



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.12197 of 2014

S.M.Seeni Mohamed

... Petitioner

Vs.

1.The Chief Secretary,
Government of Tamil Nadu,
St. George Fort,
Secretariat,
Chennai - 9.

2.The Chief Secretary,
Tamil Nadu Waqf Board,
Vallal Seethakathi Nagar,
Chennai.

3.The District Collector,
Ramnad District,
Ramnad.

4.The Deputy Superintendent of Police,
Rameshwaram,
Ramnad.

5.Abdul Hameed

6.Abdul Kalam

7.Avul Meera

8.Uthuman Ali

9.Habeeb Rahmathullah

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 4 to take appropriate action against the respondents 5 to 9 on the basis of the petitioner's representation dated 26.06.2014.

For Petitioner	: Mr.Naresh Prabhu for Mr.S.M.A.Jinnah
For Respondents 1, 3&4	: Mr.M.Lingadurai Special Government Pleader
For Respondent No.2	: Mr.Mohamed Hashim for Mr.N.Mohideen Basha Standing Counsel
For Respondents 5 to 9	: Mr.Nawaz for M/s. Ajmal Associates



ORDER

'Mohideen Andavar Tholugal Pallivasal' situate in Rameshwaram [Pin - 623 526] shall hereinafter be referred to as 'said Waqf'.

2.This Court is informed that said Waqf is a public waqf within the meaning of 'the Waqf Act, 1995 (43 of 1995)' which shall hereinafter be referred to as 'said Act' for the sake of convenience and clarity.

3.The case of the writ petitioner is that he was a part of the said Waqf but he was subsequently ostracized *inter alia* by respondents 5 to 9 [private respondents]. On the basis of such a complaint, writ petitioner has come up with captioned main writ petition with a prayer to Mandamus respondents 1 to 4 [official respondents] to take appropriate action against respondents 5 to 9 [private respondents] on the basis of a representation dated 26.06.2014 sent by the writ petitioner. To be noted, the representation as placed before this Court is dated 25.06.2014 and the same is as follows:

வணப்புநர்

S.M.சீனி முகம்மது (50/14)
த/பெ. முகம்மது அலியார்
3/21 ஏ, முத்துச்சாவடி தெரு,
ராமேஸ்வரம்,
ராமநாதபுரம்

பெறுநர்

உயர்திரு. முதன்மைச் செயலாளர் அவர்கள்
தலைமைச் செயலகம்
புனித சார்ஜ் கோட்டை
சென்னை 600 009

பொருள் : ராமேஸ்வரம் முகைதின் ஆண்டவர் தொழுகை பள்ளிவாசல் ஜமாத்தைச் சார்ந்த 25 குடும்பங்களை சமூக பதிஸ்காரம் செய்து ஊரை விட்டு ஒதுக்கிவைத்தவர்கள் மீது நடவடிக்கை எடுப்பது சம்மந்தமாக.

ஐயா,

நான் மேற்கண்ட முகவரியில் குடியிருந்து வருகின்றேன். எனக்கு 2 பையன்கள் உள்ளனர். நான் சங்கு வியாபாரம் செய்து தொழில் நடத்தி வருகிறேன். எனக்கு சொந்த ஊர் ராமேஸ்வரம் ஆகும். நான் ராமேஸ்வரம் முகைதின் ஆண்டவர் தொழுகை பள்ளிவாசல் ஜமாத்தில் பல வருடங்களாக உறுப்பினராக உள்ளேன் எனது தந்தை சுமார் 20 வருடங்களுக்கு முன்பு மேற்படி ஜமாத்தின் தலைவராக இருந்தார். ராமேஸ்வரத்தில் சுமார் 400-க்கும் மேற்பட்ட குடும்பங்கள் வாழ்ந்து வருகின்றனர்.

மேற்படி 400 குடும்பங்களுக்கும் பாத்தியப்பட்ட மேற்படி முகைதின் ஆண்டவர் தொழுகை பள்ளிவாசல் ஜமாத்தானது சுமார் 700 வருடங்களுக்கு முன்னால் முகலாயர் காலத்தில் கட்டப்பட்டதாகும். பிறகு கடந்த 2006-ம் ஆண்டு மேற்படி பள்ளிவாசல் பழைய கட்டிடங்கள் இடிக்கப்பட்டு புதிய கட்டிடங்கள் கட்டப்பட்டன. மேற்படி புதிய கட்டிடங்கள் கட்டுவதற்கு மக்களிடமும் உறுப்பினர்களிடமும் பணம் வசூல் செய்யப்பட்டது. மேற்படி ஜமாத்திற்கு உட்பட்ட அனைவரிடமும் சந்தா வசூல் செய்தும் மற்றும் நன்கொடைகள் வசூல் செய்தும் ஜமாத் சார்பாக பள்ளிவாசல் கட்டினோம். மேற்படி ஜமாத்தில் முறையாக சந்தா செலுத்தும் உறுப்பினர்களுக்கு மட்டுமே இறந்தவர்களை அடக்கம் செய்யும் உரிமை, திருமண பதிவு உரிமை போன்ற உரிமைகள்



எங்களது ஜமாத் சுமார் 400-க்கும் மேற்பட்ட தலைகட்டுகளை கொண்டது. அவர்கள் அனைவரும் வரி செலுத்தி வருகின்றனர். மேலும் மேற்படி ராமேஸ்வரத்தில் இஸ்லாமிய தவ்லித் அடிப்படையில் விபச்சாரம், வட்டித்தொழில், இறைவனுக்கு இணைவைப்பது, வரத்துசனை வாங்குதல் மற்றும் மூட பழக்கவழக்கங்களுக்கு எதிராகவும் குரான் ஹதீசை அடிப்படையாகக் கொண்டு மக்களிடையே பல்வேறு விழிப்புணர்வுகளை நான் மற்றும் என் ஊரைச்சேர்ந்த சுமார் 25 குடும்பங்களைச்சேர்ந்த செய்யது அன்வர் அலி, அல்லா பிச்சை, முகம்மது நூருல்லா, லியாகத் அலி, அகமது சுல்தான், ஜகுப் ஷாதிக், அபூல்

பரகத், அபூப் கான், அசாருதின், ஆஷிக் ரகுமான், செய்யது அன்வர், இப்ராஹிம் (எ) பாபுஜி, சம்சுதின், முகம்மது அலி, தாஜீதின், சித்திக் அலி மற்றும் முகம்மது ஓஷிக் ஆகியோர் ஏற்படுத்தி வந்தோம்.

இந்நிலையில் கடந்த 2006-ம் ஆண்டு புதிய கட்டிடங்கள் கட்டியதில் முறையாக கணக்கு வழக்குகள் பராமரிக்காமல் ஜமாத் உறுப்பினர்களுக்கு கணக்கு வழக்குகளை காட்டாமல் பல்வேறு முறைகேடுகள் நடந்ததால் நாங்கள் ஜமாத் உறுப்பினர்கள் என்ற அடிப்படையில் கணக்கு வழக்குகளை ஜமாத் நோட்டீஸ் போர்டில் வெளியிடக்கோர் அப்போதைய ஜமாத் நிர்வாகத்திற்கு கோரிக்கை வைத்தோம். ஆனால் ஜமாத் நிர்வாகம் கணக்குகளை வெளியிட மறுத்து அதுசம்மந்தமாக பிரச்சனை ஏற்பட்டு ராமேஸ்வரம் வட்டாட்சியர் மற்றும் துணை கண்காணிப்பாளர் தலைமையில் 23.08.2007-ல் சமாதானக் கூட்டம் நடைபெற்று முடிவில் மேற்படி ஜமாத்திற்கு பாத்தியப்பட்ட மையவாடி கதவின் சாவியை இரண்டு சாவிகள் வைத்துக் கொள்வதென்றும் தௌஹித் கொள்கையை பின்பற்றுபவர்கள் தனியாக மீகஸ் (தொழுகை நடத்துமிடம்) வைத்துக்கொள்வதென்றும் முடிவு செய்யப்பட்டது. அதன் பிறகு கடந்து 16.02.2009 அன்று மீண்டும் மேற்படி ஜமாத் நிர்வாக கமிட்டி ஊர் நீக்கம் செய்யப்பட்ட 4 குடும்பங்களை அழைத்து சமரசம் பேச எங்களிடம் ஒப்படைக்கப்பட்ட மையவாடி சாவியை அனைவரும் ஒத்துமையுடன் செயல்படுவதாக முடிவு செய்து வாங்கிவிட்டனர். இதுசம்மந்தமாக இருதரப்பினரும் சமாதானமாக ஏழுதி அதன் பிரதி வட்டாட்சியர், துணை கண்காணிப்பாளருக்கு அனுப்பப்பட்டது.

அதன் பின் கடந்த 2012-ம் ஆண்டு புதிதாக தேர்ந்தெடுக்கப்பட்ட தலைவர் அப்துல் ஹமீது, செயலாளர் அப்துல் கலாம், பொருளாளர் ஆவுல் மீரா மற்றும் செயற்குழு உறுப்பினர்களான உதுமான் அலி மற்றும் பைத்துல்மால் கமிட்டி உறுப்பினரான ஹபீப் ரகுமத்துல்லா (எ) பல்லாக் ஆகியோர் தேர்ந்தெடுக்கப்பட்டவுடன் அவர்கள் ஜமாத்தார்களிடையே மறைமுக உத்தரவுகளைப் பெற்று எங்கள் குடும்பங்களுடன் எல்வித் தொடர்பும் வைத்துக்கொள்ளக்கூடாது என்றும் எங்கள் குடும்பங்களுக்கு கடைகளில் எந்த பொருளும் கொடுக்கக்கூடாது என்றும் சமூக புறக்கணிப்பு செய்து வருகின்றனர்.

மேலும் எங்கள் ஜமாத்தில் திருமண வைபோகங்கள் சம்மந்தமாக திருமண அழைப்பிதழ்களை மணமக்கள் வீட்டாரிடம் கொடுத்து அதனை ஜமாத்தார்கள் உறுப்பினர்களுக்கு கொடுப்பது வழக்கம். ஆனால் எங்கள் ஜமாத்தைச் சார்ந்த பாருக் அலி என்பவரின் மகனுக்கு 25.06.2014 அன்று நடைபெற்ற திருமணத்திற்கு மணமக்கள் சார்பில் ஜமாத்திடம் கொடுத்த 400 பத்திரிக்கைகளை ஜமாத் தலைவர் மற்றும் நிர்வாகிகள் எங்களை ஊரைவிட்டு ஒதுக்கி வைத்திருப்பதைக் காட்ட வேண்டி எங்கள் குடும்பங்களுக்கு மட்டும் பத்திரிக்கை வழங்காமல் எங்களை சமூக புறக்கணிப்பு செய்தனர். மேலும் எங்கள் குடும்பத்துடன் எந்தவொரு இன்ப துன்பங்களிலும் கலந்து கொள்ளக்கூடாது என்று வாய்பொழி உத்தரவும் பிறப்பித்துள்ளனர்.

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4.Counter affidavits have been filed by State as well as Tamil Nadu Waqf Board. The private respondents have not filed counter affidavits.

5.Mr.Naresh Prabhu, learned Counsel representing the Counsel on record for writ petitioner, Mr.M.Lingadurai, learned Special Government Pleader on behalf of respondents 1, 3 and 4, Mr.Mohamed Hashim learned Counsel representing learned Standing Counsel for Tamil Nadu Waqf Board on behalf of second respondent and Mr.Nawaz, learned Counsel of M/s. Ajmal Associates [Law Firm] on behalf of respondents 5 to 9 [private respondents] are before this virtual Court.

6.A careful perusal of the counter affidavits of the State and the Chief Executive Officer of Tamil Nadu Waqf Board bring to light that this appears to be a tussle *inter alia* for administration *qua* said Waqf between writ petitioner on one side and respondents 5 to 9 on the other side. It also comes to light that the counter allegation of respondents is the writ petitioner and some others started following a separate set of faith in Islam where the manner of prayer and ceremonies in the Waqf are different. It is also a further point that the writ petitioner and others have therefore formed a separate Jamath and they are functioning separately. The allegation that writ petitioner and others are functioning separately is denied by learned Counsel for writ petitioner. Writ petitioner also raises a question of use of burial ground. This Court refrains itself from expressing any view or opinion on these disputations and disagreements as they turn heavily on facts. It would be appropriate to relegate the parties to the Tamil Nadu Waqf Tribunal, Chennai *inter alia* under Section 83 of said Act to have the issues arising in captioned writ petition thrashed out legally.

7.The aforesaid view of this Court is fortified by at least four case laws of Hon'ble Supreme Court.

8.The first case law is ***Subhan Shah's*** case being ***M.P. Waqf Board Vs. Subhan Shah*** reported in ***(2006) 10 SCC 696***. In ***Subhan Shah's*** case, besides an issue pertaining to mutation of revenue records *qua* a mafi inayat land to a Dargah, muthawaliship was also in issue. In this fact setting Hon'ble Supreme Court laid down the ratio that said Act is a self-contained code. This is articulated in paragraph No.27 of the case law and the same reads as follows:

'The Wakf Act is a self-contained code. Section 32 of the 1995 Act provides for powers and functions of the Board. Sub-section (2) of Section 32 of the 1995 Act enumerates the functions of the Board without prejudice to the generality of the power contained in Sub-section (1) thereof. Clauses (d) and (e) of sub-section (2) of Section 32 of the 1995 Act reads as under:

"32. (2) (d) to settle schemes of management for a wakf:



Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard;

(e) to direct

(i) the utilisation of the surplus income of a wakf consistent with the objects of a wakf;

(ii) in what manner the income of a wakf, the object of which are not evident from any written instrument, shall be utilized;

(iii) in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community:

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation.- For the purposes of this clause, the powers of the Board shall be exercised -

(i) in the case of a Sunni wakf, by the Sunni members of the Board only; and

(ii) in the case of a Shia wakf, by the Shia members of the Board only:

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Muslims being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its powers under this clause;"'

9. The second case law is **Anis Fatma Begum's** case law being **West Bengal Waqf Board Vs. Ani Fatma Begum** reported in **(2010) 14 SCC 588 = (2012) 1 SCC (Civ) 773**. In this case a disputation pertaining to Waqf estate and a Waqf nama arose. The disputation turned on the estate of Shahzadi Begum and the Wakifa is late Shahzadi Begum. The dispute turns on the property being demarcated / divided into two portions having 75% share for Wakf-al-al-aulad and 25% share for pious and religious purposes. It is not necessary to dilate further on facts. In this fact setting, Hon'ble Supreme Court held that any dispute, question or other matters relating to a Waqf or Waqf property can be decided by the Waqf Tribunal. It was also held that the Waqf Tribunal has the powers of a Civil Court under Section 83 (5) of said Act. There is also a caveat that matters should go at the first instance to the Waqf Tribunal under Section 83 rather than being entertained by a Civil Court or by the High Court under Article 226 in the writ jurisdiction. Relevant paragraphs are paragraph Nos.7 to 12 and the same read as follows:

'7. However, in appeal, the Division Bench by the



impugned judgment has answered both the questions in the negative. Hence, this appeal.

8.It was submitted by Dr. Rajeev Dhawan, learned Senior Counsel appearing for the appellant, that only the Wakf Tribunal has jurisdiction in the matter under the Wakf Act, 1995 and hence the Suit filed in the High Court was without jurisdiction. We agree.

9.The dispute in the present case relates to a Wakf.

10.In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.

11.It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a special Tribunal for deciding disputes relating to Wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to Wakfs were being filed in the courts in India and they were occupying a lot of time of all the Courts in the country, which resulted in increase in pendency of cases in the Courts. Hence, a special Tribunal has been constituted for deciding such matters.

12.Section 83 (1) of the Wakf Act, 1995 states,

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

10.The observations made in paragraph No.14 are also of relevance and the same reads as follows:

'14.Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word 'Wakf' has been defined in Section 3 (r) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in Section 3 (r),



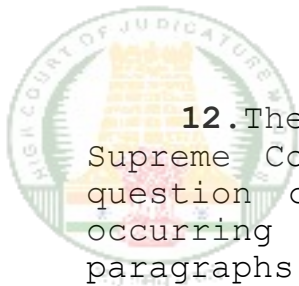
then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.'

11. The third case law is ***Sham Singh Harike's*** case being ***Punjab Waqf Board Vs. Sham Singh Harike*** reported in ***2019 SCC Online SC 142***. In ***Sham Singh Harike's*** case the issue was pertaining to whether certain extent of properties are Waqf properties. In this case Hon'ble Supreme Court noticed that there is cleavage in judicial opinion regarding jurisdiction of Waqf Tribunal qua various High Courts that this cleavage is noticed by Hon'ble Supreme Court in paragraph No.28 which reads as follows:

'28. This Court noticed in the aforesaid judgment that there is a cleavage in the judicial opinion expressed on the question of jurisdiction of Wakf Tribunal by the different High Courts in the country. The view of the Andhra Pradesh High Court, Rajasthan High Court, Madhya Pradesh High Court, Kerala High Court and Punjab and Haryana High Court has been noticed where High Courts have taken the view that jurisdiction of the Wakf Tribunal is wide enough to entertain and adjudicate upon all kinds of disputes which relate to any Wakf Property. The contrary view of the High Court of Karnataka, High Courts of Madras, Allahabad and Bombay was also noticed. This Court proceeded to examine the scheme of Wakf Act, 1995. After noticing the scheme of Sections 6, 7, 25 and other provisions with respect to Section 85 of the Act, following was stated by this Court in paragraphs 24 and 28:

"24.A plain reading of the above would show that the civil court's jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words "which is required by or under this Act to be determined by a Tribunal" holds the key to the question whether or not all disputes concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court.

28. Section 85 of the Act clearly bars jurisdiction of the civil courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of the civil courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the civil court does not fall within the four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred."



12. Thereafter after a survey of the various views Hon'ble Supreme Court went on to interpret the expression 'any dispute, question or other matter relating to a Waqf or Waqf property' occurring in Section 83 of said Act. This has been articulated in paragraphs 36 and 37 which read as follows:

36. After noticing the provisions of Section 83 this Court held that words "any dispute, question or other matter relating to a Wakf or Wakf property" are words of wide connotation and any dispute, question or other matter whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. Following has been laid down in paragraph 10:

"10. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words "any dispute, question or other matters relating to a wakf or wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal. The word "wakf" has been defined in Section 3 (r) of the Wakf Act, 1995 and hence once the property is found to be a wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal."

37. This Court also held that when there is special law providing for a special forum, then recourse cannot be taken to the general law. In paragraphs 14, 15 and 16 following was laid down:

"14. It is well settled that when there is a special law providing for a special forum, then recourse cannot be taken to the general law, vide Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn., 2004, pp. 133-34).

15. In Chief Engineer, Hydel Project v. Ravinder Nath, (2008)2 SCC 350, this Court held that when the matter fell in the area covered by the Industrial Disputes Act, the civil court would have no jurisdiction. In the above decision the Court has referred to several earlier decisions on this point.

16. In view of the above, we are of the opinion that since the matter fell under the purview of the Wakf Act, only the Wakf Tribunal has jurisdiction in the matter, and not the civil court. However, in view of the decision of this Court in Sardar Khan v. Syed Najmul Hasan (Seth), (2007) 10 SCC 727, the Wakf Act will not be applicable to suits / appeals / revisions / proceedings commenced prior to 1-1-1996 when the Wakf Act came into force."



13. To be noted in paragraph No.37 there is a clear reference to the earlier **Anis Fatma Begum's** case referred to supra.

14. The fourth case law is **Rashid Wali Beg** case reported in (2021) 8 MLJ 259 (SC) wherein factual matrix turned on whether certain properties are Waqf properties, Supreme Court made a survey of the provisions, set out the same by way of a tabulation and the most relevant paragraphs are paragraph Nos.31, 43 & 54 which read as follows:

'31. Some of the decisions of this Court, in which this controversy was addressed, are presented in the form of a table, for the purpose of easy appreciation. Apart from the cause title and citation, the table below gives an indication of the forum from which the original proceedings emanated in those cases, the reliefs sought by the plaintiff/applicant in those original proceedings and a summary of facts and the ratio laid down in each of them.

S. No	Cause Title & Case No.	Emanating from Civil Court/Waqf Tribunal	Reliefs sought in the original proceeding	Opinion of this court on the question of Jurisdiction of civil court/ Tribunal
1	<i>Sayed Muhammed Mashur Kunhi Koyal Thangal v. Badagara Jumayath Palli Dharas Committee</i> (2005) 1 MLJ (Cri) 194 : LNIND 2004 SC 818 : (2004) 7 SCC 708 : AIR 2004 SC 4365	Civil Court	Declaration of Title and Recovery of possession of the Plaintiff Schedule Property.	1. The matter arose out of a civil suit filed in 1984, before the advent of the Waqf Act, 1995. 2. The trial court decreed the suit, but the first appellate court reversed it. In the second appeal filed in 1988 which came up for hearing in 2001 after the advent of the 1995 Act, the High Court framed a question with reference to Section 85 and held that the civil court had jurisdiction to try the suit. 3. Though this Court reversed the judgment of the High Court, the same was not on the question of maintainability of the suit. The net result is that the opinion of the High court on the question of jurisdiction was left untouched.
2	<i>Sardar Khan v. Syed Najmul Hasan</i> (2007) 3 MLJ 366 : LNIND 2007 SC 266 : (2007) 10 SCC 727 : AIR 2007 SC 1447	Civil Court	Not clear from the narration of facts in the judgment.	1. The suit was filed in December, 1976, and the trial (civil) court dismissed the suit on merits on 23.01.1996. The Waqf Act, 1995 came into force w.e.f. 01.01.1996. 2. The plaintiff filed an appeal before High court on 1-3-1996 and contended that the civil court ceased to have jurisdiction after the coming into force of the 1995 Act. High court agreed and relegated the parties to the Waqf Tribunal. This was challenged in this court. 3. This Court referred to Section 7(5) of the Waqf Act, 1995 and held that the tribunal will have no jurisdiction to decide any matter



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			which is the subject matter of any suit instituted or commenced in a civil court before commencement of the 1995 Act. 4. So holding, this Court reversed the judgment of the High Court which relegated the parties to the Waqf tribunal.
3	<i>Ramesh Gobindram v. Saigra Humayun Mirza Waqf</i> (2010) 8 MLJ 527 : LNIND 2010 SC 823 : (2010) 8 SCC 726 : AIR 2010 SC 2897	Waqf Tribunal	Suit for Eviction of tenants occupying Waqf properties.
			1. Suits for eviction of tenants filed before the Waqf Tribunal were decreed. The tenants filed revision petitions before the High Court but the High Court dismissed the revision petitions. Hence the tenants were on appeal. 2. This Court held that the Waqf Act, 1995 does not provide for any proceedings before the tribunal for determination of a dispute concerning the eviction of a tenant in occupation of Waqf property or the rights and obligations of the lessor and lessees of such property. 3. Holding that a suit for eviction of tenants from what is admittedly a waqf property could be filed only before the civil court and not before the tribunal, this Court overruled the views of the High Courts of Andhra Pradesh, Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana. The views taken by the High Courts of Allahabad, Karnataka, Madras and Bombay were affirmed. It was further held that the interest of those uninterested in the waqf (nonmuslims) will be put in jeopardy if Section 6(1) is limited to only the muttavalli, board and those interested in waqf, hence the special limitation imposed by Section 6(1) is inapplicable to strangers.
4	<i>Board of Waqf v. Anis Fatma Begum</i> (2011) 2 MLJ 219 : LNIND 2010 SC 1127 : (2010) 14	Civil Court	Questions raised were: (i) whether the division of immov-
			1. While the single judge of the High Court held that the Waqf Act is applicable for the property earmarked for waqfalaulad, the Division Bench of the High Court



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			able property into two distinctive parts, one for waqfala-laulad, and another for pious and religious purposes is in accordance with the Act; and (ii) whether the Waqf Act is applicable for the portion of the property earmarked for waqfala-laulad.	reversed it. 2. While reversing the decision of the Division Bench of the High Court, this Court held that the words, "any dispute, question or other matters" are words of very wide connotation and that the tribunal has all the powers of the civil court including the power to grant temporary injunctions under Order XXXIX, CPC. 3. This Court further held that though Section 83(2) refers to orders passed under the Act, Sections 83(1) and 84 are independent provisions and that they do not require an order passed under the Act for invoking the jurisdiction of the Waqf Tribunal. Even if no order has been passed under the Act, the party can approach the Waqf Tribunal. 4. The decision in <i>Ramesh Gobindram</i> was distinguished, on the ground that the same related to an eviction dispute.
5	<i>Punjab State Waqf Board v. Pritpal Singh</i> 2013 SCC Online SC 1345	Waqf Tribunal	Suit for possession and mesne profits.	1. A suit for possession and mesne profits was decreed by the Waqf Tribunal. But on a writ petition, the High Court set aside the judgment of the Waqf Tribunal on the ground that the Tribunal had no jurisdiction to entertain a suit for ejection. 2. However, this Court set aside the judgment of the High Court holding that the suit was maintainable before the Waqf Tribunal. This Court pointed out that the High Court mistook the suit to be one for eviction, though in fact, it was for possession and mesne profits.
6	<i>Akkode Jumayath Palli Paripalana Committee v. P.V. Ibrahim Haji and Others</i> LNIND 2013 SC 698 :	First filed before Civil Court, but later transferred to Waqf	Suit for permanent injunction	1. A suit for permanent injunction was first filed before the civil court, but it was transferred to the waqf tribunal. 2. The waqf tribunal decreed the suit and granted a decree of perpetual injunction, restraining



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	(2014) 16 SCC 65	Tribunal		the defendants from interfering in the administration, management, peaceful possession and enjoyment of the mosque, the madarassa run by it and all the assets attached to the mosque. 3. On revision under Section 83(9) of the Act, the Kerala High Court set aside the judgment of the waqf tribunal holding that a suit for perpetual injunction is not maintainable before the waqf tribunal. The High Court relied upon the decision of this Court in <i>Ramesh Gobindram</i>. This judgment of the High Court was challenged before this Court. 4. This Court allowed the appeal by relying upon the decision in <i>W.B. Waqf Board v. Anis Fatma Begum</i>, (2010) 14 SCC 588, in which <i>Ramesh Gobindram</i> was distinguished. 5. In other words a suit for perpetual injunction was held to be maintainable before the waqf tribunal.
7.	<i>Bhanwar Lal v. Rajasthan Board of Muslim Waqf</i> LNIND 2013 SC 804 : (2014) 16 SCC 51 : AIR 2014 SC 758	Civil Court (filed in 1980)	Suit was first filed for possession and rendition of accounts but subsequently amended to include a prayer to declare the sale deed as invalid.	1. A suit was filed in the civil court for possession and rendition of accounts way back in the year 1980. During the pendency of the suit, the property was sold in 1983 and hence the plaint was amended for additional relief of declaration that the sale deed was invalid. 2. During the pendency of the suit, the 1995 Act came into force and hence the plaintiffs themselves (State Waqf Board and Muslim Board Committee) filed an application under Section 85 of the 1995 Act seeking return of the plaint to enable them to resubmit the same before the waqf tribunal. 3. The Trial court allowed the application on the ground of bar of jurisdiction and the defendants filed a revision before the High Court. The revision was



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				dismissed by the High Court and the defendant was before this Court. 4. After taking note of Section 7(5) and Section 85 as well as the decision in <i>Sardar Khan</i>, this Court held that those matters which are already pending before the civil court, would continue to be adjudicated by the civil court, even after if the subject matter is covered by Section 6(1). 5. The decision in <i>Ramesh Gobindram</i>, was extensively referred to and it was held that a suit for possession and rent is to be tried by the civil court, but a suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the tribunal. 6. It was further held that the relief of cancellation of sale deed is not covered by Section 6 or 7 and that therefore it is to be tried by the civil court.
8	<i>Haryana Waqf Board v. Mahesh Kumar</i> LNIND 2013 SC 1004 : (2014) 16 SCC 45 : AIR 2014 SC 501	Civil Court	Suit for possession	1. A suit for possession was filed by the Waqf Board before the civil court on the ground that the property involved was notified as a waqf property under Section 5(2). 2. The trial court decreed the suit but the first appellate court reversed it on the ground that a question has arisen as to whether the suit property is a waqf property or not and that the said question has to be decided only by the tribunal. So holding, the first appellate court set aside the judgment of the trial court and ordered the return of the plaint under Order VII, Rule 10. The High Court confirmed the said judgment on a second appeal. 3. Relying upon the decision in <i>Bhanwar Lal</i>, this Court dismissed the SLP, thereby confirming the view of the first appellate court and the High



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	<i>Faseela M v. Munnerul Islam Madrasa Committee</i> LNIND 2014 SC 250 : (2014) 16 SCC 38 : AIR 2014 SC 2064	Waqf Tribunal	For eviction of the tenant, filed by Madrasa Committee	Court that the waqf tribunal alone had jurisdiction. 1. The Madarssa Committee filed an application before the waqf tribunal for the eviction of a person on the ground that he was a tenant in respect of a waqf property. The respondent denied that the subject property is a waqf property and he also challenged the jurisdiction of the tribunal. 2. The waqf tribunal first ordered the return of the plaint for presentation before a civil court but later recalled the previous order on the ground that the issue whether the subject property is a waqf property or not has arisen for consideration. 3. The said order of the waqf tribunal was challenged in a revision before the High Court. The High Court confirmed the second order of the waqf tribunal. 4. Holding that the issue relating to eviction of tenant is squarely covered by the decision of this Court in <i>Ramesh Gobindram</i>, and that <i>Bhanwar Lal</i> is not inconsistent with <i>Ramesh Gobindram</i>, this Court allowed the appeals and restored the first order of the tribunal directing the return of the plaint.
10	<i>Rajasthan Waqf Board v. Devki Nandan Pathak</i> LNIND 2017 SC 249 : (2017) 14 SCC 561	Waqf Tribunal	Suit for declaration that the sale of the subject Property was void as it was a Waqf Property. There was also an alternative prayer to prevent the	1. The suit was filed by the mutawalli of a masjid before the waqf tribunal. 2. The tribunal held the suit property to be a waqf property and hence decreed the suit. 3. The High Court set aside the judgment of the waqf tribunal on a revision filed by the persons who purchased the property from a private individual as though it was a private property. The High Court held that the remedy would lie before the civil court. 4. This court allowed the appeal holding that the main controversy in the suit was whether the

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				1954 inserted by way of Amendment Act 69 of 1984. 7. But this court took note of the fact that the aforesaid amendment under Act 69 of 1984 was never notified and that therefore, Section 55C had no application. As a consequence this Court held that the civil court had jurisdiction to decide the suit by virtue of Section 6 of the 1954 Act.
12	Projab Waqf Board v. Sham Singh Harike (2019) 4 SCC 698	There were two civil appeals before this Court, one arising out of a suit filed before the civil court for permanent injunction, but which got transferred to the waqf tribunal and the other arising out of a suit filed before the waqf tribunal for possession and permanent injunction.	The relief sought in one proceeding was for a permanent injunction and the relief sought in the second proceeding was for possession and permanent injunction.	1. There were two civil appeals before this Court. 2. <i>Facts in one appeal*</i> Suit for permanent injunction was filed by the waqf board before the civil court seeking to restrain the respondents from raising any construction and changing the nature of the property from agricultural to residential. * The respondent denied the title of the waqf board and raised the question of maintainability of the suit. * The suit was transferred to the waqf tribunal but an application for rejection of plaint was filed before the tribunal on the ground that the tribunal had no jurisdiction. * The tribunal dismissed the application for rejection of plaint, holding that the waqf tribunal had jurisdiction. But the judgment of the tribunal was reversed by the High Court on a revision, by relying upon the judgment of this Court in <i>Ramesh Gobindram</i> . The High Court also held that the person against whom reliefs were sought, was a non-Muslim. 3. <i>Facts in next appeal</i> * The Waqf Board filed a suit for possession and injunction before the Waqf Tribunal. The defendant admitted tenancy and claimed readiness to pay the rent. The waqf tribunal decreed the suit. * The High Court on a revision set aside the judgment of the



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waqf tribunal on the basis of the decision in *Ramesh Gobindram*.
4. The judgment of the High Court in both the matters came up for consideration before this Court in the two appeals.

5. OPINION OF THIS COURT

* After taking note of Section 55 of the Waqf Act, 1954, as it stood prior to the 1984 amendment, the amendments sought to be made by the 1984 Act and the provisions of the 1995 Act, this Court dealt in extenso with the reasoning of this Court in *Ramesh Gobindram*.

* This Court also took note of the decisions in *Bhanwar Lal*, *Sardar Khan*, *Faseela*, *Anis Fatma Begum*, *Mahesh Kumar* and *Akkode Jumayath Palli Paripalana Committee*. The provisions of Sections 6(1), 7(1), 33(4), 51(5), 52(4) and 54(4) as well as the amendment to Section 83(1) under Act 27 of 2013 were also referred to.

* Thereafter this Court held at the outset that the High Court's view that the right of a non-Muslim cannot be jeopardized under the Act, is contrary to the statutory scheme contained in Section 6.

* After holding so, this Court allowed the 1st civil appeal which arose out of a suit for permanent injunction, earlier filed before the civil court and later transferred to the waqf tribunal. The reason given by this court was that the question whether the subject property is a waqf property or not has arisen for consideration in the said suit and hence the Tribunal had jurisdiction.

* However, this Court dismissed the 2nd civil appeal on the ground that it was a suit for possession and permanent injunction where



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				waqf property and that therefore the issue arising therein was fully covered by the decision in <i>Ramesh Gobindram</i> .
13	<i>Kiran Devi v. Bihar State Sunni Waqf Board</i> 2021 SCC Online SC 280	Instituted before the civil court but it was transferred to waqf tribunal on an application filed by the waqf board and the tenant newly inducted into the premises by the waqf board.	The suit was for declaration that the plaintiff had succeeded to the tenancy rights, as a member of joint Hindu family and that therefore the plaintiff is entitled to continue as tenant.	1. The suit was originally instituted before the civil court but it was transferred to the waqf tribunal on an application taken out by the waqf board and another. The transfer of the suit to the tribunal was challenged but in vain. Therefore, the parties went to trial before the waqf tribunal. 2. The tribunal dismissed the suit, but on a writ petition filed against the said order, the High Court reversed the same. Actually, the judgment was on merits. 3. Before this Court it was contended that the tribunal had no jurisdiction in view of the decision in <i>Ramesh Gobindram</i> . 4. Though this Court found that in terms of <i>Ramesh Gobindram</i> , the waqf tribunal could not grant a declaration as claimed by the plaintiff, this Court held that it cannot entertain such an objection especially after the order of transfer of the suit from the civil court to the waqf tribunal had attained finality. It was argued that the parties cannot confer jurisdiction upon a tribunal by consent. But that argument was repelled on the ground that it was not a case where jurisdiction was conferred by consent of parties, but a case where proceedings were transferred by a judicial order to a tribunal.
14	<i>Telangana State Waqf Board v. Mohamed Muzafar</i> 2021 SCC Online SC 537	Waqf Tribunal	For the eviction of the tenant, both from the tenanted portion as well as the encroached portion.	1. The waqf tribunal decreed the suit and directed the defendants to vacate the suit property. 2. But on a revision, the High Court set aside the judgment of the tribunal on the ground that in view of the decision in <i>Ramesh Gobindram</i> the suit was not maintainable before the Waqf Tribunal.



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3. However, this Court distinguished *Ramesh Gobindram* on the ground that a suit for ejectment of a person from what is admittedly a waqf property would stand on a different footing from a suit for ejectment of a person from a property which is disputed to be a waqf property.

4. This Court noted the decision in *Faseela, Anis Fatma Begum, Mahesh Kumar and Sham Singh Harike*, and eventually came to the conclusion that the facts and circumstances of each case will have to be taken note of in the background of the legal framework contained in the Waqf Act, to determine jurisdiction. This Court reiterated that wherever the subject property is disputed to be a waqf property, the issue would fall squarely within the jurisdiction of the waqf tribunal.

Paragraph No.43:

43. The various provisions of the Act which make a reference to the Tribunal and the subject matter in relation to which such a reference is made are presented in a tabular column as follows:—

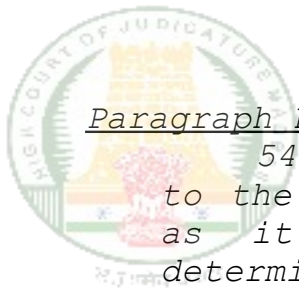


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Sl. No.	Provision of the Act	Subject Matter
1.	Section 32(3)	Wherever the Waqf Board has settled any scheme of management or issued a direction, any person interested in the waqf or affected by the settlement of a scheme or directions may institute a suit before the Tribunal.
2.	Section 33(4)	A mutawalli or other person aggrieved by an order passed by the Chief Executive Officer under Section 33(3) directing such person to make payment of any amount misappropriated, misapplied or fraudulently retained and to restore the property of the waqf, may appeal to the Tribunal.
3.	Section 35(1)	The Tribunal is conferred with the power to order conditional attachment of any property, which, a mutawalli or any other person is likely to dispose of with intent to delay or defeat the execution of any order passed under Section 33.
4.	Section 38(7)	Any Executive Officer or a member of the staff who is aggrieved by an order of removal or dismissal passed by the Waqf Board under Section 38(6) has a right of appeal to the Tribunal.
5.	Section 39(3)	Whenever a building or other place which was earlier used for religious purpose or instruction or for charity, has ceased to be used for that purpose, the Board may make an application to the Tribunal for an order for recovery of possession.
6.	Sections 40(2) and (4)	The decision of the Board on the question whether a particular property is a waqf property or not or whether a waqf is a Sunni Waqf or Shia Waqf, is made subject to the decision of the Tribunal under sub-section (2). Similarly, a direction issued by the Board to any Trust or Society under Section 40(3) to get registered, is made subject to the decision of the Tribunal under sub-section (4)
7.	Section 48(2)	Whenever a Board examines the Auditor's report and



		passes orders on the basis of the report, directing the recovery of any amount certified by the Auditor, the mutawalli or any other person aggrieved by such order may apply to the Tribunal.
8.	Section 52(4)	Wherever an order is passed by the Collector under Section 52(2) directing the person in possession of a property to deliver the property to the Waqf Board, on the basis of a requisition made by the Board, the person aggrieved by such order may file an appeal to the Tribunal.
9.	Section 54(3)	Whenever the Chief Executive Officer is satisfied that there is an encroachment on a waqf property, he may make an application to the Tribunal for the removal of such encroachment.
10.	Section 64(4)	A mutawalli removed from office for the reasons contained in clauses (c) to (i) of subsection (1) is entitled to file an appeal to the Tribunal.
11.	Section 67(4)	Any person aggrieved by an order passed by the Board superseding the Committee of Management may file an appeal to the Tribunal under the 1st proviso to sub-section (4) of Section 67.
12.	Section 67(6)	Whenever a member of a Committee of Management is removed by the Board, instead of exercising the option of superseding the Committee of Management, such removed member may file an appeal to the Tribunal under the 2nd proviso to sub-section (6) of Section 67.
13.	Section 69(3)	Whenever a scheme is framed by the Board for the administration of a waqf, which include a provision for the removal of the mutawalli and the appointment of his successor, a person aggrieved by the same may file an appeal to the Tribunal.
14.	Section 73(3)	Whenever a direction is issued by the Chief Executive Officer to any bank to pay out of the money belonging to the waqf, the contribution leviable under Section 72, the bank may file an appeal to the Tribunal.
15.	Sections 94(1) & (2)	Whenever a mutawalli who is under an obligation to perform a pious, religious or charitable act fails to perform such act or whenever a mutawalli willfully fails to discharge any other duties imposed on him under the waqf, an application could be made to the Tribunal for appropriate directions to the mutawalli. If it is a case covered by sub-section (1), the Tribunal may be moved by the Board. If it is a case covered by sub-section (2) the Tribunal may be moved by the Board or any person interested in the waqf.



Paragraph No.54:

54. It is well settled that the court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter **(i)** relating to a waqf; and **(ii)** relating to a waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1).'

15.Reverting to the facts of the case on hand, there is no disputation that said Waqf is a public Waqf within the meaning of Section 3(r) of said Act. Therefore, there is no difficulty in saying that Section 83 of said Act applies to the case on hand.

16.It is open to the writ petitioner to present his aforementioned representation in the form of an application *inter alia* under Section 83 of said Act before the Tamil Nadu Waqf Tribunal after arraying all concerned as co-applicants / respondents. If the writ petitioner chooses to do so, the Tamil Waqf Tribunal, Chennai will do well to take up the matter, hear all parties concerned and decide the matter on its own merits and in accordance with law. In other words this Court is relegating the parties to the Waqf Tribunal under said Act which is a self-contained Code without expressing any view or opinion on the merits of the matter.

17.Captioned writ petition is disposed of with the above observations. There shall be no order as to costs.

Sd/-

Deputy Registrar (A/CS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MR

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Chief Secretary,
Government of Tamil Nadu,
St. George Fort,
Secretariat,
Chennai - 9.

2.The Chief Secretary,
Tamil Nadu Waqf Board,
Vallal Seethakathi Nagar,
Chennai.

3.The District Collector,
Ramnad District,
Ramnad.

4.The Deputy Superintendent of Police,
Rameshwaram,
Ramnad.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-3892[F] dated 03/02/2022)

+1 CC to M/s.SPL.GP (SR-3939[F] dated 03/02/2022)

**ORDER MADE IN
W.P. [MD]No.12197 of 2014
01.02.2022**

RS(17.02.2022) 24P-7C