

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 92 OF 2018

Applicant M/s Kailash Agencies Pvt. Ltd.,
Through its Director,
Kailash s/o Prakash Bafna,
Age: 42 years, Occu: Business
R/o: Bafna House, Jalna Road,
MIDC Chikalthana, Aurangabad.

Versus

Respondents The Maharashtra State Board
of Wakf, through its Chief
Executive Officer, Panchakki,
Aurangabad.

Mr. Sapkal h/f Mr. Amol Kakade, Advocate for the Applicant.
Mr. A. B. Chate, AGP for the Respondent/State.
Mr. Y. B. Pathan, Advocate for Respondent/State.

CORAM : AVINASH G. GHAROTE, J.

JUDGMENT RESERVED ON : 03/07/2021

JUDGMENT PRONOUNCED ON : 14/07/2021

JUDGMENT :

1. Heard. Rule. Rule returnable forthwith.

2. The present Civil Revision Application challenges the order dated 27.03.2018, passed by the Maharashtra Wakf Tribunal, Aurangabad in Wakf Suit No. 32 of 2011, whereby the claim of the Wakf for possession of the suit property, against the present applicant, has been decreed.

3. The facts giving rise to the present Revision are as under :

Sr. No.	Date	Event
1.	19.11.1964	A lease in respect of the land bearing CTS No.12503 admeasuring 9256.03 sq. mtrs from and out of Survey No. 33, situated at Aurangabad-Jalna road, Aurangabad, which was for a period of 99 years, was executed by the Mutawalli of the Dargah Hazrat Daud Auliya Magrabi, Aurangabad, in favour of the applicant partnership firm, which was duly registered under the Registration Act.
2.	02.06.1995	the lease deed was modified by addition of certain terms and conditions and a fresh lease deed was executed by the then Mutawalli of the Dargah, with the consent of

		the then Marathwada Wakf Board, through its Secretary in favour of the applicant.
3.	01.09.1983	Prior to that a notice/order was issued by the Collector, under Section 36-B of the Wakf Act 1954, asking the applicant, to hand over possession to the Board, on the ground that the applicant was an encroacher, as the lease dated 19.11.1964 was illegal being in excess of the period as provided in Section 36-A (ii) of the Wakf Act 1954.
4.	14.07.1988	R.C.A. No. 221/1983, filed by the applicant, against the notice/order dated 01.09.1983, was allowed by setting aside the notice/order dated 01.09.1983. This order, was not challenged and thus attained finality.
5.	20.02.2003	The Maharashtra State Wakf Board, again issued notice to the applicant under Section 54 of the Wakf Act 1995, for removal of encroachment, in CTS No. 12503 by the applicant.
6.	27.05.2003	Proceedings were initiated, under Section 54 of the Wakf Act, 1995 for removal of encroachment.

7.	27.07.2006	Wakf Application No. 4/2003, before the Wakf Tribunal filed by the present applicant, was allowed and it was held, that the applicant was not an encroacher and was a lawful lessee. It was also held that the proceedings for removal of encroachment under Section 54 of the Wakf Act of 1995, were not tenable in view of the earlier decision inter parties, in R.C.A. No. 221/1983.
8.	07.02.2007	CRA 86 of 2006, preferred by the Wakf Board against the judgment dated 27.07.2006 in W.A. No.4/2003, was dismissed by the High Court.
9.	13.07.2007	SLP No. 10513 / 2007, filed by the Board, was withdrawn.
10.	07.04.2011	The Board filed Wakf Suit No. 32 / 2011, under Section 54 of the Wakf Act, 1995 seeking a declaration that the lease deeds in favour of the applicant, be declared as null and void and the applicant, being an encroacher be directed to hand over possession of the property.

11.		The Wakf Tribunal granted exparte stay in favour of the Board and against the applicant in Wakf Suit No. 32/2011 staying the construction on the suit property.
12.	30.12.2012	The order of exparte stay was challenged in CRA No. 4/2012, which was allowed.
13.		SLP against the order in CRA No. 4/2012 was dismissed.
14.	27.03.2018	The Wakf Tribunal decreed Wakf Suit No. 32/2011, holding that the leases in favour of the applicant was null and void, in view of the mandate of section 56 of the Wakf Act 1995, and the applicant thus was an encroacher and further directing the applicant to deliver possession.
		Hence this Civil Revision Application.

4. Mr. Sapkal, learned Senior Counsel for the applicant contends, as under :

4.1. that in the first round of litigation, wherein the notice for removal of encroachment, issued by the Collector,

dated 01.09.1983, under Section 36 (B) of the Wakf Act, 1964, was challenged in RCA No. 221/1983, the Additional District Judge, Aurangabad, had already decided that the lease in favour of the applicant, was legal and valid, and therefore the said findings rendered by a Court of competent jurisdiction, between the parties interse, would clearly operate as res judicata under Section 11 of the CPC and therefore the present proceedings were not maintainable.

4.2. that in Wakf Application No. 4/2003, decided on 27.07.2006, by the Wakf Tribunal, issues as to the legality and validity of the lease deeds dated 19.11.1964, and 02.06.1995, were specifically framed as issues No. 7 and 8 and the same were decided in favour of the applicant. He, therefore, submits that these findings would also operate as res judicata between the parties.

4.3. that the judgment dated 27.07.2006 by the Wakf Tribunal, was challenged before the High Court, by the Board, by way of Civil Revision Application No. 86 of 2006 in which a

specific plea was raised, that a lease beyond the period of 3 years, was not permitted in the Wakf Act, and therefore, the lease executed in favour of the applicant, was void ab initio. He submits, that the fact that this contention was raised was reflected from para-2 of the order of the High Court but was negated by the High Court, in its order dated 07.02.2007, for which he invites my attention to para 5 of the said order, which specifically holds, that the act of the Mutawalli regarding leasing of the property in the year 1964, stood rectified by the Board, under the Act of 1954 and therefore it could not be said, that by virtue of the provisions under Section 54 of the Wakf Act 1995, the action of ratification, was nullified. It was specifically held that such an act was saved by the provisions of section 112 of the Wakf Act, 1995 and had upheld the order dated 27.07.2006, passed by the Wakf Tribunal, Aurangabad.

4.4. that a Petition for Special Leave to Appeal (Civil) No.10513/2007 carried by the Board before the Hon'ble Apex Court, against the order in CRA No. 86/2006 by the High Court, and the Tribunal in W.A.No. 4/2003 and was dismissed as

withdrawn on 13.07.2007 resultant which, the findings rendered by the Wakf Tribunal in the Judgment dated 27.07.2006 in W.A.No. 4/2003, stood confirmed.

4.5. That the Wakf Tribunal, could not have entertained the subsequent Wakf Suit No. 32/2011, and further could not have passed the judgment dated 27.03.2018, as the findings rendered, in the earlier rounds of litigation, clearly operated as *res judicata*.

4.6. By inviting my attention to the language of Section 11 of CPC, he submits that the ingredients as required for applicability of Section 11 of CPC, fully stand satisfied, as (a) there is identity of parties; (b) there is identity of property; (c) former proceedings RCA No. 221/1983 decided on 14.07.1988, and Wakf Application No. 4 /2003 decided on 27.07.2006, clearly satisfied the test of former suit / proceedings and (d) Wakf Suit No. 32/2011, also satisfied the test of a later proceedings. (e) the issue about the legality and validity of the lease in favour of the applicant already stood decided and finally

concluded in the earlier proceedings, upto the Hon'ble Apex Court. (f) The Wakf Suit No. 32/2011, also dwelt upon the legality and validity of the lease in favour of the applicant, which was already adjudicated in the earlier proceedings. He therefore submits, that all the requirements for applicability of the principles of res judicata, as enunciated in section 11 of CPC, clearly stood satisfied. It is contended that even if the Code of Civil Procedure may not be applicable in its entirety, to proceedings before the Wakf Tribunal, however principles of res judicata as enunciated in Section 11 of CPC, were clearly attracted on the ground of constructive res judicata.

4.7. Reliance is placed on *Dr. Subramanian Swamy vs State of TN, 2014 AIR SCW 6893* ; *State of WB vs Hemant Kumar Bhattacharjee, AIR 1966 SC 1061*; *Supreme Court Employees Welfare Association vs Union of India, AIR 1990 SC 334*; *S. Nagraj vs. B. R. Vasudeva Murthy, 2010 AIR SCW 1519* and on *Tarini Charan Bhattacharya vs Kedarnath Halder, 1928 CWN (33) 126*.

4.8. It is therefore contended that the judgment as rendered in Wakf Suit No. 32/2011 dated 27.03.2018 is clearly not sustainable in law and the same requires to be quashed and set aside.

5. Mr. Pathan, learned Counsel for the respondent Wakf Board submits as under :

5.1. that the issue of res judicata, does not arise at all in the present matter.

5.2. that leases executed in favour of the applicant, were contrary to the provisions of Section 36 (A) (ii) of the Wakf Act 1954, which was then applicable, which barred a lease, of the Wakf property, for a period exceeding one / three years depending upon the nature of the land and is also contrary to the provisions of Sections 51, 52 and 56 of the Wakf Act, 1995 and therefore, the question of applicability of the principles under Section 11 of the CPC did not arise.

5.3. that a judgment which did not consider statutory provisions, would not be binding in nature to invoke section 11 of CPC.

5.4. that evidence recorded in the earlier proceedings was considered in Wakf Application No. 4/2003, which was not permissible.

5.5. that no evidence was recorded in the present proceedings which was summary in nature.

5.6. Reliance is placed on *Samta Vikas Mandal vs Shaikh Sirajoddin*, 2011 (6) BCR 167 ; *Union of India vs Promod Gupta*, AIR 2005 SC 3708; *K. B. Mohammad Maqsood Ali Khan vs. B. Hoshier Singh*, AIR 1945 All. 377; *Hafiz Wazir Ali vs Ladley Begum*, AIR 1938 Cal. 437; *Shinde Enterprises vs Arastu Talimi Trust – CRP 5626-2004*, decided on 20.01.2005 by the High Court of Andhra Pradesh; *Arun Bhimaji Lakare vs. Hindustani Momain Banarasi Jatiche Panch Mandali*, 2014 (3) Mh.L.J. 870; *Abdul Hamid Shaikh Safdar vs Darushifa Masjid Farmanpura*,

CRA 116/2008, decided on 03.07.2009 by the Bombay High Court; *Shaikh Shafiq Shaikh Osman Vs Kisan Laxman Waghmare, CRA No. 143/2004, decided on 30.08.2004* by the Aurangabad Bench of the Bombay High Court; *Mohamodiya Co-operative Building Society Ltd. Vs Laxmi Shriniwasa Co-operative Building Society Ltd, 2008 (6) Mh.L.J. 5.*

6. It would be material to state here that the basic question which falls for consideration, is not whether the lease deeds dated 19.11.1964, and 02.06.1995 are legal or valid, but whether the findings rendered in the earlier proceedings between the parties hereto regarding the legality and validity of the lease deeds dated 19.11.1964, and 02.06.1995, fall within the parameters of sec.11 C.P.C. so as to attract the principles of res-judicata and thereby prevent the Tribunal from deciding Wakf Suit no.32/2011.

7. To consider the rival contentions it is necessary to have a look at the provisions of Section 11 of CPC, which encapsulate the principles of res judicata. The requirement as

spelt out from the language of Section 11 of CPC and the explanations as contained therein appear to be as under :

- (a) There have to be two suits, one formerly instituted and the other subsequently instituted
- (b) the matter in issue, in the former suit has to be directly and substantially in issue in the subsequently instituted suit.
- (c) both the suits have to be between the same parties or parties under whom either of them claim, litigating under the same title.
- (d) the former suit, must have been instituted in a Court competent to try the subsequent suit.
- (e) the issue has been raised, heard and finally decided by the Court in the former suit.
- (f) former suit indicates a suit, which has been decided prior to the suit in question, it being immaterial, whether it has been filed earlier or later to the subsequent suit (Expln- I).
- (g) the matter in the former suit must have been alleged by one party and either denied or admitted, expressly or impliedly by the other. (Expln-III).

(h) any matter which might and ought to have been made a ground of defence or attack in the former suit shall be deemed to have been a matter directly and substantially in issue in such suit. (Expln-IV).

(i) any relief claimed not expressly granted is deemed to have been refused. (Expln.-V).

(j) where a public right is bonafidely litigated or a private right is claimed in common, then all persons interested in such right, will be deemed to claim under the persons so litigating. (Expln. VI).

(k) even if a Court of limited jurisdiction, competent to decide an issue, hears and finally decides such issue, it shall operate as res judicata in a subsequent suit, even if such Court was not competent to try the subsequent suit in which the issue has been raised. (Expln.VIII).

8. From the judgments cited at the bar, the following principles for applicability of sec.11 of C.P.C. can be culled out :

(a) the doctrine of res judicata, contains the rule of conclusiveness of the judgment which is based partly on the

maxim of Roman Jurisprudence “interest republicae ut sit finis litium”- it concerns the State that there be an end to law suits- and partly on the maxim “nemo debet bis vexari pro uno et eadem causa” – no man should be vexed twice over the same cause and even an erroneous decision of law attracts the doctrine of res judicata between the parties to it, as the correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata [*Dr. Subramanian Swamy* (supra)].

(b) decision of a Court having jurisdiction, even if wrong is as much binding between the parties as much as right one and may be superseded only by appeals to higher tribunal or other procedure like review which the law provides [*Hemant Kumar Bhattacharjee*, (supra)].

(c) the doctrine of res judicata is a universal doctrine laying down the finality of litigation between the parties and where a particular decision has become final and binding between the parties, it cannot be set at naught on the ground that such a decision is violated of Article 14. So far as the parties are

concerned, they will always be bound by the said decision
[***Supreme Court Employees Welfare Association*** (supra)]

(d) Even where a fresh cause of action arises issues between the parties which have been decided cannot be reopened before the Court for fresh adjudication between the same parties [***S. Nagraj*** (supra)]

(e) whether a decision is correct or erroneous has no bearing on the question of its operating res judicata and what is res judicata between the parties is not the reasoning or any principle of law, but the actual decision declaring rights of the parties. When a matter, whether concerning fact or law has been directly or substantially in issue between the parties as bearing on their rights, the decision thereon provided other conditions are satisfied, will operate as res judicata concluding those rights. [***Tarini Charan Bhattacharya*** (supra)]

(f) If the cause of action is different then the principles of res judicata were not applicable [***Samta Vikas Mandal*** (supra)]

(g) the principle of res judicata would apply only when the lis was inter-parties and had attained finality in respect of the issues involved and would have no application in a case where the

judgment and/or order had been passed by a court having no jurisdiction therefore and / or in a case involving pure question of law and also also in a case where the judgment is not a speaking one. [*Promod Gupta* (supra)]

(h) there can be no res judicata or estoppel against a statute [*K. B. Mohammad Maqsood Ali Khan*(supra)] .

9. The question raised about the applicability of sec.11 CPC, has thus to be tested upon the requirements of sec.11, based upon its language and the principles enunciated by the Courts as culled out above.

10. There is no dispute between the parties in respect of the following :

(a) there is an identity of the parties and identity of the subject-matter/property, in respect of the former proceedings i.e. R.C.A.No. 221/1983 and W.A.No. 4/2003, and the present proceedings i.e. Wakf Suit No. 32/2011.

(b) the lease deeds dated 19.11.1964 and 02.06.1995, in favour of the applicant and the continuation in possession of the

applicant under them were the subject-matter of the R.C.A. No.221/1983 decided on 14.07.1988 and proceedings, in WA No. 4/2003, decided on 27.07.2006.

(c) It is also not disputed that the lease deeds dated 19.11.1964 and 02.06.1995, in favour of the applicant, and the continuation in possession of the applicant under them were the subject-matter of the subsequent Wakf Suit No. 32/2011.

(d) It is also not disputed that the tribunal, which decided R.C.A.No. 221/1983 and WA No. 4/2003 were competent to entertain and decide the proceedings.

Thus, the requirements, as contemplated for applicability of the principles as enunciated in Section 11 of CPC, in my considered opinion stand satisfied.

11. The contention of Mr. Pathan, learned Counsel for the non applicant, that the lease deeds dated 19.11.1964 and 02.06.1995, in favour of the applicant, were in contravention to the provisions as contained in Section 36-(A) (ii) of the Wakf Act 1954, as well as of Section 56 of the Wakf Act, 1995, and therefore, they were void ab initio, is an issue, which has been

specifically considered and dealt with by the Tribunal, in R.C.A.

No. 221/1983, in the following words :

“16. Now coming to the other aspect of the case it is seen from the papers that initially the property was standing in the name of Inamdar. The succession statement shows the name of Syed Khutubuddin Inamdar. The S.No. 15 has been notified in Govt Gazette dt. 17.3.73, since then property belongs to the Wakf Board. As soon as the property has been entered as a Wakf property, the Mutawalli has no authority to lease out the property without prior permission of the Board. It seen that then Mutawalli, before the notification of the property as Wakf Property inducted the appellant no. 1 as a lessee in the year 1964. From 1964, till the enquiry in the year 1980 by the board no steps were taken by the board or even after the notification in the year 1973 board has not taken any steps against the appellant no. 1 who was inducted by Syed Shah Nizamuddin and others. Even thereafter the board has issued letter to appellant on 12th December 1980 and thereby informed the appellant, that the possession of all Mashrul Khidmat Inam land belonging to Dargah Hazrt Daud Auliya Magrabi, Aurangabad has been obtained by the Marathwada Wakf Board as per the order of the civil court and

the appellants were requested not to pay Husul of the land to Mutawalli but to contact the board. In pursuance of that order which is along with exh.20 at sr. no. 5, it seems appellant approached and thereafter the board accepted the lease amount under receipt exh.20/6 and 20/7 that is proved. The amount was deposited by the appellant no. 2 for Kailash Motor, Aurangabad, the first receipt is of 17-12-80, second receipt is of 17-12-81. Acceptance of rent by the board from the appellant goes to prove the implied consent or implied sanction to the act done by the Mutawalli in respect of letting out the property in question to the appellant. If there would not have been consent or permission as provided in the Wakf Act, I do not think that Wakf Board would have passed receipt in favour of appellant. Acceptance of rent itself goes to prove the implied consent or permission as provided u/s 36-A of the Wakf Act. The property was let out, board kept silence till the proceedings are initiated in the year 1980. The property was let out in the year 1964, thereafter in the year 1973, the property was notified as Wakf property as per the notification u/s 36-F of the Wakf Act still no steps have been taken thereafter accepting the rent by giving letter to appellant to form the opinion that the board has consented for the act of Mutawalli. From this it is

quite clear that the property has been let out with the permission of the board. So I do not think that even on that count the board is entitled to claim the possession or the order of the Collector is legal. Even assuming the notice is legal still board is estopped from raising the dispute that there was no permission as provided u/s 36-A of the Wakf Act as board has accepted the rent. So even on that count also the appeal deserves to be allowed. Moreover, appellants have carried out the construction that is proved and admitted fact and it has been observed by the Collector. The name of the appellant has been entered in the property extract as a holder of the property, still no steps were taken by the Board. The silence on the part of the board and the act on the part of the appellant lead to conclude that there was an implied sanction by the board for letting out the property by Mutawalli to the appellant. So I do not think that the order of Collector is justified”.

In so far as the objection as to maintainability of the proceedings under Section 36-B of the Wakf Act was concerned, in R.C.A. No. 221/1983, it was held as under :

“14. Before discussing the above point I would first prefer to deal with the aspect of maintainability of the

appeal as Mr. Nehri Adv. for the respondent vehemently submitted by referring to Sec.36-B (4) of the Wakf Act, that District Court has no original civil jurisdiction to hear the appeal, so appeal itself is not tenable. Sec. 36-B (4) of the Act, runs as follows :-

“Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the District Court within whose jurisdiction the property is situate and the decision of the district court on such appeal shall be final”.

The district court means in any area for which there is a city civil court, that court and in any other area, the principal civil court of original jurisdiction. I disagree with the submission of learned counsel Shri Nehri that district court has no original civil jurisdiction in view of the provisions of Bombay Civil Court Act. Section 7 of the aid Act empowered the District Court to hear the appeal as it has got original jurisdiction, so I do not think that Section 360B (4) will take out the jurisdiction of the district court from hearing the appeal. So I do not think that the submission of the learned counsel Shri Nehri carry weight on the point of maintain of the appeal in the district court”.

12. The issue as to validity and legality of the leases has also been considered by the Tribunal in WA No. 4/2003, by framing issues No. 7 and 8 as under:

“7. Whether the respondent proves that the lease in respect of the suit property executed by the Mutawalli on 19.11.1964 is void? No.

8. Whether the respondent prove that lease deed dated 02.06.1995 in respect of the suit property is also void on the grounds stated in para no.8 of written statement? No.

13. It is material to note that the findings rendered in WA No. 4/2003 were after recording evidence. It is also material, to note that in WA No.4/2003 an issue No.4 was also framed as under :

“4. Whether the applicant prove that in view of the decision in R.C.A. NO.221/1983 initiated of the proceedings U/s 54 of the Wakf Act 1995 is illegal? Yes”.

14. A categorical finding was rendered, in para 26 of the judgment dated 27.07.2006 in WA No. 4/2003, that in view of the judgment passed in R.C.A.No. 221/1983 by the Additional District and Sessions Judge, Aurangabad, in absence of a challenge to the same, the issue had become final and conclusive between the applicant and the non-applicant and therefore, in

view of the provisions of Section 112 of the Wakf Act, 1995, the proceedings initiated under section 54 of the Wakf Act, 1995, namely WA No. 4/2003, was not legal and was quashed and set aside.

15. It has also been held in W.A. No. 4/2003 that the possession of the applicant, of the suit property, under the lease deeds dated 19.11.1964 and 02.06.1995, was lawful though the lease was for a period of 99 years, negating the objection as raised on the ground of section 56 of the Wakf Act 1995 and in para 30, it was categorically held, that the applicant was in lawful possession of the suit property as a lessee. It is further material to note, that the notification declaring the property in question, as a Wakf property, has been published in the Government Gazette in 1973 and the lease dated 02.06.1995 was with the consent of the then Secretary of the Maharashtra Wakf Board, and in pursuance to a resolution no.84, dated 18.10.1994 and resolution no. 68 dated 06.05.1995, of the Wakf Board, as admitted by DW-1 in his cross-examination, as recorded in para 22 and 24, of the judgment dated 27.07.2006.

16. It is further material to note that the plea, that the lease in favour of the applicant, was for a period beyond three years, which was not permitted under the Wakf Act, 1995, was specifically raised in para-2 of the CRA No. 86/2006, filed by the Board before this Court in a proceeding challenging the judgment dated 27.07.2006 passed in W.A. 4/2003, and was turned down, by relying upon Section 112 of the Wakf Act, 1995. The challenge to this finding as rendered by the tribunal in WA No. 4/2003, and by this Court in CRA No. 86/2006, as raised by the non applicant before Hon'ble Apex Court, was withdrawn on 13.07.2007, by withdrawal of the SLP No. 10513/2007. Thus, the findings rendered inter se between the parties in respect of the lease deeds dated 19.11.1964 and 02.06.1995 and the consequent possession of the applicant, being legal and valid in face of the contention that the same was in contravention to the mandate of sec.36-A of the Wakf Act, 1954 or Section 56 of the Wakf Act, 1995, on count of the leases being for more than 3 years, as well as the plea that the same was not consented to by the Board, as contemplated by Section 51 of the Wakf Act, 1995 had attained finality in view of the withdrawal of the Special

Leave Petition by the non applicant Board. It is not disputed by Mr.Pathan, learned Counsel for the non applicant, that the tribunal which decided WA No. 4/2003, or this Court which decided CRA No. 86/2006, did have competency and jurisdiction to do so. Rather this position, stands admitted. What is contended, is that the lease deeds dated 19.11.1964 and 02.06.1995, were contrary to the provisions of Section 36-A of the Act of 1954 and Section 56 of Act of 1995, and therefore, the applicant was an encroacher and was required to be evicted. However, these issues, were already considered and decided by the competent tribunals, in RCA No. 221/1983 and WA No. 4/2003 which finding, stood confirmed in view of the decision in CRA No. 86/2006, challenge to which before the Hon'ble Apex Court was withdrawn. Thus, in light of the above position, any further challenge, by the present Wakf Suit No. 32/2011, was clearly not maintainable in law as the issue sought to be raised therein, namely the legality and validity of the lease deeds dated 19.11.1964 and 02.06.1995, on the touchstone of Section 36-A of the Wakf Act, 1954 and / or section 56 of the Wakf Act, 1995, already stood concluded between the parties as indicated above.

In this view of the matter, the tribunal could not have entertained Wakf Suit No. 32/2011 and embarked upon an exercise, to delve into the legality of the lease deeds dated 19.11.1964 and 02.06.1995 once again, on the same grounds as contained in Section 36-A of the Wakf Act, 1954, and Section 56 of the Wakf Act, 1995. Such an action, by the learned tribunal, was clearly prohibited under the provisions of Section 11 of CPC the principles of which, are clearly applicable to the proceedings before the tribunal also.

17. Though reliance has been placed by Mr. Pathan Learned Counsel for the non-applicant on *Shinde Enterprises*; *Arun Bhimaji Lakare* and *Abdul Hamid Shaikh Safdar* (supra), all of which hold that a lease of Wakf property in excess of 3 years is not legal, however considering that a finding as to its legality has already been rendered and which stands confirmed upto the Hon'ble Apex Court, in the earlier round of litigation as indicated above in the present matter, these judgments are not of any assistance to the argument advanced by learned Counsel Mr. Pathan for the non-applicant. For the same reason *Hafiz Wazir*

Ali (supra) which holds, that no estoppel can operate against the Wakf, is also not applicable. **Shaikh Shafiq Shaikh Osman** (supra) on which reliance is placed by Mr. Pathan learned Counsel for the Non-Applicant, holds that a lease in excess of the period as mentioned in Section 36-A of the Wakf Act 1954, which corresponds to Section 56 of the Wakf Act, 1955, without approval of the Board, would not be legal, is equally not attracted as in the instant case as there has been a specific finding rendered in R.C.A. No. 221/1983 that the Board had approved the lease by acceptance of the rent and issuance of rent receipts in favour of the applicant. **Mohamodiya Co-operative Building Society Ltd. (supra)** relied by Mr. Pathan learned Counsel for the non-applicant holds that a Mutawalli is a Manager or Trustee of the Wakf property and functions in the light of the provisions of the Act and Rules framed thereunder and has no ownership right or estate in the property unless the Wakf deed says so, which proposition cannot be disputed, however in the instant matter in the earlier round of litigation, it has been categorically held that the action of the Mutawalli, in executing and registering the lease in favour of the applicant was

legal and also carried a stamp of approval by the Board, which is reflected from a reading of para 22 and 24 of the judgment in W.A. No. 4/2003, in view of which the same also is of no assistance to him. The further contention by Mr. Pathan, learned Counsel for the non-applicant, that the judgments in the earlier proceedings did not consider the statutory provisions, and they would therefore not be binding, so as to invoke Section 11, is clearly misconceived, as a bare perusal thereof, would indicate, that the statutory provisions, as applicable, based upon which the objections, regarding the legality and validity of the lease deeds were raised, were duly considered and decided.

18. In my considered opinion as the earlier proceedings namely R.C.A. No. 221/1983 and W.A. No. 4/2003, were in relation to eviction of the applicant, on the plea, that the applicant was an encroacher, as the lease deeds in favour of the applicant, being beyond the period as provided in Section 36-A (ii) of the Wakf Act, 1954 and Section 56 of the Wakf Act 1995 were not legal and valid, which pleas were turned down and it was also held that the consent / sanction of the Board was there,

the institution of the subsequent Wakf Suit no.32/2011 for eviction of the applicant on the same ground, and the judgment as rendered therein is clearly affected by the principles of res-judicata, as what has been pleaded and presented for consideration and decision in Wakf Suit no.32/2011, had already been decided in R.C.A.No. 221/1983 and W.A. No. 4/2003, which was between the parties hereto. The principles of res-judicata as indicated above, emphasis the finality of litigation and once it is held that the issues have been finally decided between the parties, it would not be permissible to reopen the same, which is the case in the present matter.

19. That being the position, the judgment as rendered in Wakf Suit no.32/2011, cannot be sustained and the same is hereby quashed and set aside. The Civil Revision Application is accordingly allowed. The Wakf Suit No. 32/2011, is accordingly dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)