



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3760 OF 2008
ALONG WITH
CIVIL APPLICATION NO. 11450 OF 2008
ALONG WITH
CIVIL APPLICATION NO. 13203 OF 2008
ALONG WITH
CIVIL APPLICATION NO. 15651 OF 2011
IN
WRIT PETITION NO. 3760 OF 2008

1. Sanjay Vijaykumar Agarwal,
[deceased through its L.Rs.]
 - 1-A. Karan Sanjay Agarwal,
Age- 23 years, Occ- Student.
 - 1-B. Nakul Sanjay Agarwal
Age- 20 years, Occ- Student.
- Both residing at 91 E1-Cid,
Ridge Road, Mumbai-400 006.
2. Vinay Vijaykumar Agarwal
Aged 44 years.
 3. Vijaykumar Motilal Hirakhanwala
(deceased)

...PETITIONERS

VERSUS

1. Amanullahkhan s/o Jafarkhan
residing at Dukhinagar, Old Jalna
431203.
2. Syed Jameel Ahmed Rizvi s/o Syed
Jani Miyan,
residing at Tattupura, Old Jalna-431203.
3. Shaikh Wahiduddin Tamoli s/o Shaikh
Fakhruddin, residing at Rahimnagar,

Ambad Road, Jalna-431203.

4. Gulam Mehboob s/o Abdul Khalique
residing at Rahimnagar, Amad Road,
Jalna-431203.
5. Juned Ahmed s/o Abdul Rehman
residing at Modikhana, Old Jalna-431203.
6. The Chief Executive Officer,
Maharashtra State Board
Wakfs, having its office at Panchakki,
Aurangabad.
7. Jindal Seed Company Ltd. through its
Director Anil s/o Banarasidar Jindal,
Jindal House, Bus Stand Road, Shambhajnagar,
Jalna-431203.
8. Vidyadevi w/o Narayandas Tharani
[deceased]
- 8-A. Narayandas s/o Kanwarmai Tharani
Age 75 years, Occ- Business.
- 8-B. Ashokkumar s/o Narayandas Tharani
Age 54 years, Occ- Business
- 8-C. Rajkumar s/o Narayandas Tharani
Age 52 years, Occ- Business
- 8-D. Pradeepkumar s/o Narayandas Tharani
Age- 47 yeas, Occ- Business.
8A to 8D all r/o Mohandas Talreja Nagar
Opposite Bajrang Dal Mill, Jalna,
Taluka and District Jalna.
- 8-E. Smt. Shakuntala w/o Vijaykumar Bajaj
Age- 50 years, occ- Household,
R/o Sindhi Colony, Mondha Naka,
Jalna Aurangabad Road, Aurnagabad
Taluka and Dist. Aurangabad.

- 8-F. Smt. Rajshree w/o Shyamlal Keswani
Age- 46 years, Occ- Household,
R/o. Kanwarnagar, Sindhi, Colony, Jalgaon,
Taluka and District Jalgaon.
- 8-G. Smt. Anita w/o Rajesh Kapdi
Age- 39 years, Occ- Household,
R/o. Dasturnaar Colony Amravati
Taluka and Dist. Amravati.
9. Ushadevi w/o Ashokkumar Tharani
10. Neetadevi w/o Rajkumar Tharani
11. Vaijayanti w/o Pradeepkumar Tharani
Nos. 8 to 11 residing at Tulshi Bungalow,
Opposite Bajrang Dal Mill, Jalna- 431203.
12. Superintendent of Land Records, Jalna
13. Deputy Director of Land Records, Aurangabad.
14. Settlement Commissioner and Director of Land
Records, Pune.
15. Additional Chief Secretary (Revenue), Govt. of
Maharashtra, Mantralaya, Mumbai-400032.
16. Afroz Khan s/o Mahemood Khan
Age- 28 years, Occ- Labour, R/o. Old
Police Chowki, Bazar Lane, Aksa Communication
Shakir Chowk, Jalna. **...RESPONDENTS**

Mr. J.R. Shah, Advocate for petitioners.

Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for respondent
Nos. 2 and 4.

Mr. A.P. Bhandari, Advocate for respondent No. 7.

ALONG WITH
WRIT PETITION NO. 3761 OF 2008
ALONG WITH
CIVIL APPLICATION NO. 13202 OF 2008
ALONG WITH
CIVIL APPLICATION NO. 15722 OF 2015

ALONG WITH
CIVIL APPLICATION NO. 15723 OF 2015
ALONG WITH
CIVIL APPLICATION NO. 15650 OF 2011
ALONG WITH
CIVIL APPLICATION NO. 9399 OF 2016
ALONG WITH
CIVIL APPLICATION NO. 10391 OF 2023
IN
CIVIL APPLICATION NO. 15722 OF 2015
IN
WRIT PETITION NO. 3761 OF 2008

1. Sanjay Vijaykumar Agarwal,
[deceased through its L.Rs.]

1-A. Karan Sanjay Agarwal,
Age- 23 years, Occ- Student.

1-B. Nakul Sanjay Agarwal
Age- 20 years, Occ- Student.

Both residing at 91 E1-Cid,
Ridge Road, Mumbai-400 006.

2. Vinay Vijaykumar Agarwal
Aged 44 years.

3. Vijaykumar Motilal Hirakhanwala,
aged 73 years,
all three residing at 91, E1-Cid,
Ridge, Road, Mumbai- 400006
VERSUS

...PETITIONERS

1. Amanullahkhan s/o Jafarkhan
residing at Dukhinagar, Old Jalna
431203.

2. Syed Jameel Ahmed Rizvi s/o Syed
Jani Miyan,
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Fakhruddin, residing at Rahimnagar,

Ambad Road, Jalna-431203.

4. Gulam Mehboob s/o Abdul Khalique
residing at Rahimnagar, Amad Road,
Jalna-431203.
5. Juned Ahmed s/o Abdul Rehman
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6. The Chief Executive Officer,
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Aurangabad.
7. Superintendent of Land Records, Jalna
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Maharashtra, Mantralaya, Mumbai-400032.
11. Afroz Khan s/o Mahemood Khan
Age- 28 years, Occ- Labour, R/o. Old
Police Chowki, Bazar Lane, Aksa Communication
Shakir Chowk, Jalna. **...RESPONDENTS**

Mr. J.R. Shah, Advocate for petitioners.

Mr. Shaikh Mujtaba Gulam Mustafa, Advocate for respondent
Nos. 2 and 4.

Mr. M.R. Sonawane, Advocate for applicant in CA No.
15723/2015.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 20th SEPTEMBER, 2023
PRONOUNCED ON: 1st DECEMBER, 2023

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally

with the consent of parties.

2. Similar question of law and facts are involved in both these petitions, hence, they were heard together and are being decided by this common judgment.

3. Both these petitions claim following reliefs:-

Writ Petition No. 3760 OF 2008

"(ii) the impugned Orders dated 20th March, 2007 and 19th December, 2007 passed by the SLR and DDLR (Respondents Nos. 12 and 13) respectively be quashed and set aside and Appeal No. 50 of 2006 filed by Respondents Nos. 1 to 5 before the SLR be dismissed;

(iii) the letter dated 4th February, 2008 written by Respondent No. 13 to Respondent No. 14 and the letter dated 9th April, 2008 written by Respondent No. 14 to Respondent No. 15 be declared illegal;

(iv) the Respondent No. 15 be restrained from taking any steps as proposed in the letter dated 9th April, 2008 written by Respondent No. 14 or otherwise howsoever;"

Writ Petition No. 3761 OF 2008

(ii) the impugned Orders dated 20th March, 2007 and 19th December, 2007 passed by the SLR and DDLR (Respondents Nos. 7 and 8) respectively be quashed and set aside and Appeal No. 49 of 2006 filed by Respondents Nos. 1 to 5 before the SLR be dismissed;

(iii) the letter dated 4th February, 2008 written by Respondent No. 8 to Respondent No. 9 and the letter dated 9th April, 2008 written by Respondent

*No. 9 to Respondent No. 10 be declared illegal;
(iv) the Respondent No. 10 be restrained from
taking any steps as proposed in the letter dated 9th
April, 2008 written by Respondent No. 9 or
otherwise howsoever;"*

4. Brief facts leading to these petitions can be stated as follows:

City Survey No. 6758/A-1, admeasuring 15746.49 square meters, situated at Jalna, is the subject matter of Writ Petition No. 3760/2008. City Survey No. 6758, admeasuring 21632.21, situated at Jalna, is the subject matter of Writ Petition No. 3761/2008 (both these properties hereinafter for short referred to as 'suit properties').

5. Marathwada Wakf Board filed Special Civil Suit No. 13/1969 against Jalna Municipal Council claiming that the suit properties are wakf properties. Learned Civil Judge, Senior Division, by judgment and decree dated 03.12.1970, dismissed the suit on merits holding that, suit properties are not wakf properties. This decision was confirmed by the Division Bench of this Court in First Appeal No. 340/1971.

6. It is the case of petitioners that petitioner No. 3 was the owner and possessor of suit properties, since more than a century. Respondent No. 6 (for short 'Wakf Board') filed Civil

Revision Application No. 189/2004 challenging the decision in Regular Civil Suit No. 17/2003, wherein the decision of Wakf Tribunal, Aurangabad, dated 07.05.2004 was challenged. Subject matter of the suit was land admeasuring 5 Acres 27 ghuntas, Survey No. 235, situated at Jalna, which was claimed to have been converted in City Survey No. 6758. This Court dismissed the civil revision application by a reasoned order dated 24.02.2005. Even the review application bearing Civil Application No. 4691/2005 filed by Wakf Board seeking review of the said judgment in civil revision application, was dismissed by this Court on 03.07.2006. In spite of these facts, Wakf Board issued notice dated 24.09.2007 to petitioner No. 3 calling upon him to show cause as to why the suit lands should not be notified as Wakf properties. Petitioner No. 3 on receipt of notice, filed Contempt Petition No. 116/2008, in which notice was issued to Wakf Board on 05.05.2008. Wakf Board and/or at its instance various persons filed following proceedings claiming that the suit properties are Wakf properties.

(a) Special Suit No. 13 of 1969 (Marathwada Wakf Board v/s Jalna Municipal Council), was dismissed on merits by the Civil Judge, Senior Division, Aurangabad, by judgment and Decree dated 3rd December, 1970 which was confirmed by a Division Bench of this Hon'ble Court by its Judge and Decree dated 14th April, 1981 in First Appeal No. 340 of 1971.

(b) Regular Civil Suit No. 217 of 1986 (Syed Hussain and another v/s Vijaykumar Hirakhanwala), dismissed by the Joint Civil Judge, Senior Division, Jalna by his Order and Decree dated 2nd January, 1991.

(c) Wakf Suit No. 17 of 2003 (Mohd. Ziauddin and others v/s Vijaykumar Hirakhanwala and others), dismissed by the Maharashtra State Wakf Tribunal by its Judgment dated 7th May, 2004 which was confirmed by this Court by Orders dated 24th February, 2005 and 3rd July, 2006 in Civil Revision Application No. 189 of 2004 (CEO, Maharashtra State Board of Wakfs v/s. Vijaykumar Hirakhanwala and others).

(d) Wakf Suit No. 97 of 2006 (Shaikh Imtiaz v/s. Vijaykumar Hirakhwanwala), permitted to be withdrawn unconditionally by the Wakf Tribunal, Aurangabad by its Order dated 7th May, 2007.

(e) Wakf Suit No. 144 of 2006 (Respondents Nos. 1 to 5 herein v/s Sanjay Agarwal and others), dismissed for want of prosecution by the Wakf Tribunal, Aurangabad, by Order dated 12th June, 2007.

(f) Regular Civil Suit No. 278 of 2006 (Sattarkhan and another v/s Vijaykumar Hirakhanwala), dismissed for default by Extra Joint Civil Judge, Junior Division, Jalna, by Order dated 18th December, 2006.

(g) Wakf Suit No. 90 of 2007 (Sikander Ahmed and another v/s. Vijaykumar Hirakhanwala and others), pending before the Wakf Tribunal, Aurangabad, which was being prolonged on one pretext or the other by the plaintiffs therein and ultimately on 13th May, 2008 they have filed a purshis for its withdrawal, which was posted to 21st June, 2008 for hearing by the Tribunal.

7. Respondent Nos. 1 to 5 filed First Appeal No. 50/2006 against petitioners and others before respondent No. 12 (for short 'SLR') under section 247 of Maharashtra Land Revenue

Code, 1960 (for short 'MLR Code'), claiming that land bearing Survey No. 235, admeasuring 5 Acres 27 Ghuntas (22966 Square meters), at Jalna was converted into City Survey Nos. 6758 and 6758/A-1 and said land was Wakf property and they being members of Anjuman Khudamin were interested persons. They claimed that City Survey Officer, Jalna by order dated 23.10.1975 has wrongly shown petitioner No. 3 as owner and possessor of suit properties and therefore, challenged the said order and claimed that names of respondent Nos. 1 to 5 be restored as owners and possessors.

8. Petitioners and respondent No. 7 by written objection objected the appeal on the ground that it is hopelessly time barred and is filed after more than 30 years from the date of decision or order. Locus of respondent Nos. 1 to 5 to file appeal was also challenged by way of written objection.

9. According to petitioners respondents No. 1 to 5 never pursued Appeal No. 50/2006 and even their advocate remained absent on various dates of hearing. The Wakf Board did not even entered its appearance in the said appeal. The SLR therefore ought to have dismissed the appeal for want of prosecution. However, instead of dealing with the issue of limitation, SLR

without hearing petitioners proceeded to condone the delay and ordered that the suit properties to be classified as agricultural till non agricultural order is obtained. It is the case of petitioners that it was never the issue before SLR that whether properties are agricultural or non agricultural. This order dated 20.03.2007 passed by SLR was challenged by petitioners and 7th respondent by filing Second Appeal No. 894/2007, under section 247 of MLR Code before respondent No. 13 (for short 'DDLRL'). Wakf Board filed written arguments in the said appeal. According to petitioners, respondents No. 1 to 4 and their advocate did not make any written or oral submissions. Petitioners filed their written arguments on 24.10.2007. On that date appeal was reserved for orders. By the impugned order dated 19.12.2007, DDLRL dismissed the appeal and quashed the orders dated 23.10.1975 and 20.03.2007 and directed that name of Maharashtra Government be entered as holder of said lands and further held that petitioners and respondent No. 7 shall approach the Civil Court to get their title cleared.

10. At the instance of petitioner No. 3, DDLRL passed order under section 256 of MLR Code on 23.01.2008 and stayed his order. It is further the case of petitioners that after passing

the stay order, DDLR sought sanction of respondent No. 14 as required under proviso (i) to Section 258(1) of MLR Code to review his order dated 19.12.2007. Though, petitioners applied under RTI to DDLR for copies of his letter to respondent No. 14 seeking sanction and response of respondent No. 14 to the said letter, DDLR forwarded only copy of letter dated 04.02.2008 addressed by him to respondent No. 14 seeking sanction. He further replied that no response was received to the said letter from respondent No. 14.

11. According to petitioners, another person when applied under RTI, obtained copy of letter dated 09.04.2008 written by respondent No. 14 to respondent No. 15, refusing sanction and endorsing the copy of it to DDLR. Petitioners thereafter filed review application before the DDLR for review of the order dated 19.12.2007. However, realizing that since sanction is refused under MLR Code by respondent No. 14, DDLR would not favorably consider the review, petitioners have filed present writ petitions on various grounds.

12. It is contended by petitioners that Sub Divisional Officer, Jalna made inquiry under section 20 of MLR Code, on complaint that suit properties are government properties. After

visiting the properties and detail inquiry, by order dated 21.06.1995 passed in File No. 94/ROR/CR-75 held that, suit properties are not government properties. Copy of said decision dated 21.06.1995 is also placed on record by Sub Divisional Officer.

13. It is also contended by petitioners that this Court in PIL No. 5096/2018 appointed Court Commissioner to verify and examine properties which are claimed to be government properties. Accordingly, Pathak Commission made a detail inquiry and submitted a report. At page/Sr. No. 101 of the said report, it is recorded that land Survey No. 235 is not a government land.

14. Civil Application Nos. 15722/2015, 15723/2015, 9399/2016, 11450/2008 are filed seeking intervention.

15. Heard learned advocate for petitioners and learned advocate for respondent Nos. 2 and 4, learned advocate for respondent No. 7 and learned advocate for intervenors, at length.

16. Learned advocate for petitioners submits that civil revision application filed by Wakf Board raising all the

contentions raised in the present matters, was rejected by this Court and said decision has become final as it is not challenged by the Wakf Board. Therefore, those findings now cannot be challenged as the said challenge would be hit by principle of res judicata. In support of this submission, he places reliance on Dattatraya shivaji Thorwat and others vs. Clothildas Souza wd/o Caetao Piedade Vaz and others, 2006 (5) Mh.L.J, 750 and Procter and Gamble India Ltd. vs. Municipal Corporation of Greater Bombay and others, 2004 (1) Mh.L.J. 406.

By pointing out the order passed in contempt petition, he submits that Chief Executive Officer of Wakf Board has admitted mistake of the Wakf Board of issuing notice dated 24.09.2007 and 16.02.2008 and tendered unconditional apology. Accepting that contempt petition was disposed of. He therefore submits that Wakf Board though is fully aware of all these facts and decision, however, at the instance of Wakf Board persons like respondent No. 1 to 5 are filing frivolous proceedings against petitioners claiming that the suit properties are Wakf properties.

17. Learned advocate for respondent Nos. 2 and 4 opposed the petitions contending that in view of alternate remedy of filing appeal before the State Government, petitions

are not maintainable. He further submits that no registered sale deeds are placed on record by petitioners showing that suit properties are purchased by them. He submits that purchaser in title of petitioners had no title to pass to the petitioners and therefore, petitioners have no title to the suit properties. In support of these submissions he relies on Garment Craft vs. Prakash Chand Goel, 2022 (3) Mh.L.J. 706 and Kanchi Kamamma and others v. Yerramsetti Appanna, AIR 1973 Andhra Pradesh 201.

18. Perused the memo of writ petitions, documents annexed with it, impugned orders and the citations relied upon by the parties.

19. Admittedly, Wakf Board filed Special Civil Suit No. 13/1969 against Jalna Municipal Council claiming that the suit properties are Wakf properties and mesne profit was also sought. By a reasoned judgment and decree dated 03.12.1970 the suit was dismissed with costs.

20. Judgment and decree of the Trial Court was challenged by the Wakf Board in First Appeal No. 340/1971. Division Bench of this Court at Principal Seat dismissed the appeal by a detail judgment and decree dated 14.04.1981 and

confirmed the judgment and decree of Trial Court. There is nothing on record to show that said decision is further challenged by the Wakf Board.

21. It is an admitted position on record that Regular Civil Suit No. 217/1986 filed by Syed Hussain and another vs. Vijaykumar Hirakhanwala (Agarwal) claiming the suit properties as Wakf properties was dismissed on merit by learned Civil Judge, Senior Division, Jalna by judgment and decree dated 02.01.1991. Thereafter, Wakf board or at its instance many persons filed proceedings claiming that the suit properties are Wakf properties. It is clear from the record that suits/proceedings filed by Wakf Board or at its instance by other persons have been dismissed on merits holding that, suit properties are not Wakf properties.

22. In the background of these facts and particularly that this Court has consistently held that suit properties are not Wakf properties, SLR who was dealing with the Appeal Nos. 49/2006 and 50/2006 filed by respondent Nos. 1 to 5 challenging the mutation entries by which name of petitioner No. 1 was recorded to the suit properties has erroneously condoned the delay of more than 30 years caused by respondent Nos. 1 to 5 in filing

proceedings, on the ground that while filing proceedings respondents have filed affidavit explaining the delay, which is accepted and the matter is decided on merits. Obviously, before condoning the inordinate and unexplained delay of more than 30 years no opportunity of hearing was given to petitioners. The SLR has lightly brushed aside the objection raised by petitioners about inordinate and unexplained delay.

23. In *Bansilal Ramgopal Bhattad vs. State of Maharashtra and others*, 2001(1) Mh.L.J. 68, '*suo motu proceedings for revision under section 45(2) of Maharashtra Agricultural Lands (Ceiling on Holdings) Act 1961, were initiated almost after 9 years were held to be without authority and void, as they were initiated after unreasonable period.*'

24. In *Mohamed Kavi Mohamed Amin vs. Fatmabai Ibrahim*, 1997(6) SCC 71, Apex Court has held that, "*even if authority is vested with the power to take an action, without providing for any limitation, even in such a case it is the duty of the authority to take action within a reasonable time. It is held that if the action is taken after unreasonable time or belatedly, the same is vitiated in law.*"

25. SLR by ignoring the settled legal position has

erroneously condoned inordinate delay of 30 years. Considering this appeals filed by appellant/respondent Nos. 1 to 5 ought to have been dismissed. The impugned order is therefore unsustainable.

The decision of learned Single Judge in *Balkrishna Sadashiv Thakur and others vs. Prabhakar Sadashiv Thakur and others*, 2021 (5) Mh.L.J. 669, supports the case of petitioners on this point.

26. SLR has ignored the objection about locus of respondent Nos. 1 to 5, raised by petitioners without assigning any reason. Without there being any issue raised either in the appeal or in the submissions, SLR has held that, since the suit properties have survey numbers, they need to be converted into non agricultural land and till the non agricultural order is passed in respect of suit properties, they are converted into agricultural properties. By making these observations, SLR has exceeded his jurisdiction and the impugned order is vitiated on this ground also.

27. DDLR has failed to consider the grounds raised by petitioners in the appeal, about limitation and locus of respondent Nos. 1 to 5. Without recording any finding on those

grounds, DDLR has erroneously proceeded to hold that the suit properties are government properties and petitioners are lessors and on those grounds rejected the appeal and directed to record name of Maharashtra Government, as owner of the suit properties. While passing this order, DDLR has ignored the decisions given by the competent Civil Court which were confirmed up to this Court, inquiry report of Pathak Commission in which it is held that suit properties are not government lands and the decision of Sub Divisional Officer dated 21.06.195 in File No. 94/ROR/CR-75, wherein it is held that the suit properties are not Government lands. The impugned order passed by DDLR is therefore vitiated on the ground of non application of mind as the same is passed by ignoring the relevant material.

28. DDLR has exceeded his jurisdiction and has traveled beyond the scope of his appellate powers. Grounds raised in the appeal are not adverted to while passing the impugned order. The impugned order therefore is passed in clear violation of Section 20 of MLR Code and on this ground alone the same is unsustainable.

For the above reasons and in view of the fact that after hearing Wakf Board, by order dated 11.07.2008, this Court

granted rule and interim relief and ratio in Procter and Gamble India Ltd (supra) that *"Once the petitions are admitted for final hearing, without any reservation of right in favour of the respondents to raise plea of non-maintainability of the petitions on account of any such alternative remedy being available to the petitioners, the respondents cannot be allowed to non-suit the petitioners, at the final stage, merely on such a technical plea and more particularly when the petitioners have a good case on merits. Objection challenging tenability on account of availability of alternative remedy rejected."*, objection of respondent Nos. 1 to 5 that there is alternate remedy to petitioners to challenge the orders impugned in the present petitions before the State Government is liable to be rejected.

29. Learned advocate for petitioners has rightly submitted that the issue raised by respondent Nos. 1 to 5 in Appeal Nos. 49/2006 and 50/2006 filed under Section 247 of MLR Code, is hit by principle of *Res Judicata*. Since, competent Courts have held that, suit properties are not Wakf properties and since those decisions have attained finality, the issue raised by respondent Nos. 1 to 5 that suit properties are Wakf properties is hit by principle of *res judicata*.

For the same reason interim applications and submission of Wakf Board that the suit properties are Wakf properties is liable to be rejected.

30. In Dattatraya Shivaji Thorwat (supra), learned Single Judge of this Court held that, "*Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same case of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are 'cause of action estoppel' and 'issue estoppel'.*"

31. It is significant to note here that after issuance of notice to the Wakf Board in Contempt Petition No. 116/2008, Wakf Board through its Chief Executive Officer has tendered apology for issuing notice dated 24.09.2007 and contempt petition was disposed on 10.11.2009. Though, Wakf Board is well aware of all these facts and has tendered unconditional apology,

is erroneously claiming that suit properties are Wakf properties.

32. Since, there are orders on record of the competent Civil Courts and authorities declaring that the suit properties, are neither Wakf properties nor Government properties in view of Pathak Commissions report and order of Sub Divisional Officer dated 21.06.1995, passed under section 20 of MLR Code, which has attained finality, the correspondence between respondent Nos. 13 to 15 on 04.02.2008 and 09.04.2008 is unwarranted and uncalled for.

33. In *Garment Craft (supra)*, while considering the exercise of supervisory jurisdiction of High Court, the Apex Court has held; "*Trial Court has passed a reasoned decision on elaborate consideration of relevant facts and therefore, it did not warrant interference in exercise of supervisory jurisdiction*".

In the present case while passing the impugned orders SLR and DDLR have recorded perverse findings, ignored the relevant decisions which are applicable to the facts of the present matters and have exceeded the jurisdiction vested in them. In this view of the matter, petitioners have made out a case to exercise supervisory jurisdiction under Article 227 of the Constitution of India.

34. In Kanchi Kamamma (supra), learned Single Judge of Andhra Pradesh High Court held that, '*civil suit filed by alienee of co-owner's in undivided share is maintainable against total strangers, trespassers for possession of entire property*'.

This decision is distinguishable on facts and has no application the facts of the present case.

35. For the aforestated reasons, following order is passed:

ORDER

- (i) Writ petitions are allowed in terms of prayer clause (ii), (iii) and (iv).
- (ii) Impugned orders dated 20th March, 2007 and 19th December, 2007, passed by the SLR and DDLR, respectively, are hereby quashed and set aside.
- (iii) Appeal Nos. 49/2006 and 50/2006 are dismissed.
- (iv) Letters dated 04.02.2008 and 09.04.2008 are hereby quashed and set aside.
- (v) Civil applications are accordingly disposed of.

Rule is made absolute in the above terms.

[NITIN B. SURYAWANSHI, J.]