, subject matter of the instant dispute, are situated in terms of the revenue record and as per the plaint."

(v) In **AIR 2017 SC 2653 (Madanuri Sri Rama Chandra Murthy v. Syed Jalal)**, the Hon'ble Supreme Court has held as follows:

"19. As per Section 27 of 1954 Act (Section 40 of 1995 Act), the Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not the Board after making such enquiry as it deems fit, decide the question. The decision of the Board on any question under sub-section (1) of Section 27 of 1954 Act (or under Section 40(1) of 1995 Act) shall, unless revoked or modified by the Civil Court, be final. The effect of Section 27 of 1954 Act or Section 40 of 1995 Act is that, if any property had been omitted to be included in the list of auqaf by inadvertence or otherwise, then it was/is for



the Wakf Board to take action, as per said provision. In this context, it is relevant to note the observations by this Court in the case of T.N.Wakf Board vs. Hathija Ammal [1] which read thus:

"In the event, any property has been omitted by inadvertence or otherwise, then it is for the Wakf Board to take action as provided under Section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any question arises whether a particular property is a wakf property or not, it may, after making such enquiry as it may deem fit decide the question and such decision of the Wakf Board shall be final unless revoked or modified by a civil court. Such action has not been taken by the Wakf Board in this case."

21. In the matter on hand, the said provision also will not come to the aid of the plaintiff inasmuch as the said sub-section can be employed only if survey of auqaf was not done before the commencement of Wakf (Amendment) Act, 2013. Admittedly in the matter on hand, the survey was conducted prior to 1962 and based on such Surveyor's report only, the list was prepared and the same was submitted to State Government, which in turn, was forwarded to Wakf Board, the Wakf Board after examining the report published the list in the official gazette in the year 1962. Hence, sub-section (1A) of Section 4 also will be of no avail to the plaintiff.

22. In the matter on hand, as mentioned supra, the Tribunal and the High Court, on facts have held that the property in question is not included in the list published in the Official Gazette as a wakf property. Such non-inclusion was never questioned by any person including the Wakf Board. The Board has not exercised jurisdiction under Section 27 of 1954 Act and Section 40 of 1995 Act, though 50 years have elapsed from the date of the gazette notification. Hence, in our considered opinion, the averments in the plaint do not disclose the cause of action for filing the suit. The suit is manifestly meritless and vexatious. So also the suit is barred by law for the reasons mentioned supra."

(vi) In **2012 (4) L.W. 65 (Chinna Mazjid Sunnath Jamath by its Muthavalli Abdul Shukkur v. S.V.Thangam (died) and others)**, this Court has held as follows:

"3. The long and short of the germane facts absolutely necessary for the disposal of this revision would run thus: According to the learned counsel for the revision petitioner herein, the property described in the W.O.P. is a Wakf property. There is no doubt about it. The Muthavalli representing the said Rasipuram Chinna Mazjid Sunnath Jamath also is the proper Muthavalli, over which there is no rival



claim. The grievance expressed in the W.O.P. by the Muthavalli concerned on behalf of the Rasipuram Chinna Mazjid Sunnath Jamath was to the effect that, the defendants without any manner of right encroached a portion of the Wakf property and lay claim over it as if it is their own property. In such circumstances, the Tribunal to which they straightaway approached without approaching the Wakf Board, ordered that it is for the petitioner to approach the Wakf Board itself for proper remedy; he also referred to Section 40 of the Wakf Act and rendered his finding that it is for the petitioner to approach the Wakf Board concerned. Over and above that, I would like to refer to Section 54 of the Wakf Act, which is reproduced hereunder:

"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 my 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.

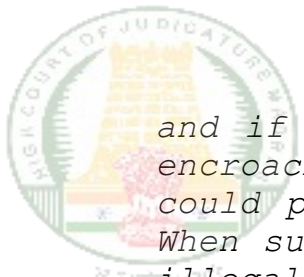
(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(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.

4. A mere perusal of Section 54 of the Wakf Act coupled with Section 40 of the Act, would leave no doubt in the mind of the Court that the authority under the Wakf Act has got ample powers to decide all matters relating to Wakf property



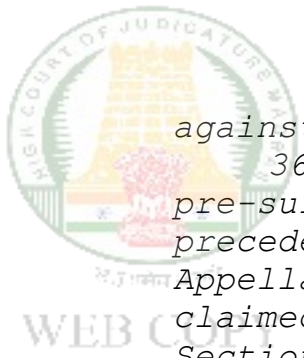
and if really the defendants as stated by the petitioner are encroachers, then the appropriate authority under the Act could proceed as against the encroachers and do the needful. When such is the legal position, I could see no perversity or illegality in the order passed by the lower Court. Accordingly, this revision petition is dismissed and it is for the petitioner to approach as per the above provisions the authority concerned under the Act and get appropriate remedy. No costs.

(vii) In **2010 (4) CTC 516 (The Secretary, Tamil Nadu Wakf Board, Madras v. Kancheepuram Oili Mohamed Petai Lebbai Jamma Masjuid and others)**, this Court has held as follows:

"27. It is to be noted that as per Section 32(2)(i) of the Wakf Act, 1995, the power to institute and defend suits and proceedings pertaining to Wakf lies with the board and therefore the present suit filed before the trial Court by the Muthavalli representing the 1st Respondent/plaintiff's Mosque is not maintainable in the eye of law.

28. In regard to the plea of the Appellant/10th Defendant that issuance of notice to the Appellant/Wakf Board is a condition precedent to the filing of the suit, this Court points out that new Section 89 (old Section 56) of the Wakf Act, 1995, has not undergone any change and the notice under Section 56 (new Section 89) is analogous to Section 80 of the Code of Civil Procedure and it prohibits the filing of any suit against the Wakf Board in respect any Act purporting to be done by it in pursuance of the Act or the rules framed thereunder unless, the proper notice is served on the Wakf Board before filing of the suit. Defect of want of notice goes to the root of the matter and it cannot be viewed likely.

29. In the instant case, though as against the Appellant/10th Defendant no relief is claimed as per the averment made in the plaint yet, it is a necessary party to the suit as opined by this Court. Eventhough as against the Appellant/10th Defendant no relief is claimed by the 1st Respondent/plaintiff in the suit since the Appellant/10th Defendant has General Superintendent and control of the 1st Respondent/plaintiff's Mosque and inasmuch as the 1st Respondent/plaintiff is represented by Muthavalli who can be removed from his office as per the provisions of the Wakf Act, 1995, and since he has to carry out the directions of the Board and to perform other duties enjoined under the Act, this Court is of the considered view that pre-suit notice as required under Section 89 (old Section 56) of the Act is very much necessary/mandatory and in the instant case, the plaintiff has not issued the pre-suit notice as per Section 89 (Old Section 56) of the Act and this material defect affects the very foundation of the filing of the suit and the substantial questions of law 2 and 3 are answered



against the 1st Respondent/plaintiff.

36. Be that as it may, since this Court has held that pre-suit notice under Section 89 of the Act is a condition precedent to the filing of the suit against the Appellant/10th Defendant Board (eventhough no relief is claimed against it) and also because of the fact that as per Section 32(2)(i) of the Act, only the Appellant/Wakf Board can file a suit and defend the same etc, this Court (on the basis of facts and circumstances of the present case which float on the surface) opines that the substantial question of law No. 1 framed by it, relating to the protection of action taken in good faith that no suit or other proceedings shall lie against the Board and its subordinates etc., duly appointed under the Act etc., does not warrant an answer from this Court and the point is so answered."

(viii) In **AIR 2004 SC 4365 (S.M.M.K.K.Thangal v. Badagara Jamayath Palli Dharas Committee)**, the Hon'ble Supreme Court has held as follows:

"8. As is evident from the impugned judgment, the High Court took into consideration the written statement filed by the Secretary, Wakf Board wherein it has been stated that the plaintiff-committee was very regular in submitting annual statement of accounts to the Wakf Board and in payment of annual contribution to the Board as per the provisions of the Act in support of the view that the plaintiff was actually acting as a mutawalli. This approach, in our view, is not correct. The written statement filed by Wakf Board could not bind the defendant no. 2. Further any statement made in the said written statement could not be accepted against the defendant No. 2 unless it was established on the basis of evidence. The decision of Moideen Bibi Ammal (supra), in our view, does not help the plaintiff. To apply the said decision, necessary facts ought to have been pleaded and established. In the case on hand, as already noticed above, neither there was pleading specifically in that plaint as to the plaintiff actually acting as a mutawalli to come within the scope of Section 3(f) of 1954 Wakf Act nor acceptable and sufficient evidence was placed on record to prove it as a fact. In the situation, the aforementioned decision has no application to the case of the plaintiff. When the plaintiff came forward specifically pleading that he was entitled for declaration of title and for recovery of possession of the plaint schedule property based on the agreement Exbt. A-2 dated 13.2.1973, it could succeed only on the basis of validity of Exbt. A-2 and the validity of transfer of mutawalliship in its favour. Since all the courts have concurrently found that mutawalliship could not be validly transferred in favour of the plaintiff-committee under Exbt. A2, the suit filed by the plaintiff ought to have been dismissed. The plaintiff could only succeed on the strength of its case and not on the weakness found in



the case of the defendant, if any. The first appellate court having elaborately considered the evidence placed on record in the light of the pleadings of the parties had come to the right conclusion in dismissing the suit of the plaintiff. The High Court in second appeal, in our view, was not right in upsetting the findings of fact recorded by the first appellate court, that too without putting the parties on notice on the substantial question of law. Even otherwise, the finding of the High Court on question no. 3 cannot be sustained when such a case did not arise for consideration in the absence of necessary pleading in the plaint in that regard. More so when the case of the plaintiff was based clearly on title said to have been derived under Exbt. A-2.

9. Under the circumstances and in the light of what is stated above, the impugned judgment cannot be sustained. In the result, the appeal is allowed, the impugned judgment is set aside except the direction given to the Wakf Board to act under Section 63 of the Wakf Act, 1995 and the suit filed by the plaintiff is dismissed. In other words, the direction given by the High Court to the Wakf Board to exercise power under Section 63 of the Wakf Act, 1995 is maintained. In case any of the parties wants to challenge that the property in question is not a wakf property, it is open to such party to seek appropriate remedy in accordance with law. No costs."

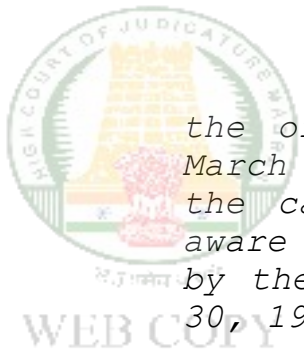
(ix) In **AIR 2009 SC (Supp) 2471 (Santhoshkumar Shivagonda Patil v. Bala Saheb Thukkaram Shevale)**, the Hon'ble Supreme Court has held as follows:

"16. It seems to be fairly settled that if a statute does not prescribe the time limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein.

Ordinarily, the reasonable period within which power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of Tehsildar passed on March 30, 1976 is flawed and legally

~~not correct.~~

Pertinently, Tukaram Sakharam Shevale, during his lifetime never challenged the legality and correctness of



the order of Tehsildar, Shirol although it was passed on March 30, 1976 and he was alive upto 1990. It is not even in the case of Respondent Nos. 1 to 5 that Tukaram was not aware of the order dated March 30, 1976. There is no finding by the Sub-Divisional Officer either that order dated March 30, 1976 was obtained fraudulently."

(x) In **AIR 2015 SC 1021 (Jt. Collector, Renga Reddy District and another v. D.Narasimha Rao & others)**, the Hon'ble Supreme Court has held as follows:

"11. No time limit is prescribed in the above Regulation for the exercise of suo motu power but the question is as to whether the suo motu power could be exercised after a period of 50 years. The Government as early as in the year 1991 passed order reserving 477 acres of land in Survey Nos. 36 and 37 of Gopanpally village for house-sites to the government employees. In other words the Government had every occasion to verify the revenue entries pertaining to the said lands while passing the Government Order dated 24.9.1991 but no exception was taken to the entries found. Further the respondents herein filed Writ Petition No.21719 of 1997 challenging the Government order dated 24.9.1991 and even at that point of time no action was initiated pertaining to the entries in the said survey numbers. Thereafter, the purchasers of land from respondent Nos.1 and 2 herein filed a civil suit in O.S.No.12 of 2001 on the file of Additional District Judge, Ranga Reddy District praying for a declaration that they were lawful owners and possessors of certain plots of land in survey No.36, and after contest, the suit was decreed and said decree is allowed to become final. By the impugned Notice dated 31.12.2004 the suo motu revision power under Regulation 166B referred above is sought to be exercised after five decades and if it is allowed to do so it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties.

12. In the light of what is stated above we are of the view that the Division Bench of the High Court was right in affirming the view of the learned single Judge of the High Court that the suo motu revision undertaken after a long lapse of time, even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law.

24. To sum up, delayed exercise of revisional jurisdiction is frowned upon because if actions or transactions were to remain forever open to challenge, it will mean avoidable and endless uncertainty in human affairs, which is not the policy of law. Because, even when there is no period of limitation prescribed for exercise of such powers, the intervening delay, may have led to creation of third party rights, that cannot be tampered by a belated exercise of a discretionary power especially when no cogent explanation for the delay is in



sight. Rule of law it is said must run closely with the rule of life. Even in cases where the orders sought to be revised are fraudulent, the exercise of power must be within a reasonable period of the discovery of fraud. Simply describing an act or transaction to be fraudulent will not extend the time for its correction to infinity; for otherwise the exercise of revisional power would itself be tantamount to a fraud upon the statute that vests such power in an authority.

25. In the case at hand, while the entry sought to be corrected is described as fraudulent, there is nothing in the notice impugned before the High Court as to when was the alleged fraud discovered by the State. A specific statement in that regard was essential for it was a jurisdictional fact, which ought to be clearly asserted in the notice issued to the respondents. The attempt of the appellant-State to demonstrate that the notice was issued within a reasonable period of the discovery of the alleged fraud is, therefore, futile. At any rate, when the Government allowed the land in question for housing sites to be given to Government employees in the year 1991, it must be presumed to have known about the record and the revenue entries concerning the parcel of land made in the ordinary course of official business. In as much as, the notice was issued as late as on 31st December, 2004, it was delayed by nearly 13 years. No explanation has been offered even for this delay assuming that the same ought to be counted only from the year 1991. Judged from any angle the notice seeking to reverse the entries made half a century ago, was clearly beyond reasonable time and was rightly quashed."

(xi) In **AIR 2015 Rajasthan 179 (TARA v. State of Rajasthan (FB))**, the High Court of Rajasthan has held as follows:

"42. On the aforesaid discussion and in the light of the judgments of the Supreme Court referred to above, we decide the question no.(v) in the manner that even if no time limit has been fixed for reference under Section 82 of the Rajasthan Land Revenue Act, 1956 and under section 232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity), a reference can be made within a reasonable time, which will depend upon the facts and circumstances of each case. Even if the fraud is alleged, the power must not be exercised after unreasonable period, such as, after several decades claiming rights over the land.

48. In order to summarize the answers, the questions framed by by the Court and our decisions on the questions are stated as below:-

"Question No.(i) Whether the land held in Jagir, by Hindu Idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity or by hired labour or servants engaged by its Shebait/Pujari as a



tenant of the deity, such idol being treated as a perpetual minor, will still be regarded as land held in the personal cultivation of the deity or will such land be regarded as held in the tenancy by the person cultivating such land as tenant of a deity?

WEB COPY

Answer:- The question no.(i) is decided in favour of the State and against the Shebait/Pujari claiming the land to be saved by the Jagirs Act of 1952. The land held in Jagir by Hindu idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity personally or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, shall vest in the State, after the Jagirs Act of 1952. The Hindu idol (deity), even if it is treated to be a perpetual minor, could not continue to hold such land. Such land cannot be treated to be in its personal cultivation. A tenant of such land cultivating the land acquired the rights of khatedar of the State. Such land under the tenancy of a person other than Shebait/Purjari of Hindu Idol (deity) became khatedari land of such tenant. The name of Hindu Idol (deity) from such land had to be expunged from the revenue records with Shebait/Pujuri having no right to claim the land as Khatedar. Consequently, they had no right to transfer such lands, and all such transfers have to be treated as null and void, in contravention of the Jagirs Act 1952, and the land under such transfers to be resumed by the State.

Question No.(ii) What are the rights of the Hindu Idol (deity) in the lands held by them in the name of its Shebait/Pujari on the date of resumption of such Jagir, under the provisions of the Rajasthan Land Reforms & Resumption of Jagir Act, 1952?

Answer:- The Hindu Idol (deity) in the lands held by them in the name of its Shebait/Pujari on the date of resumption of such Jagir under the provisions of the Jagirs Act of 1952 did not have any rights except in khudkasht land cultivated by Shebait/Pujari either by themselves or by hired labour or servant engaged by them for the benefit of the expenses of the temple including sewa puja. All those lands let out by them to the tenants or sub-tenants were resumed by the Jagirs Act of 1952 and that the Hindu idol (deity) lost all the rights in such jagir lands.

Question No.(iii) Whether such a Jagir land/Muafi held by the Shebait/Pujari of Hindu Idol (deity) in their name after the date of resumption of the Jagir (Muafi) can be alienated by them? If so, what is the effect?

Answer:- The Jagir land/Muafi held by the Shebait/Pujari of Hindu Idol (deity) in their name after the date of resumption of the Jagir (Muafi) by the Jagirs Act of



1952 will not give them any right nor they could alienate the land. The alienation made by them of such land which was resumed/acquired by the State Government and for which claims were made and settled before the Jagir Commissioner, would be null and void and will have no effect.

WEB COPY

Question No.(iv) Whether any person can acquire right by adverse possession in the lands of aforesaid nature against the holder?

Answer:- No person can acquire right by adverse possession in the lands which were resumed or are in the tenancy of the tenants as khatedars. The limitation applicable under the Rajasthan Tenancy Act, 1955 for filing suit for possession against the trespasser will be applicable. The Rajasthan Tenancy Act, 1955 being a Special Act, will prevail and the provisions of Section 27 of the Limitation Act will not apply for claiming adverse possession on such lands.

Question No.(v) Whether any time limit can be fixed for reference u/s 82 of the Rajasthan Land Revenue Act, 1956 and u/s.232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity). If so, to what extent?

Answer:- No time limit has been fixed for reference under Section 82 of the Rajasthan Land Revenue Act, 1956 and under section 232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity), and thus a reference can be made within a reasonable time, which will depend upon the facts and circumstances of each case. Even if the fraud is alleged, the power must not be exercised after unreasonable period, such as, after several decades claiming rights over the land."

(xii) In **2016 (2) L.W. 45 (Sundaram and others v. the Principal Secretary and Commissioner of Land Administration)**, the Division Bench of this Court has held as follows:

"25. In the case on hand, incontrovertibly, the appellants have filed the representation/petition seeking grant of patta after six decades, claiming to be descendants of the erstwhile Zamindar. Albeit there is no limitation prescribed for exercise of power under Section 7(c) of the Act, it does not entitle the appellants to question the action of the Settlement Officer by allotting the scheduled property in favour of the third respondent and its predecessors, beyond a reasonable delay. The appellants have miserably failed to explain such an inordinate delay and laches.

28. The appellants, claiming to be descendants of the erstwhile Zamindar are entitled to ryotwari patta in Zamindari Estate under the provisions of Section 12 of the Act. On a bare reading of the said provisions, it is



eloquent that a landholder, claiming to be entitled to ryotwari pata under the provisions, must have acquired the land by inheritance or succession under a will or by purchase, exchange of gift, but not including purchase at a sale for arrears of rent, provided the said land holder is in continuous possession of such lands from 1st day of July 1945 and had been cultivating such lands himself, by his own servants or by hired labour, with his own or hired stock in the ordinary course of husbandry. The appellants have not pleaded even in their representation made to the first respondent that they have been in continuous possession of the land from the specified date, i.e., 1st July, 1945 and also on the notified date, i.e., the date when the Act came into force and cultivating themselves or through their own servants or by hired labour or otherwise.

29. The State Government, subsequently, by several Government Orders, as referred to in G.O. Ms. No. 1300, Revenue Department dated 30 April 1971, had permitted the landholders or the ryots, who could not obtain patta within the prescribed time under the provisions of the Act, to make an application for grant of patta in respect of such lands, provided they were in continuous possession and enjoyment of any land in the estate taken over under the Act. The said permission came to an end subsequently by G.O. Ms. No. 714, which stipulated the last date as 20 August 1987. The appellants had never come forward under the aforesaid provisions of the Act or under the extended time granted by several Government Orders, claiming to be in continuous possession and enjoyment of any land in the estate taken over under the Act.

30. As a sequitur, we have no hesitation in holding that the first respondent had rightly rejected the appellants' application as being barred by delay and that the learned Single Judge has justly dismissed the writ petition upholding the order passed by the first respondent."

(xiii) In **2018 SAR (Civil) 360 (Mahavir and Others v. Union of India and another)**, the Hon'ble Supreme Court has held as follows:

"16. The Constitution Bench of this Court in *Rabindranath Bose and Ors. v. Union of India and Ors.* MANU/SC/0506/1969 : (1970) 1 SCC 84 has observed:

32...we are of the view that no relief should be given to Petitioners who, without any reasonable explanation, approach this Court Under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions Under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years. It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the

Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.

17. This Court in *Dharappa v. Bijapur Co-operative Milk Producers Societies Union Ltd.* MANU/SC/7367/2007 : 2007 (3) S.C.T. 491 : (2007) 9 SCC 109 considered the question of delay and laches in the matter of raising the dispute under Industrial Dispute Act, 1947. Though no limitation period is prescribed under the Industrial Disputes Act, this Court has held that if on account of delay, a dispute has become stale or ceases to exist, the reference should be rejected. It is also held that lapse of time results in losing the remedy and the right as well. The delay would be fatal if it has resulted in material evidence relevant to adjudication being lost or rendered unavailable. When belated claims are considered as stale and non-existing for the purpose of refusing or rejecting a reference Under Section 10(1)(c) or in spite of no period of limitation is prescribed this Court laid that it will be illogical to hold that the amendment to the I.D. Act inserting Section 10(4-a) prescribing the time limit of six months should be interpreted as reviving all stale and dead claims. This Court has further observed that Section 10(4-A) clearly requires that a workman who wants to directly approach the Labour Court, should do so within six months from the date of communication of the order. This Court has laid down that when a new remedy or relief is provided by a statute, such a transitional provision is made to ensure that persons who are given a special right, do not lose it for want of adequate time to enforce it, though they have a cause of action or right as on the date when the new remedy or relief comes into effect. This Court has further observed that Section 10(4-A) does not, therefore, revive non-existing or stale or dead claims but only ensures that claims which were live, to be filed, by applying the six-month Rule in Section 10(4-A). This Court has laid down thus:

"29. This Court while dealing with Sections 10(1)(c) and (d) of the ID Act, has repeatedly held that though the Act does not provide a period of limitation for raising a dispute Under Section 10(1)(c) or (d), if on account of delay, a dispute has become stale or ceases to exist, the reference should be rejected. It has also held that lapse of time results in losing the remedy and the right as well. The delay would be fatal if it has resulted in material evidence relevant to adjudication being lost or rendered unavailable (vide *Nedungadi Bank Ltd. v. K.P. Madhavankutty*; *Balbir Singh v. Punjab Roadways*; *Asstt. Executive Engineer v. Shivalinga* and *S.M. Nilajkar v. Telecom Distt. Manager*). When belated claims are considered as stale and non-existing for the purpose of refusing or



rejecting a reference Under Section 10(1)(c) or (d), in spite of no period of limitation being prescribed, it will be illogical to hold that the amendment to the Act inserting Section 10(4-A) prescribing a time-limit of six months, should be interpreted as reviving all stale and dead claims.

30. The object of Section 10(4-A) is to enable workmen to apply directly to the Labour Court for adjudication of disputes relating to termination, without going through the laborious process of seeking a reference Under Section 10(1) of the ID Act. The legislative intent was not to revive stale or non-existing claims. Section 10(4-A) clearly requires that a workman who wants to directly approach the Labour Court should do so within six months from the date of communication of the order. Then come the words "or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later". The reason for these words is obvious. In cases where the cause of action arose prior to 7-4-1988, some additional time had to be provided to make the provisions effective. Let us take the example of a workman who had received the termination order on 10-10-1987. If Section 10(4-A), which came into effect on 7-4-1988, had merely stated that the application had to be filed within six months from the date of communication, he had to file the application before 10-4-1988, that is hardly three days from the date when the amendment came into effect. The legislature thought that workmen should be given some reasonable time to know about the new provision and take steps to approach the Labour Court. Therefore, all workmen who were communicated orders of termination within six months prior to 7-4-1988 were given the benefit of uniform six months' time from 7-4-1988, irrespective of the date of expiry of six months. When a new remedy or relief is provided by a statute, such a transitional provision is made to ensure that persons who are given a special right, do not lose it for want of adequate time to enforce it, though they have a cause of action or right as on the date when the new remedy or relief comes into effect.

31. Section 10(4-A) does not therefore revive non-existing or stale or dead claims but only ensures that claims which were live, by applying the six-month Rule in Section 10(4-A) as on the date when the Section came into effect, have a minimum of six months' time to approach the Labour Court. That is ensured by adding the words "or the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later" to the words "within six months from the date of communication to him of the order of discharge, dismissal, retrenchment or termination". In other words all those who were communicated orders of termination during a period of six months prior to 7-4-1988 were deemed to have been



communicated such orders of termination as on 7-4-1988 for the purpose of seeking remedy. Therefore, the words "within six months from the date of commencement of the Industrial Disputes (Karnataka Amendment) Act, 1987, whichever is later" only enables those who had been communicated order of termination within six months prior to 7-4-1988, to apply Under Section 10(4-A).

18. This Court in *State of Karnataka v. Laxman* MANU/SC/2506/2005 : 2005 (4) R.C.R. (Civil) 631 : (2005) 8 SCC 709 considered the question where no time limit is fixed Under Section 18(3) of Land Acquisition Act, 1894 (as amended in Karnataka State). No time limit was fixed by the statute to apply before the court but since the application is to the court, though under a special enactment of Article 137, the residuary Article of the Limitation Act, 1963 would be attracted and the application has to be made within three years of the application relying on the *Addl. Special Land Acquisition Officer, Bangalore v. Thakoredas, Major, and Ors.* MANU/SC/0464/1994 : (1997) 11 SCC 412. This Court has observed:

9. As can be seen, no time for applying to the court in terms of Sub-section

(3) is fixed by the statute. But since the application is to the court, though under a special enactment, Article 137, the residuary Article of the Limitation Act, 1963, would be attracted and the application has to be made within three years of the application for making a reference or the expiry of 90 days after the application. The position is settled by the decision of this Court in *Addl. Spl. Land Acquisition Officer v. Thakoredas*. It was held: (SCC p. 414, para 3)

3. Admittedly, the cause of action for seeking a reference had arisen on the date of service of the award Under Section 12(2) of the Act. Within 90 days from the date of the service of the notice, the Respondents made the application requesting the Deputy Commissioner to refer the cases to the civil court Under Section 18. Under the amended Sub-section (3)(a) of the Act, the Deputy Commissioner shall, within 90 days from 1-9-1970 make a reference Under Section 18 to the civil court which he failed to do. Consequently, by operation of Sub-section 3(b) with the expiry of the aforesaid 90 days, the cause of action had accrued to the Respondents to make an application to the civil court with a prayer to direct the Deputy Commissioner to make a reference. There is no period of limitation prescribed in Sub-section (3)(b) to make that application but it should be done within limitation prescribed by the Schedule to the Limitation Act. Since no Article expressly prescribed the limitation to make such application, the residuary Article Under Article 137 of the Schedule to the Limitation Act gets attracted. Thus, it could be seen that



in the absence of any special period of limitation prescribed by Clause (b) of Sub-section (3) of Section 18 of the Act, the application should have been made within three years from the date of expiry of 90 days prescribed in Section 18(3)(b) i.e. the date on which cause of action had accrued to the Respondent claimant. Since the application had been admittedly made beyond three years, it was clearly barred by limitation. Since, the High Court relied upon the case in Municipal Council which has stood overruled, the order of the High Court is unsustainable.

This position is also supported by the reasoning in Kerala SEB v. T.P. Kunhaliumma. It may be seen that under the Central Act sans the Karnataka amendment there was no right to approach the Principal Civil Court of original jurisdiction to compel a reference and no time-limit was also fixed for making such an approach. All that was required of a claimant was to make an application for reference within six weeks of the award or the notice of the award, as the case may be. But obviously the State Legislature thought it necessary to provide a time-frame for the claimant to make his claim for enhanced compensation and for ensuring an expeditious disposal of the application for reference by the authority under the Act fixing a time within which he is to act and conferring an additional right on the claimant to approach the civil court on satisfying the condition precedent of having made an application for reference within the time prescribed.

10. A statute can, even while conferring a right, provide also for a repose. The Limitation Act is not an equitable piece of legislation but is a statute of repose. The right undoubtedly available to a litigant becomes unenforceable if the litigant does not approach the court within the time prescribed. It is in this context that it has been said that the law is for the diligent. The law expects a litigant to seek the enforcement of a right available to him within a reasonable time of the arising of the cause of action and that reasonable time is reflected by the various articles of the Limitation Act.

19. The court is duty bound to prevent the abuse of the process of law in the cases which have been concluded several decades before, in our considered opinion, the provisions of Section 24(2) of the 2013 Act cannot be invoked in such cases of dead claims or stale claims. There are several numbers of cases coming to this Court in which matters had been contested up to this Court questioning the acquisition and the petitions have been dismissed by this Court, and acquisition has attained finality, possession was taken, the award passed. Notice had been issued Under Section 12(2) of the Act tendering the awarded amount but it has not been collected by the claimants/land owners deliberately or they had refused to collect it and are not



ready and willing to accept it and, thereafter, it has been deposited in the name and account of the owners in the treasury which is also deposited as per the State Government's instructions issued time to time relating to how Government money is to be dealt with. The act of failure to deposit money Under Section 31 after possession is taken only imposes liability to pay higher interest Under Section 34. The acquisition would not lapse under the Act.

20. In our opinion, the cases in which there is deliberate action of the owners for not collecting the compensation and they do not want to receive it, Section 24 (2) of the 2013 Act does not come to their rescue as provisions are to help those persons who are deprived of compensation but not for those who deliberately had not received it and litigated for decades for quashing of proceedings avoiding to receive compensation by willful act. The failure to deposit in court Under Section 31(1) in such cases would attract only interest as envisaged Under Section 34 of the Act and the provisions of Section 24 cannot be so invoked in such cases.

21. In the instant case, the claim has been made not only belatedly, but neither the Petitioners nor their previous three generations had ever approached any of the authorities in writing for claiming compensation. No representation had ever been filed with any authority, none has been annexed and there is no averment made in the petition that any such representation had ever been filed. The claim appears not only stale and dead but extremely clouded. This we are mentioning as additional reasons, as such claims not only suffer from delay and laches but courts are not supposed to entertain such claims. Besides such claims become doubtful, cannot be received for consideration being barred due to delay and laches."

15. For better appreciation, Sections 4, 5, 6 and 27 of the Waqf Act, 1995, are extracted below:

**"4. Preliminary survey of [auqaf].—**(1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of [Auqaf] and as many Additional or Assistant Survey Commissioners of [Auqaf] as may be necessary for the purpose of making a survey of [auqaf in the State].

[(1A) Every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013 (27 of 2013), in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013:

Provided that where no Survey Commissioner of Waqf has been appointed, a Survey Commissioner for auqaf shall be



appointed within three months from the date of such commencement.]

(2) All Additional and Assistant Survey Commissioner of [Auqaf] shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of [Auqaf].

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of [auqaf] existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

(a) the number of [auqaf] in the State showing the Shia [auqaf] and Sunni [auqaf] separately;

(b) the nature and objects of each [waqf];

(c) the gross income of the property comprised in each [waqf];

(d) the amount of land revenue, cesses, rates and taxes payable in respect of each [waqf];

(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each [waqf]; and

(f) such other particulars relating to each [waqf] as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(a) summoning and examining any witness;

(b) requiring the discovery and production of any document;

(c) requisitioning any public record from any court or office;

(d) issuing commissions for the examination of any witness or accounts;

(e) making any local inspection or local investigation;

(f) such other matters as may be prescribed.

(5) If, during any such inquiry, any dispute arises as to whether a particular [waqf] is a Shia [waqf] or Sunni [waqf] and there are clear indications in the deed of [waqf] as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of [waqf] properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):

Provided that no such second or subsequent survey shall be made until the expiry of a period of [ten years] from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):



3[Provided further that the waqf properties already notified shall not be reviewed again in subsequent survey except where the status of such property has been changed in accordance with the provisions of any law.]

**5. Publication of list of [auqaf].**—(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and [forward it back to the Government within a period of six months for publication in the Official Gazette] a list of Sunni [auqaf] or Shia [auqaf] in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

6[(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.]

**6. Disputes regarding [auqaf].**—(1) If any question arises whether a particular property specified as [waqf] property in the list of [auqaf] is [waqf] property or not or whether a [waqf] specified in such list is a Shia [waqf] or Sunni [waqf], the Board or the mutawalli of the [waqf] or [any person aggrieved] may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of [auqaf]:

[Provided further that no suit shall be instituted before the Tribunal in respect of such properties notified in a second or subsequent survey pursuant to the provisions contained in sub-section (6) of section 4.]

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any [waqf] shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of [auqaf] shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1),



be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

WEB COPY

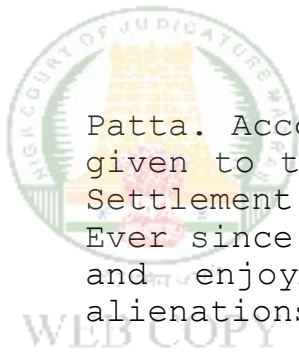
**27. Delegation of powers by the Board.**—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110.]

16. It is settled law that any order obtained by practising fraud is a nullity. Hence, there is no quarrel over the proposition laid down in the decisions referred in Para -10 (i) to (vii) and with regard to the character of the property in the decisions referred in Paragraphs 10 (ix), (x) and (xi), however, in view of the categorical pronouncement of the Hon'ble Apex Court in the subsequent decisions cited by the learned counsel for the respondent, we are unable to accept the decision of this Court reported in **2011 (6) MLJ 731** (supra).

17. In this appeal, questions arise for consideration as to whether the allegations of the appellant are sufficient to decide that the private respondents had obtained Patta by playing fraud and the serious disputed facts could be decided in the writ petition filed invoking Article 226 of the Constitution of India.

18. It is also well settled that with regard to fraud, there shall be specific pleading and proof and the burden of proof lies on the person who alleges fraud. In the matter on hand, admittedly even in the year 1905, the property in dispute was partitioned through a registered deed and Pattas were issued in favour of the private respondents in the year 1961 by the Settlement Tahsildar. It is also not disputed that the suit instituted by the appellant before the competent forum was struck off at the instance of the private respondents and the Civil Revision Petition filed questioning the order was also withdrawn by the appellant for the reasons best known to him.

19. By virtue of Section 3(b) of Tamil Nadu Estates Abolition Act, the entire Inam estate shall stand transferred to the Government and vest with them free from all encumbrance, however, it is subject to the pre-existing right of the Ryots or land owners to get Ryotwari Patta under the provisions of Act. Section 11 of the Act deals with issuance of Patta to the Ryots and under Section 12, the land owners are entitled to get Ryotwari Patta. Once Patta is issued under the above said provisions, aggrieved persons have to prefer an appeal and no civil suit lie questioning the issuance of



Patta. According to the private respondents, Ryotwari Patta had been given to the purchasers in title of the respondents 8 to 21 by the Settlement Officer under Section 11 of the Act, in the year 1961. Ever since they have been in continuous and uninterrupted possession and enjoyment of the land in dispute. There were numerous alienations for the past 54 years.

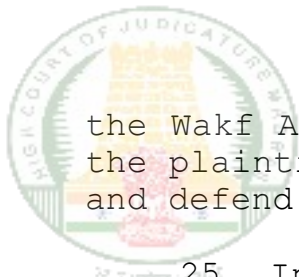
20. The learned Senior counsel for the private respondents would urge that the petitioner ought to have filed an application under Section 13 of the Act and even one more opportunity was given by issuing G.O.(Ms.)No.1300, dated 30.04.2017, enabling the appellant to apply for issuance of Patta. The submissions of the learned Senior counsel is that unless an application is filed under Sections 11 to 13 of the Act, there was no obligation for the second respondent to issue a notice to the parties.

21. The learned Senior counsel by referring to the Inam Fair Register and the Notification would argue that the land in dispute was not dedicated to the appellant Pallivasal as alleged and the appellant has no legal right to maintain the writ petition.

22. The main grievance of the appellant is that the second respondent issued patta without putting on notice to the appellant. As rightly contended by the learned counsel for the respondents that it is not mandatory under the Abolition Act to issue notice the person interested and if anyone claims of right over the property, that will be considered by the authority. Hence, we find no force in the contention of the appellant. It is to be noted that except making bald and vague allegations that the private respondents obtained Patta in collusion with the second respondent, no materials have been brought on record to substantiate the same. Hence, in our considered opinion the allegation of fraud cannot be decided by this Court and the appellant is relegated to the competent forum for redressal of his grievance.

23. Wakf Act is a Self Contained Code. A plain reading of the above provisions would reveal that it has been stated in categorical terms how the property of Wakf is to be maintained and protected. It is evident from the decisions relied on by the respondents, as per the Scheme of the Wakf Act all the properties belong to the Wakf are to be notified under Section 5 of the Act. If any property of the Wakf has been omitted, under Section 27, necessary and required action is to be initiated by the Wakf Board to determine whether the particular property belongs to the Wakf and unless a property published under Section 5(2) or an order passed by the Wakf in exercise of the power, Wakf Board cannot file a suit.

24. This Court in **2012 (4) L.W. 65** (supra), by referring Section 54 of the Wakf Act, confirmed the finding of the Wakf Tribunal that the Muthavalli of Rasipuram Chinna Mazjid of Sunnath Jamath has no right to institute suit for removal of encroachment from Wakf property and he has to approach the Wakf Board. In **2010 (4) CTC 516**, it has been held that in view of Section 32(2)(1) of



the Wakf Act, the present suit filed by the Muthavalli representing the plaintiff's Mosque is not maintainable as the power to institute and defend the suit pertaining to Wakf lies with Wakf Board.

25. In the case on hand, the appellant claims right over the property on the basis that the property was dedicated to the religious institution and it is a Wakf property. The respondent would contend that the property was not notified under Section 5(2) and no order was passed under Section 27 of the Act. It is the case of the appellant that the provisions of the Wakf Act have no application and the writ petition filed by Muthavalli is maintainable. But we are not able to accept the submission of the learned counsel for the reasons that they cannot blow hot and cold in the same breath. In our considered opinion, all the provisions of Wakf Act are applicable to the case on hand and as per the decisions referred above, the appellant has no *locus standi* to file the writ petition and this writ appeal.

26. In **AIR 2009 (SC) Suppl. 247** and **AIR 2015 (SC) 102 (Supra)**, the Hon'ble Apex Court set aside the orders passed in exercise of the *suo motu* judicial power after lapse of 17 and 13 years respectively. The same view was taken by the Supreme Court in the latest decision reported in **2018 SAR Civil 360**. The Rajasthan High Court in **AIR 2015 Rajasthan 179 (Supra)** has gone to the extent of holding that even if the fraud is alleged, the power must not be exercised after unreasonable period, such as after several decades. In similar circumstances, the Division Bench of this Court in **2016 (2) L.W. 45 (Supra)**, rejected the prayer sought for grant of Patta after six decades. In the matter on hand, indisputably the appellant challenges issuance of Patta after a lapse of 54 years.

27. The learned single Judge by following the principles laid down in the decisions of the Hon'ble Supreme Court and after analysing the relevant provisions of the Wakf Act, dismissed the writ petition. Taking note of the above facts, we find no ground to interfere with the impugned judgment. In that view, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Commissioner of Land Administration / Board of Revenue,  
<https://hcservices.ecourts.gov.in/hcservices/>  
Chepauk,  
Chennai 600 005.



2. The Assistant Settlement Officer,  
Tirunelveli District at Tirunelveli.
3. The District Collector,  
Tirunelveli District at  
Tirunelveli.
4. The Tamil Nadu Wakf Board,  
represented by the Chief Executive Officer,  
No.1 Jaffer Syrang Street,  
Chennai 600 001.
5. The Member Secretary,  
Local Town Planning,  
Palayamkottai,  
Tirunelveli.
6. The District Registrar,  
Tirunelveli District,  
Tirunelveli.
7. The Second Sub Registrar,  
Tirunelveli District, Pettai,  
Tirunelveli 627 004.

+4cc to Mr.D.NALLATHAMBI, Advocate, SR.No.64567

+1cc to Mr.A.MOHAMED YUSUF, Advocate, SR.No.64256

**W.A. (MD) No.7 of 2016**  
**30.04.2019**

**AKV**

**KK/SAR/17.05.2019/ 40P- 13C**