THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

W.P. Nos. 5938, 5987, 6082, 6775, 7473, 7474, 7475, 7476, 7477, 7559, 8416, 8417, 8418, 8419, 14734, 14745, 17125 of 2006, 5039 of 2008, 17505, 18298, 19893, 19905, 19996, 20113, 20164, 20326, 20425, 20431, 20526, 20838, 23549, 24100, 24102, 24104, 24105, 24109 of 2009, 3310 OF 2011, 15497 OF 2016, 7960 OF 2017 and 8780 OF 2020

COMMON ORDER:

W.P. Nos.5938, 5987, 6082, 6775, 7473, 7474, 7475, 7476, 7477, 7559, 8416, 8417, 8418, 8419, 14734, 14745, 17125 of 2006, 5039 of 2008, and 15497 of 2016 are filed questioning the proceedings, dated 25.02.2006, issued by the Joint Collector-II, Ranga Reddy District, setting aside the Occupancy Rights Certificates (ORCs) granted by the Revenue Divisional Officer, Ranga Reddy East Division, dated 07.01.2005, in favour of the persons, who are in possession of the subject lands, as on the date of vesting i.e. 01.11.1973, as illegal and arbitrary. These writ petitions are hereinafter referred to as 'first batch'.

W.P.Nos.17505, 18298, 19893, 19905, 19996, 20113, 20164, 20326, 20425, 20431, 20526, 20838, 23549 of 2009, 3310 OF 2011 and 7960 OF 2017 are filed questioning the Gazette Notification Supplement 2 Part-II No.6A, dated 09.02.1989 issued by the Waqf Board. These writ petitions are hereinafter referred to as 'Second batch'.

W.P.Nos.24100, 24102, 24104, 24105, 24109 of 2009 and 8780 of 2020 are filed aggrieved by the action of the

Registration Authorities in refusing to register the subject documents on the ground that the said lands are included in the Prohibitory List under Section 22-A of the Registration Act, 1908 (in short 'Registration Act') being notified as property of Wakf Institution under Gazette No.6-A, dated 09.02.1989. These writ petitions are hereinafter referred to as 'Third batch'.

The issue involved in all these writ petitions is intrinsically inter-connected to the Gazette Notification dated 09.02.1989 issued by the Waqf Board, which is impugned in Second batch of Writ Petitions. Therefore, all the writ petitions are taken up together and being disposed of by this common order.

Heard Sri Vedula Venkata Ramana, learned Senior Counsel, Sri D.Jagan Mohan Reddy, Sri C.Sudesh Anand, Sri Resu Mahender Reddy, Sri G.Shiva Kumar Goud, Sri Mehdi Hussain, Sri O.Manohar Reddy, Sri Mohd. Vasi Ahmed, Sri Prabhakar Peri, Sri Sai Gangadhar Chamarthy, Sri Kishore Rai, and Sri Srinivas Rao Putluri, the learned counsel for the petitioners respectively.

Heard Sri Farhan Azam Khan and Sri SR Mahajir, learned Standing Counsel for Waqf Board. Heard the learned Government Pleader for Revenue for the official respondents, and Sri Syed Abbas Nadem, Sri Mohd. Abdul Rafi, Sri

Subhani SM, and Sri Mir Masood Khan, learned counsel for unofficial respondents.

Sri Vedula Venkata Ramana, the learned Senior counsel, appearing on behalf of the petitioners in W.P.No.5938 of 2006 has stated that the Joint Collector relying on the Notification, dated 09.02.1989, issued by the Waqf Board, without putting the parties on notice, has *suo moto*, taken up the matter and while relying on the notification dated 09.02.1989, has set aside the orders of the RDO, and held that the Waqf Board is entitled for grant of ORC, ignoring the fact that neither the Waqf Board is not a party to the said litigation nor the appeals are filed by the Waqf Board against the order passed by the RDO granting ORCs. Learned Senior counsel has argued that the Joint Collector without putting the parties on notice and without giving an opportunity of hearing, has set aside the orders of the RDO and granted ORC in favour of the Waqf Board and the same is against the principles of natural justice and equity. Learned Senior Counsel has further argued that for the purpose of granting the ORC, the date of vesting is 01.11.1973 as decided by the Hon'ble High Court and as confirmed by the Hon'ble Supreme Court in catena of cases. But, ignoring the said factual position, the Joint Collector has granted the ORC in favour of the Waqf Board, who was never in possession of the lands at any point of time. The learned Senior Counsel has further stated that as per Section 3 of The

Telangana Abolition of Inams Act, 1975 (in short 'Inam Abolition Act'), the lands vest with the State. However, the persons, who are in physical possession of the lands i.e. 'Inamdars' as per Section 4, 'Kabiz-e-Kadim' as per Section 5, 'Permanent Tenant' as per Section 6, 'Protected Tenant' as per Section 7, and 'Non-Protected Tenant' as per Section 8 of the Inam Abolition Act, are alone entitled for grant of ORC. Learned Senior Counsel specifically asserts that only the persons who are envisaged under Sections 4 to 8 of the Inam Abolition Act are alone entitled for the grant of ORC and none else. That neither the Waqf Board nor the Inamdars are in physical possession of the lands as on the date of vesting and therefore the order of the RDO, who is the primary authority under the Inam Abolition Act to verify the physical possession of the persons and grant ORC, has rightly granted the ORCs in favour of the petitioners. That the Joint Collector had no business to set aside the same, more so, without putting the petitioners on notice or giving them an opportunity of hearing. If the Joint Collector had put the parties on notice, they could had clarified the legal position with regard to the Waqf Notification dated 09.02.1989 and an order could had been passed on merits. Learned Senior Counsel has further argued that basing on the amendment made in the Inam Abolition Act, more particularly, the proviso to Section 4, which reads as under:

> "Provided that where inams are held by or for the benefit of charitable and religious institutions no person shall be entitled to be registered as an occupant under

> Sections 5, 6, 7 and 8 and the institution alone shall be entitled to be registered as an occupant of all inam lands other than those specified in clauses (a) and (c) above without restriction of extent to four and half times the family holding and without the condition of personal cultivation."

the Joint Collector has set aside the ORC granted in favour of the petitioners and granted the ORC in favour of the Waqf Board. The learned counsel has further stated that once the inams are abolished and lands vest with the State, the question of creating any Waqf by Inamdars does not arise and the consequential notification dated 09.02.1989 issued by the Waqf Board declaring the subject lands as Waqf lands, is one without jurisdiction. As per the ratio laid down by the Hon'ble Supreme Court in ***TAMIL NADU WAKF BOARD vs. HATHIJA AMMAL (DEAD) BY L.Rs. Etc.***[1], once the inams are abolished, the lands vest with the State and therefore the inamdars or any person who are in physical possession of the lands did not have any right, title or interest to deal with the subject lands unless and until the ORC is granted in their favour by the competent authority. Learned Senior Counsel has further stated that the Inamdar cannot endow the lands to a Waqf after the abolition of the Inams, until and unless the Inamdar has been granted the ORC by the competent authority. The Joint Collector has misconstrued the notification, dated 09.02.1989, and has also misconstrued the proviso to Section 4 of the Inam Abolition Act and set aside the order of the RDO granting ORC in favour of the

[1] AIR 2002 SC 402

petitioners. The learned counsel has relied on the judgments of this Court as well as the Hon'ble Supreme Court in support of his case and prayed this Court to allow the writ petitions filed by the persons in whose favour the ORC was granted by the RDO.

The counsels appearing on behalf of the other writ petitioners in whose favour the ORCs were granted have adopted the arguments made by Sri Vedula Venkata Ramana, the learned Senior counsel.

Per contra, the learned counsel appearing on behalf of the respondents-inamdars, who also challenged the orders of the Joint Collector, has argued that the unofficial respondents are the legal representatives of the Inamdars who were issued the Muntakab. Learned counsel has stated that the classification of the land is not Inam, but it is purely a patta land and therefore the question of granting ORC in favour of any person or Institution does not arise. That without going into the merits of the case or giving an opportunity of hearing to the Inamdars or their legal representatives, the Joint Collector while setting aside the orders of the RDO has granted ORC in favour of the Waqf Institution. That the Joint Collector instead of verifying the record to see if the lands are Inam or patta lands and passing the orders on merits has passed the orders solely on the basis of the Waqf Notification, dated 09.02.1989. Learned counsel had stated that the ORC granted by the RDO is on the basis of the sale deed executed pending a *status quo* order granted

by the Court and has therefore prayed that the impugned order of the Joint Collector may be set aside and remand the matter back to the Appellate Authority for deciding the matter afresh on merits.

The other counsels, appearing on behalf of the other legal representatives of the Inamdars, have also argued on the same lines and have prayed this Hon'ble Court to set aside the order of the Joint Collector and remand the matter back to the Joint Collector.

Sri Mahajir and Sri Farhan Azam Khan, learned Standing Counsels for the Waqf Board, have vehemently supported the order of the Joint Collector and drawn the attention of this Court to the proviso to Section 4 of the Inam Abolition Act and have argued that a perusal of the same makes it abundantly clear that once the Waqf is created no individual is entitled for the ORC and it is only the Institution which is entitled for the grant of ORC. The Joint Collector has rightly set aside the order of the RDO and has granted the ORC in favour of the Waqf Board. The Joint Collector has correctly appreciated the provisions of law and has granted ORC in favour of the Waqf Board. That the writ petitions filed either by the legal representatives of the Inamdar or the persons in whose favour the ORCs were granted are not maintainable, the remedy available to the petitioners is to approach the Waqf Tribunal for setting aside the Notification and therefore all these writ petitions deserve to be dismissed.

Sri Farhan Azam Khan, the learned Standing Counsel, has also drawn the attention of this Court to the proviso to Section 4 of the Inam Abolition Act and also relied on Sections 4, 5, 6, 7, 36 and 85 of the Waqf Act, 1995 (in short 'Waqf Act'). Learned Standing Counsel has stated that the Gazette Notification has been issued under Sections 4 and 5 of the Waqf Act and once the notification is issued, it is only the Waqf Tribunal which can go into the question as to whether the property in dispute is a Waqf property or not. Learned Standing counsel has also stated that under the provisions of the Waqf Act, a civil suit is barred and the only remedy available to the party is to file an Original Petition (OP) before the Waqf Tribunal. Learned Standing Counsel has also stated that the present writ petitions are not maintainable under law as an alternative effective remedy of filing an OP before the Waqf Tribunal is available to the parties and has prayed this Court to dismiss the writ petitions. Learned Standing Counsel has further stated that by virtue of the proviso to Section 4 of the Inam Abolition Act, the Charitable Institutions are automatically entitled for grant of ORC and they need not be in physical possession of the lands in question and the Joint Collector has rightly granted the ORC in favour of the Waqf Board. The contention of the petitioners that the principles of natural justice are not followed and therefore the order of the Joint Collector has to be set aside is legally untenable and has relied on the

judgment of the Hon'ble Supreme Court In ***Whirlpool Corpn. vs. Registrar of Trade Marks***[2].

The learned Standing Counsels have further argued that in case this Hon'ble Court feels that an opportunity of hearing has to be given to all the parties to putforth their case and the matters are remanded back to the Joint Collector, the Waqf Board may also be given an opportunity to get themselves impleaded before the Joint Collector to put forth their case and place relevant documents before the Joint Collector to support the case of the Waqf Board that it is a Waqf created under the provisions of the Waqf Act and that the Waqf Institution alone is entitled for grant of ORC. Learned Standing Counsels have further stated that it is incorrect to say that except the notification issued under the Waqf Act, there are no other documents to prove that the lands in question are Waqf lands and that if an opportunity is given to the Waqf Board, they will place them before the Joint Collector.

In reply to the above submissions made by the learned Standing Counsels for Waqf Board, Sri Vedula Venkata Ramana, the learned Senior Counsel, has stated that the Waqf Amendment Act came into effect on 11.11.2013 whereas the impugned notification was issued by the Waqf Board in the year 1989. Therefore, the Amended Act would not apply to the facts of the present case. Learned Senior Counsel has

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[2] (1998) 8 SCC 1

further stated that *de hors* the Gazette Notification, there was no other material before the Joint Collector to grant any ORC in favour of the Waqf Board and has relied on ***Gosula Ramulu vs. A.P. Waqf Board***[3] to buttress his case.

Learned counsels appearing on behalf of the legal representatives of the Inamdars, in reply to the arguments of the learned Standing Counsels, have stated that prior to the conducting of any survey, as envisaged under the provisions of the Act, no notice was issued to any of the persons interested in the property and till date the survey report has not seen the light of the day. Learned counsel has also argued that at no point of time, the Waqf Board was in possession of the lands in question and as per the provisions of the Inam Abolition Act, it is only the persons, who are in physical possession of the lands as on 01.11.1973, alone are entitled for grant of ORC.

In order to resolve the issues in question, this Court is of the opinion that the second batch of writ petitions filed questioning the Gazette Notification, dated 09.02.1989, issued by the Waqf Board has to be dealt with first.

Admittedly, *vide* notification dated 09.02.1989, the Waqf Board has issued notification declaring the lands in Mamidipally Village as Waqf lands. The question as to whether the notification could have been issued by the Waqf Board, based on the survey conducted under the Repeal Act,

[3] (2017) 5 ALD 298]

has fell for consideration before this Hon'ble Court and is no longer *res integra*.

In **Tamil Nadu Wakf Board (supra),** the Hon'ble Supreme Court held as under:-

> "In the absence of proper notification under sub-section (2) of Section 5 of the Wakf Act, 1954, that the properties in question are Wakf properties, even if there is any survey report is of no avail and does not impress the property with the character of a Wakf property. It confers no rights on the Wakf Board or the Muthawali to claim it as Wakf property."

A learned Single Judge of this Court, in W.P.No.25076 of 2004, vide order, dated 19.04.2012, at para 4, while dealing with the same issue, has observed as under:

> "..... the impugned Gazette notification, dated 17.10.2002, does not stand to scrutiny in the eye of law as it is a notification issued under a repealed enactment, this Court can only say that the said notification published in the Gazette is a deadwood."

Another learned Single Judge of this Court, in W.P.No.19611 of 2012, vide order, dated 22.03.2016, observed as under:

> "This Court considered the similar issue in W.P.No.25076 of 2004 relied on by the learned Counsel for the petitioners and wherein, this Court quashed the notification under Act of 1954 on the ground that Wakf Act,. 1954 is repealed by Section 112(1) of the Wakf Act, 1995, and notification published in the Gazette does not stand to scrutiny in the eye of law, as it is a notification issued under a repealed enactment. In this case also, admittedly the impugned notification is also issued under Act of 1954 is repealed by the present Act. Since

the order in the said writ petition has become final and Wakf Board is a party to it, the present issue is squarely covered by the judgment of W.P.No.2074 of 2004…."

While dealing with the validity of the impugned Gazette Notification No.46-A, dated 15.11.2001, issued by the State under the provisions of the Wakf Act, 1954, which has been repealed by the Wakf Act, 1995, this Court in W.P.No.33133 of 2014, by order, dated 22.09.2016, held as under:

"45. In view of the rival submissions, it is first necessary to consider whether the conduct of survey by a Survey Commissioner during the time when the Wakf Act, 1954 was in force, without publication of the same in the Gazette under sub-Section(2) of Section 5 of the said Act, conferred any right on the 2nd respondent or not. If the answer is 'yes', then such right is saved under sub-Section (2) of Section 112 and not otherwise.

46. This issue was considered in **TAMIL NADU WAKF BOARD v. HATHIJA AMMAL (DEAD) BY L.Rs. Etc. (AIR 2002 SC 402).** In that case also a survey was made by the Survey Commissioner constituted under the Wakf Act, 1954 determining that a particular property is wakf property, but no Gazette Notification had been issued under Sub-section (2) of Section 5 of the Act. Suits were filed by the appellant before the Supreme Court for recovery of properties, future mesne profits and costs. The Trial Court held that though the property in question is a public wakf, the notification, dated 24.12.1958, issued under Section 5(2) of the Act did not include it and so the appellant cannot recover possession of the property. This was affirmed in First Appeal. The First Appellate Court held that in the absence of proper notification under Sub-section (2) of Section 5 of the Act that the suit properties are wakf properties, the appellant cannot succeed in the suit for recovery of possession. The High Court affirmed the same in the Second Appeal. The Supreme Court held that if any property is not published as wakf property as required under Section 5(2) to Act, the Wakf Board cannot file a suit for declaration and possession. It observed that if any property has been omitted form a

notification, the Wakf Board may itself collect information regarding any property as provided under Section 27 of the Wakf Act, 1954 and decide whether particular property is wakf property or not and that decision is final unless it is revoked or modified by a Civil Court, but this course of action had also not been adopted by the Wakf Board in that case. It held that before filing the suit for recovery of possession as provided in law, the Wakf Board should have followed the procedure as required under Sections 4, 5 and 6 or 27 of the Wakf Act, 1954. If the suit properties are not included in the notification published under Sub-section (2) of Section 5 of the Act, steps should have been taken as provided under Section 27 of the Act and only thereafter a suit for possession could have been filed and not otherwise. It therefore affirmed the decisions of the Courts below.

47. The ratio of this decision is that in the absence of proper notification under Sub-section 92) of Section 5 of the Wakf Act, 1954 that the properties in question are wakf properties, even if there is any survey report of a Survey Commissioner, the said report is of no avail and does not impress the property with the character of a wakf property.

48. In view of this decision, I reject the contention of the 2nd respondent that the survey report of the Survey Commissioner prepared in 1963 under the Wakf Act, 1954 is a completed action which is deemed to have been saved under the deeming clause in Sub-section (2) of Section 112 of the Wakf Act, 1995. It is clearly an inchoate act and not a complete act and cannot be treated as something "done" or action "taken" under the Wakf Act, 1954. It would have been complete only or treated as something "done" or action "taken", only if there had been a Gazette Notification under Sub-section (2) of Section 5 of the Wakf Act, 1954.

49. Consequently, the principle laid down in **D.C.BHATIA AND OTHERS v. UNION OF INDIA (UOI) AND ANOTHER (1995) 1 SCC 104)** would apply i.e., the provisions of a repealed statute cannot be relied upon after it has been repelead and though what has been acquired under the Repealed Act cannot be disturbed, if any further step is needed to be taken under the Act (such as publication of Gazette Notification under Sub-section (2) of Section 5 of the Wakf Act, 1954), that cannot be taken after the Wakf Act, 1954 is repelead by the Wakf Act, 1995.

52. Second Proviso to Sub-section (1) of Section 4 of the AP (Telangana Area) Abolition of Inams Act, 1955, no doubt states that if any person other than charitable or religions institutions has been registered as an occupant under Sections 5 to 8 after the commencement of the AP (Telangana Area) Abolition of Inams (Amendment) Act, 1985, such registration shall and shall be deemed always to have been null and void and no effect shall be given to such registration. The proviso was introduced by the AP Act 19 of 1994 with effect from 26.12.1985.

56. Second proviso to Section 4 was introduced by the AP Act 19 of 1994 with effect from 26.12.1985. For this to operate in respect of the subject land, a valid Gazette Notification must already have been issued under Sub-section 92) of Section 5 of the Wakf Act, 1954 or Sub-section (2) of Section 5 of the Wakf Act, 1995. Only then it would be impressed with the character of "wakf property" as held in **Tamil Nadu Wakf Board's case (supra)** referred to above.

57. It is not the case of the 2nd respondent that the property in question became wakf property on account of permanent dedication by any person professing Islam. The sole basis of the claim of the 2nd respondent that subject property is a wakf property is that it was included in the Survey report of the Survey Commissioner prepared in 1963 under the Wakf Act, 1954."

This Court in ***B.Gowra Reddy vs. Government of Andhra Pradesh***[4] while dealing with the very same notification, dated 09.02.1989, at paragraph Nos.26, 29, 32 and 33 has held as under:

26. A survey of various decisions referred to above would led to two issues, which have to be considered by this Court, viz., whether there was a contravention of the provision of Sections 4 to 6 of the Act and whether the writ petitions are maintainable under Article 226 of the Constitution of India.

29. The pre-requisite for publishing the Wakf is an enquiry to be conducted under Section 4 of the Act and

[4] (2002) 3 ALT 439

such an enquiry report has to be forwarded to the State Government, who in turn has to forward the same to the Wakf Board and the Wakf Board is required to examine the report and thereafter publish the list of Wakfs in the Official Gazette. If these requirements were fulfilled, then the contention of the learned Counsel for the Wakf Board and the learned Government Pleader would be sustainable. When the pre-requisite for publishing the Wakf is not fulfilled, then the question would remain Whether that can be challenged under Article 226 of the Constitution of India or in a suit as is sought to be contended by the learned Counsel for the respondents.

32. It is true that under Section 83 of the Act any dispute arising out of Wakf properties can be agitated only before the Tribunal constituted under the Act. But, in the instant cases, the very principal requirement of notice and conducting enquiry as envisaged under the Act are lacking. Therefore, the question of driving the petitioners to the Tribunal would not arise. Admittedly, the petitioners have made out their occupation rights from Mr.Rangaiah's possession and thereafter, Mr.Lakshmaiah and they have purchased the land under registered sale deeds and that too after obtaining appropriate permission from the Competent Authority and it is also one of the contentions of the petitioners that they have acquired title by adverse possession. But, I am not inclined to adjudicate the same inasmuch as I am only concerned with the validity of the notification published in the Gazette on 9.2.1989. The decision referred to by the learned Counsel for Wakf Board that the petitioner have to approach the Tribunal or the Civil Court, as the case may be, even after the expiry of one year period after the publication of Gazette notification is not applicable to the present cases, as that situation would not arise inasmuch as when the notice itself is lacking and no purpose will be served by approaching the Tribunal, or Civil Court. It is also to be noted that the report of the Survey Commissioner sent by the Government to the Wakf Board has no automatic acceptance. It is required to examine such report before publishing the list. This statutory obligation is also totally lacking in this case. When the violation of statutory provisions is made out, it is always open to the parties to approach this Court under

Article 226 of the Constitution of India. Admittedly, as can be seen from various documents filed by both the parties in these matters, nothing has been established to sustain the contention that the enquiry was conducted as required under Section 4(3) of the Act. In such a situation, it cannot be said that the impugned Notification is binding on the petitioners and accordingly, the petitioners are entitled to challenge the same as it is illegal and not enforceable as far as petitioners are concerned. Accordingly, I have to reject the contention raised on behalf of the Wakf Board and also the Government in this regard.

33. It is also to be noted in this regard that though the Wakf Board has been contending that the property in question is a Wakf property, which was notified in the Official Gazette as early as in 1989, but it is surprising to note that till today no action has been initiated either for evicting the petitioners or for recovery of possession of the Wakf property and no proceedings were initiated before the Tribunal constituted under the Act. None of the revenue records even whisper about the property as belonging to Wakf Board. It appears that the Wakf Board has filed an appeal only against the order of granting occupancy rights to the petitioners, and that too after one year and half decades which is pending before the appellate authority on which I am not inclined to make any comments. Under these circumstances, I have to necessarily hold that the notification published by the Wakf Board in the Gazette on 09.02.1989 is not valid and the same is not binding on the petitioners. Accordingly, it is set aside as far as the petitioners are concerned. So far as the relief for quashing the proceedings pending before the appellate authority under the Inams Abolition Act is concerned, I am not inclined to do so. It is open for the parties to agitate their respective rights before the appropriate authority.

In ***A.P. State Wakf Board vs. Hyderabad Archdioceses Society Archbishop House***[5]**,** this Court while dealing with the notification, dated 29.12.1988, at paragraph Nos.16 and 33 to 36 has held as under:

[5] 2010 SCC Online AP 1227

16. In the light of the above submissions referred to above, the following points arise for consideration in this batch of appeals.

1) Whether the learned Single Judge is justified in setting aside the notification and giving a finding with regard to title of the property in a proceeding under Article 226 of the Constitution, which are summary in nature?

2) .....

3) .....

33. Once it is established that before notifying the property as Wakf no notice as such was issued to the persons, whose rights are likely to be affected, they can always maintain the writ petition questioning the notification.

34. It is now well settled that notification issued under sub-section (1) of Section 6 of Wakf Act making list as final and conclusive between the Wakf Board and the Muttawalli land the persons interested in the Wakf and not to extend its scope to the persons who are not persons interested in the Wakf. Therefore, the right, title and interest of a stranger, a non-Muslim to the Wakf in a property cannot be put in jeopardy merely because that property is included in the list of Wakfs. (See Board of Muslim Wakfs v. Radha Kishan 9179) 2 SCC 468)

35. The Supreme Court in PUNJAB WAKF BOARD v. GRAM PANCHAYAT(2000) 2 SCC 121) and SAAYYED ALI v. A.P.WAKF BOARD, HYDERABAD (1998) 2 SCC 642) reiterated that the persons who are not served with any notice can file the writ petition challenging the notification.

36. In view of the same, quashing notification on the ground that persons, who are likely to be affected by such notification, have not been served with any notice is justified. The rest of the finding recorded by the learned Single Judge with regard to claim of the Wakf Board to notify the property as Wakf Property and title of the writ petitioners vis-à-vis Wakf Board, the learned Judge was not justified in deciding the said issue, which is dealt with in points Nos.2 and 3.

A learned Single Judge of this Court, in W.P. No.9378 of 2009, by order dated 06.02.2012, while dealing with the very same notification, dated 09.02.1989, in respect of Sy.Nos.302 and 303 of this very same village i.e. Mamidipally Village, under similar set of facts, has held as under:

> From this, it is clear that a detailed survey is required to be conducted. The publication of the notification must be soon, though not immediate, after the survey. The reason is that, any events, that occur between the date of survey, and date of publication of the notification would render the very exercise futile. If any substantial development takes place between the two events, the survey conducted earlier can not at all constitute the basis for publication. Even otherwise, unreasonable delay would defeat the very objective, underlying the provision.
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> It was way back in the year 1960, that the survey in respect of the land in Sy.Nos.299 to 306 of Mamidipally village was conducted under Section 4 of the Wakf Act, 1954. The publication was made only in the year 1989. In the period of three decades, that has intervened, several legislative and administrative changes have taken place. The Inams Act came into force, and in the course of its implementation, the ORCs were granted in respect of the lands. Had any survey been conducted immediately preceding the publication in the year 1989, the fact that the petitioners or their predecessors in title had in possession and enjoyment of the property, as absolute owners or were issued ORCs; could have been noticed, and issuance of notification would certainly have become doubtful. By no stretch of imagination, the survey conducted in the year 1960 can be said to be the basis for publication of a notification in the year 1989. Therefore, the notification dated 09.02.1989 cannot be said to be inconformity with the provisions of the Wakf Act.
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> This Court, in B.Gowra Reddy's case (sura) dealt with the manner in which the notification under challenge herein was issued, and expressed the view that it does not

accord with law. The principle laid down therein covers the facts of this case also.

The third contention arises on account of the objection raised by the 2nd respondent, the effect that the petitioners cannot challenge the notification at this stage, when its right to file a suit under the Act is barred.

The question as to whether the limitation and other aspects covered by Section 4 to 6 of the Wakf Act would apply in relation to proceedings initiated by third parties also, was dealt with by the Hon'ble Supreme Court in Board of Muslim Wakfs, Rajasthan v. Radha Kishan (1979) 2 SCC 468). It was held that the notification would become final and conclusive as between the Wakf Board and the Mutawalli, on the one hand, and the persons interested in the wakf, on the other, but not against the persons, who are not interested in the wakf. The petitioners herein did not claim any interest in the wakf concerned.

For the foregoing reasons, the writ petition is allowed, as prayed for.

The order, dated 06.02.2012, passed by the learned Single Judge in W.P.No.9378 of 2009 has been confirmed by the Division Bench of this Court in W.A.No.1010 of 2012 vide judgment dated 07.11.2013, and the same has become final.

Recently while dealing with the lands in survey Nos.302 and 303 of the very same village, this Court in W.P.No.1442 of 2020, vide order dated 11.02.2020, relying on the judgment of the learned Single Judge in W.P.No.9378 of 2009, dated 06.02.2012, while dealing with the lands in survey Nos.302 and 303 of Mamidipally village, has held as under:

In view of the above judgment of the learned Single Judge, the objection taken by the 4th respondent with regard to publication of the notification, dated 09.02.1989, notifying the subject land as wakf land, has no legs to stand, as the said notification is held to be not in conformity with the provisions of the Act.

> *Having to the facts and circumstances of the case and the submissions of the learned counsel and order passed by this Court, which is referred to above, and for the reasons alike, the present writ petition is allowed, and the 3rd respondent is directed to receive and register the document i.e., sale deed presented by the petitioner in respect of the subject land, provided the same is in order as per the provisions of the Indian Stamp Act, 1899, and the Registration Act, 1908, and the Rules made there under."*

Moreover, all the above referred judgments of this Court have become final and till date they are not set aside by the Hon'ble Supreme Court and therefore hold good.

In view of the law laid down by this Court as well as the Hon'ble Supreme Court in the above referred judgments, this Court is of the opinion that the notification, dated 09.02.1989, issued by the Waqf Board is one without jurisdiction and the same is liable to be set aside. Accordingly the second batch of writ petitions are allowed and the notification dated 09.02.1989, is set aside.

Coming to the first batch of writ petitions filed questioning the order of the Joint Collector, the operative portion of the impugned order dated 25.02.2006 setting aside the orders of the RDO reads as under:

> "…. Thus it is evident that the said lands are Waqf lands and grant of Occupancy Rights Certificate to individuals in respect of Wakf lands is not in order.
>
> No individual is entitled to get any Occupancy Rights Certificate on such land and religious institution alone is entitled to get Occupancy Rights Certificate. Hence the Occupancy Rights Certificate issued by the Revenue Divisional Officer Ranga Reddy

East Division in File No.(1) J/4163/1986 dated 7-1-2005 (2) J/4162/1986 dated 7-1-2005 (3) J/4164/1986 dated 7-1-2005 & J/4165/1986 dated 7-1-2005 are set aside and the Revenue Divisional Officer is directed to issue Occupancy Rights Certificate in the name of religious institutions only in light of the above amended Act No.19 of 1994....."

A perusal of the above portion reveals that the Joint collector has *suo moto* taken up the issue and while setting aside the orders of the RDO has granted ORC in favour of the Waqf Board, solely based on the Gazette Notification dated 09.02.1989. Neither the material on record nor the counters filed before this Court reveal that either the legal representatives of the Inamdars or the persons, in whose favour the RDO has granted ORCs, were put on notice nor given an opportunity of hearing with regard to the *suo moto* taking up of the case or that reliance was being placed on the Gazette Notification dated 09.02.1989 while passing the order, dated 25.02.2006. This Court as well as the Hon'ble Supreme Court in catena of cases have held that the principles of natural justice are inviolable and fundamental to the rights of the parties to be heard before any orders are passed and the Courts under Article 226 of the Constitution of India can exercise judicial power to review the decisions made by the subordinates/*quasi* judicial authorities to see whether the principles of natural justice are violated or not and whenever warranted the Court will step-in to correct the same. The power of judicial review has been held to form the basic structure of the Constitution and the said power cannot

be controlled or excluded by any provision of Statute or Rules made thereunder. Therefore, the contention of the learned Standing Counsels that the only remedy available to the petitioners is to approach the Waqf Tribunal for setting aside the Waqf Notification, if they are aggrieved by the same, cannot be countenanced and the same has to be rejected. The Court while exercising power under Article 226 of the Constitution of India is not denuded of the power to deal with the orders of the Joint Collector to see whether the orders that are passed are in accordance with the procedure established by law or whether there was any violation of the principles of natural justice. Even though the learned Standing Counsel for the Waqf Board has relied on the judgment of the Hon'ble Supreme Court in ***Whirlpool Corporation (supra)***, but, as a matter of fact, in the said decision, the Hon'ble Supreme Court has held as under:

> "Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

Thus, mere existence of an alternative remedy will not by itself take away the powers of the High Court under Article

226 of the Constitution of India to exercise its power to review the decision made by the *quasi* judicial authority.

Moreover, in ***State Bank of India vs. M.S. Basi & Ors.***[6], the Hon'ble Supreme Court has held that the order is liable to be set aside if no opportunity of hearing is afforded to the parties who are adversely affected.

Further, in ***Mariamma Roy vs. Indian Bank & Ors.***[7], the Hon'ble Supreme Court has held that even if an alternative remedy is available, if violation of the principles of natural justice is alleged, the writ petition is maintainable and the High Court can interfere.

Therefore, the contention of the learned Standing Counsel that it is only the Waqf Tribunal that can go into the validity or otherwise of the Gazette Notification cannot be countenanced and the same is rejected. The impugned order passed by the Joint Collector setting aside the order of the RDO granting ORCs without putting the parties on notice and without affording them an opportunity of hearing, violates the well recognized principles of natural justice i.e. *audi alteram partem* and the same cannot be countenanced and is liable to be set aside on this sole ground.

As seen from the record, the only material before the Joint Collector was the Waqf Notification, dated 09.02.1989, and admittedly the Waqf Board was not a party to the said

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[6] (2004) 11 SCC 347
[7] (2009) 16 SCC 187

proceedings nor there was any other material to contend that the subject lands are Waqf lands. In view of the fact that the notification dated 09.02.1989 itself has been held to be invalid and unsustainable and is set aside by this Court in the second batch of writ petitions, the order of the Joint Collector granting ORC in favour of the Waqf Board is also liable to be set aside and the same is accordingly set aside.

However, taking into consideration the arguments putforth by the Waqf Board, this Court is of the opinion that the ends of justice would be met if the matter is remanded back to the Joint Collector. Accordingly, the first batch of writ petitions are allowed and remanded back to the Joint Collector (now designated as Additional Collector (Revenue) to decide the matter afresh duly taking into consideration the above observations made by this Court. This entire exercise shall be completed as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. It is needless to mention that the Waqf Board, if it chooses, can implead itself before the Joint Collector and place any other material besides notification dated 09.02.1989, which has already been set aside, to buttress their case that the lands in question are Waqf lands and the same shall also be taken into consideration by the Joint Collector while passing the orders on merits. It is needless to mention that all the parties shall be put on notice and afforded reasonable opportunity of hearing, before

passing of the orders. It is also made clear that pending the appeals before the Joint Collector, if the parties alienate or change the nature of the lands, the same will be subject to the final orders likely to be passed by the Joint Collector, and in case any adverse orders are passed, the parties shall not claim any equities.

Insofar as third batch of writ petitions filed aggrieved by the Notification issued under Section 22-A of the registration Act are concerned, in view of the fact that the said notification has been issued based on the Notification dated 09.02.1989 issued under the Waqf Act, which has already been set aside by this Court, the Notification issued under Section 22-A of the Registration Act has to be necessarily set aside and the same is accordingly set aside. Accordingly, the third batch of writ petitions are allowed.

Accordingly, all the writ petitions are allowed, to the extent indicated above.

Miscellaneous petitions pending, if any, shall stand closed.

A.ABHISHEK REDDY, J

Date : 11-02-2021
sur/smr