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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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RSA-2276-1990 (O&M).
Reserved on: 09.07.2024.
Date of Decision: 02.08.2024.

PUNJAB WAKF BOARD, AMBALA CANTT.

... Appellant

Versus

MANDIR GURU RAVI DASS PUNDRI ETC.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Gurbachan Singh Bhatia, Advocate,
for the petitioner.

Mr.Divyadeep Walia, Advocate,
for respondents No.1 to 3.

VINOD S. BHARDWAJ, J.

The defendant-Punjab Wakf Board is in Regular Second Appeal against the judgment and decree dated 10.09.1988 passed by the Court of Sub Judge First Class, Kaithal as well as the subsequent dismissal of appeal No.37/13 of 1989 by the Additional District Judge, Kurukshetra vide judgment and decree dated 04.06.1989.

2. Briefly summarized, the facts of the present case are that the respondents-plaintiffs instituted a suit for declaration to the effect that they

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are the owners in possession of the suit land comprising in Khewat No.63 min, Khatoni No.1079, Killa No.330 situated within the revenue estate of village Pundri over an area measuring 1 kanal 08 marlas situated within the Municipal limits and as shown in the jamabandi for the year 1975-76. It was averred that the plaintiff is a registered Society and that a *pucca* Mandir of Guru Ravi Dass has been constructed on a portion of the suit land, since time immemorial, and shops have been constructed on the remaining portion for the benefit and maintenance of the said Mandir. The suit land was stated to be wrongly recorded as a graveyard of the Mohammedans and there is no Muslim population in the village since 1947 i.e. after the independence. The land was never used as a graveyard of Mohammedans even prior to 1947 and that the same has been wrongly recorded as graveyard in the revenue record. Taking benefit of the wrongful entry in the revenue record, the Wakf Board got the same notified as a wakf property from the Central Government under Section 5 of the Wakf Act, 1954. No notice was served prior to issuance of the said notification. Hence, the suit for declaration was filed after the appellant-defendant started interfering in the possession of the respondents-plaintiffs over the suit land and claiming themselves to be the owners thereof.

3. The appellant-defendant Punjab Wakf Board filed its reply raising objections regarding the *locus standi* of the respondents-plaintiffs to institute the suit as well as the same being barred by limitation. Further objection was also raised that the suit was liable to be dismissed for want of

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notice under Section 56 of the Wakf Act, 1954. The appellant-defendant denied the existence of any Mandir on the suit land. It was averred that the shops have been constructed on the suit land by the defendant Board and the rent is being received by them and Mandir has no connection with these shops. Various other objections were raised and the averments contained the plaint were denied by the appellant-defendant. It was asserted that the revenue record reflected the correct picture and that the said revenue record was never challenged by the respondents-plaintiffs. The land cannot be said to have been in possession of the respondents-plaintiffs since time immemorial considering that as per the case of the respondents-plaintiffs themselves, the work of laying of foundation stone in the suit land for construction of Dharamshala was itself done in the year 1961.

4. Defendant No.2-Baba Sewa Dass filed a separate written statement taking objections regarding the maintainability of the suit and also the same being barred for want of sanction from the Advocate General as per the provisions of Section 92 of the Code of Civil Procedure, 1908. It was stated to be filed as a counterblast to the suit for permanent injunction filed by defendant No.2 against the respondents-plaintiffs. It was averred that the respondents-plaintiffs were not aware of the notification issued under Section 5 of the Wakf Act, 1954.

5. On completion of the pleadings, the following issues were framed:-

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- “1) Whether the notification issued u/s 5 of Wakf Act is illegal, void and not binding upon the rights of the plaintiffs? OPP.
- 2) Whether the plaintiffs are owners in possession of the suit property? OPP
3. Whether the suit is within time? OPP
4. Whether the suit is barred by the principle of res judicata? OPP
5. Whether the plaintiffs are estopped to file the present suit by way of his own act and conduct? OPD
- 6) Whether the suit is not maintainable as alleged? OPD 2
- 7) Whether the suit is time barred under section 92 of CPC? OPD
- 8) Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
- 9) Relief.”

6. After considering the evidence and on appreciation thereof, the suit was decreed in favour of respondents-plaintiffs by relying on EX.PW9/A (maps of the shops in dispute) that were got sanctioned by the respondents-plaintiffs as well as the record of the House Assessment Register of the Municipal Committee, Pundri. It was also held that the service of notice under Section 56 of the Wakf Act, 1954 was not necessary since the respondents-plaintiffs were not Muslims/Mohammedans and the suit was also held to be within limitation as the respondents-plaintiffs are non-Muslims and thus, the limitation of one year would not be applicable.

7. Aggrieved thereof, the Wakf Board filed the appeal before the

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District Judge, Kurukshetra which was dismissed by the Additional District Judge, Kurukshetra vide judgment and decree dated 04.06.1989. The Appellate Court observed that in the revenue record, the suit land was shown to be in possession of '**Makbuzahle Islam**' and nature of land has been shown as '**Gair Mumkin Kabristan**' and such entries continued upto jamabandi for the year 1975-76 (Ex.P-10). It was held that except an entry in the revenue record, there is no evidence on the file to establish that the land of Khasra numbers 330, 331, 332, 333, 335, 336 to 350 was being used as Kabristan and as such, the notification under Section 5 of the Wakf Act, 1954 does not bind the defendant-appellant who is the stranger and in possession of the property. Hence, the present appeal has been filed.

8. Learned counsel for the appellant-defendant contends that the judgments and decrees passed by both the Courts are liable to be set aside since the mandate of a statutory notice under Section 56 of the Wakf Act, 1954 has not been complied with and the same would render the suit liable to be dismissed in view of the settled position of law and merits thereof cannot be examined. He places reliance on the judgment in the matter of **Sialkot National High School and another Vs. Punjab Wakf Board, reported as 2018 (1) RCR (Civil) 148(2)** and **Ram Partap Vs. Punjab Wakf Board, Ambala Cantt. and others, C.R No.1773 of 2007, decided on 03.04.2007.**

9. He contends that the notification EX.D14 clearly shows that the land in dispute was declared as wakf property and the mutation EX.D15,

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in favour of the Wakf Board, was also entered. Once the notification as well as the revenue record is not in dispute, it is not for the learned Civil Courts to go into the nature of the land but for no valid reasons, the learned Courts refused to give due significance to the revenue record with respect to the use and nature of the land. It is contended that there is neither any challenge to the revenue record nor any prayer has been made for correction of the revenue record, which recorded the land as graveyard/kabristan.

10. It is also argued that the notification EX.D14 was published in December 1970 whereas the suit for declaration had been filed on 04.08.1983. The suit was thus hopelessly time barred as the limitation prescribed for challenging the same is three years. He submits that the respondents-plaintiffs themselves placed reliance on the revenue record showing the property in question to be kabristan and in possession of '**Ahle Islam**' and shown as '**Gair Mumkin Kabristan**' and even the trial Court has observed in para No.18 of the judgment as under:-

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“no doubt in the revenue record, owner of the site in dispute has been shown as Ahle Islam, Central Governmentl and site in dispute has been shown to be Gair Mumkin Kabristan. Admittedly there are shops on the site in dispute, therefore, authority on which reliance has been placed by the counsel for defendant no.1 are not identical to the present case.”

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11. He submits that notwithstanding the specific findings, the suit has been decreed in favour of the respondents-plaintiffs ignoring the right and title of the appellant-defendant. He submits that the law is well settled that once a property becomes a wakf property by user and inclusion of the Wakfs, the same continues to remain as a wakf property. Reliance in this regard is placed on the judgment in the matter of **Kullu Ram Vs. Punjab Wakf Board, Ambala and others, reported as 2016 (3) RCR (Civil) 977.**

The relevant extract is reproduced as under:-

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*“16. It is settled principle of law that once a wakf always a wakf. The property which has been found as a wakf always retain its character as a wakf. Mere leasing out of such property in any manner will not nullify the original character of the property. Reference can be made to case **Sayyed Ali Vs. Andhra Pradesh Wakf Board, Hyderabad 1999 (2) RCR (Civil) 32.**”*

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12. Reliance is placed on the judgment of the Hon’ble Supreme Court in the matter of **Punjab Wakf Board Vs. Raj Rani (Dead) through LRs, reported as 2016 (1) RCR (Civil) 266,** wherein it was held by the Hon’ble Supreme Court that once the suit property was declared as Wakf property, by issuance of a notification, in the absence of any challenge, threats, the Court shall have to draw presumption with regard to

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the genuineness of the Notification, as provided under Section 81 of the Evidence Act. The relevant extract thereof is reproduced as under:-

“14. Admittedly, no one challenged the genuineness of the Notification whereby the suit property was declared as Wakf property at any stage of the proceeding. In the absence of such challenge, the Court shall have to draw presumption with regard to the genuineness of the Notification, as provided under Section 81 of the Evidence Act. Moreover, neither the first Appellate Court nor the High Court has considered and noticed the provisions of Section 5 of the Wakf Act, 1995 (Section 5 of the Old Wakf Act, 1954).”

13. A reference is also made to the judgment in the matter of **Punjab Wakf Board, Ambala Cantt. Vs. Punjab State through the Collector, Hoshiarpur, reported as 1997 (4) RCR (Civil) 83.** The relevant extract reads thus:-

“8. I have heard learned counsel for the appellant and have carefully scrutinised the record. A perusal of the record would show that in the Jamabandi for the year 1954-55, Exhibit P5, Khasra No. 40 is recorded to be Gair Mumkin Kabaristan in possession of Ahle Islam. To the same effect, are the entries in the Jamabandi for the year 1967-68, Exhibit P-1 in which suit property is recorded as Gair Mumkin Kabaristan in possession of Ahle Islam. Again in the Jamabandi for the year 1972-73, Exhibit P-6, Khasra No. 40 (8-0) is recorded to be in possession of Ahle Islam through Government Primary School. Entries in the record of rights carry a presumption of truth,

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though that presumption is rebuttable one. From the documents referred to above, it is clearly proved that the property in dispute is a wakf property. No doubt, in these documents, Panchayat Deh is recorded to be the owner of Khasra No. 40 but no document or decree of any court is available on the record to show how and in what manner Panchayat Deh came to be recorded as owner of the suit property. Statement No. 1, Exhibit P-2, is a statement showing Wakf property situated in Tehsil Garhshankar, District Hoshiarpur, Khasra No. 40(8-0) in the Jamabandi for the year 1962-63 is mentioned as graveyard as before. It is also mentioned therein that there is a Government Primary School in the area of one Kanal and remaining seven Kanal area is vacant.

9. Exhibit P-3 is the Gazetted Notification publishing a list of Wakfs existing in composite Punjab State containing particulars as prescribed in Rule 4 of the Punjab Wakf Rules 1954 issued by the Punjab Wakf Board exercising the powers conferred by Sub-section (2) of [Section 5](#) of the Act. A perusal of it would show that the Notification contains all the details of the suit property indicating that Khasra No. 40 has an area of 8 Kanals in village Mehmudpur and is a graveyard. Value of this property is shown to be Rs. 2,000/-. In column No. 14, it is recorded to be in physical possession of Government Primary School. No foundation has been laid in the written statement challenging the validity of the statement of Wakf properties, Exhibit P-2 and the Notification Exhibit P-3. The statement, Exhibit P-2 and Notification, Exhibit P-3 the correctness of which was not challenged at any point of time are exclusive and recitals therein have become final. Both the Courts below

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*have not taken note of this aspect of the matter which led them to slip in error. In the revenue record the, property in dispute is recorded as Gair Mumkin Kabaristan and in possession of Ahle Islam, and that by itself goes to show that the property in dispute became the Wakf Property by user. The observations of the first appellate Court that there is not a shred of evidence about permanent dedication of the suit property by a person professing Islam for any purpose recognised by the Muslim law as pious, religious and charitable and that there is no evidence of the suit property having become wakf by immemorial user are not in consonance with law. A reference may advantageously be made to [Syed Mohd. Salie Labhai \(Dead\) by L.Rs. and Ors. v. Mohd. Hanifa](#) (dead) by L.Rs. and Ors., A.I.R. 1976 S.C. 1569. In view of [Sections 5](#) and [6](#) of the Act the list of wakfs published in the Gazette shall be final and conclusive qua the Board the Mutwallis of the Wakfs or any other person interested therein. The further observation of the lower appellate Court that there is no evidence that in this district any Muslims were residing after the partition of India sub-continent in the year 1947 is not based on any evidence and is conjectural one. In view of the decision of the apex Court in [Syed Mohd. Salie Labhai's](#) case (supra). the decision in *Punjab Wakf Board v. Commissioner, Patiala Division and Ors.*, 1973 Revenue Law Reporter 467, loses its vigour.”*

14. A strong reliance was made to the judgment in the matter of **Punjab Wakf Board Vs. Chhailu, reported as 1986 R.R.R. 217**, as per which it is held that once jamabandi entry show land in dispute as Ghair Mumkin Kabrastan, description of burial ground in revenue records as

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public graveyard it is a conclusive proof of public graveyard and failure of wakf Board to prove user of land as Kabrastan after 1947 i.e. failure to establish user of land as Kabrastan is of no effect. The relevant part of the judgment reads as under:-

*“3. A Single Bench judgment of this Court in **Panchayat Deh through Sarpanch and Gram Sabha, Garhi Brahman v. Punjab Wakf Board, Ambala, AIR 1969 Punjab and Haryana 344**, held that the entry in the Jamahandi of the kind would be of no help if the user of the land in dispute as Kabrastan had not been established. Regarding the user it was held by both the Courts below that the Wakf Board had failed to prove the user of the land as Kabrastan after the year 1947. Following the ratio of the aforesaid judgment the trial Court dismissed the suit. The appeal filed by the plaintiff also failed.*

*4. In view of the following observation of their Lordships in **Syed Mohd. Salie Labbai (Dead) by LRs and others v. Mohd. Hanifa (Dead) by L.Rs, and others, AIR 1976 Supreme Court 1569**, the circumstance of non-user of the burial ground would not defeat the claim of the Wakf Board to the possession of a grave yard. "It is also well settled that a conclusive proof of the public grave-yard is the description of the burial ground in the revenue records as a public grave-yard."*

15. He submits that claim of the appellant-defendant has been rejected only by placing on record the copy of House Tax Assessment Register and sanction of the plan. He submits that the House Tax Assessment Register is not the proof of ownership and in the absence of any

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such document, a declaration in favour of the respondents-plaintiffs could not have been issued.

16. Learned counsel for the respondents-plaintiffs, on the other hand, submits that the notification under Section 5 of the Wakf Act, 1954 is an act done by the Central Government under Section 4 and that there is no mandate of service of advance notice for any acts of the Central Government undertaken in exercise of powers under Section 4 of the Wakf Act.1954. He contends that the notification Ex.D-14 produced by the Wakf Board is not the original copy of the notification and is only the list of properties prepared by the appellant-defendants. The said notification is not binding on non-Muslims and is not conclusive. It is further argued that the Municipal Committee, Pundri existed for last 60-65 years and Mandir has been in existence since time immemorial. He submits that Ex.P12 and P-14, which are the copies of khasra girdawris for the years 1981 to 86, reflect the possession and nature of the land to be Kabristan. He submits that even in the averments contained in the written statement, there is no suggestion about the nature of the suit land as Kabristan and there has been no burial on the suit land for the last 40-50 years. There is undisputedly a Mandir existing on the suit land. There is no evidence regarding dedication of the suit land to the Board or regarding the presence of any Muslim Population in the area of village Pundir. He submits that the property cannot be treated as a wakf property.

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17. An argument is raised by the counsel that the serving of advance notice of the acts undertaken under Section 4 of the Wakf Act is not required. He places reliance on the Division Bench judgment of this Court in the matter of **Punjab Wakf Board Vs. Joint Development Commissioner, reported as 2008 (4) RCR (Civil) 693**. The relevant extract is reproduced as under:-

“15. The case of the petitioner is covered by the ratio of the judgment of the Hon’ble Supreme Court in Punjab Wakf Board v. Gram Panchayat, 2000(2) PLJ 91. The said judgment deals with identical question of law and facts and the judgment relied upon by the petitioner Re. Sayyed Ali and others v. A.P. Wakf Board Hyderabad and others, 1998(2) PLJ 642 has been considered in Punjab Wakt Board's case, 2000(2) PLI D3 (supra) and, therefore, the said judgment relied upon by the petitioner is not applicable to the facts of the, presort case

*16. As per Section 310 of the Wakf Act, 1995, the essentials of Wakf are (1) dedication by a person professing Islam for a pious, religious or charitable purpose (1) by way of user. Both the ingredients are missing in the present case. Moreover, notification is not a conclusive proof of ownership of Wakf Board and Wakf Board has to show that the land was dedicated by a Muslim person professing Islam for charitable purposes and it has to be proved that the land was used as a Kabriston but in the case in hand, none of the ingredients is present. The issue in dispute has been discussed in the case reported as **Dev Raj v. Teja Singh, 2004(2) PLR 709**.*

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17. *The argument of the learned counsel for the petitioner does not carry weight as admittedly no notice as per notification was issued to the Panchayat before inclusion of the property in wakf properties Moreover, limitation of one year does not apply for filing the suit by the Panchayat who is a third party as held by the Supreme Court in **Punjab Wakf Board's case (supra) and in Abdul Rais and others v. Madhya Pradesh Wakf Board and others, 2005(1) Apex Court Judgments 433.***

18. *Even in the jamabandis for the years 1961-62 and 1971-72 on which the petitioner-Board Is relying, the Gram Panchayat has been recorded as owner of the property. The Panchayat has throughout been recorded as owner even before 1947 and the land in dispute has been Shamtal Deh. The fact regarding ownership of the Gram Panchayat has been admitted by the Punjab Wakt Board through official witness Mohmood Hassan, who appeared as RW-5 before D.D.PP. as is clear from the order dated May 29, 2003 and the land has been recorded in the name and ownership of the Panchayat. It has also been admitted by RW-5 that neither any notice was served nor any objection was invited from the Gram Panchayat per provisions of Wakf Act before land was included in the notification. Moreover, the land has never been used as Kabristan and there are no Muslim houses in the Village.”*

18. He submits that the notification of list of wakf properties is an act done by the Central Government hence, the question of serving of advance notice does not arise. He further submits that no application for treating the issue of serving of notice as a preliminary issue under Order 14

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Rule 2 of the Code of Civil Procedure, 1908 was moved and further no application was filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908, and that the suit cannot be said to be bad in law for the said objections.

19. No other argument has been raised.

20. I have heard learned counsel appearing for the respective parties and have also gone through the documents available on record with their able assistance.

21. Learned counsel has vehemently argued about the applicability of Section 56 of the Wakf Act, however, in order to appreciate the same, it would be relevant to refer to the certain relevant statutory provisions of the Wakf Act, 1954, which are as under:-

Section 3. Definitions

1) wakf means the permanent dedication by a person professing Islam [or any other person] of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes

(i) a wakf by user [but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser];

[(ii) grants (including mashrut-ul-khidmat [muafies, khairati, qazi services, madadmash]) for any purpose recognised by the Muslim law as pious, religious or charitable; and]

[(iii) a wakf-alal-aulad;]

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[Provided that in the case of a dedication by a person not professing Islam, the Wakf shall be void if, on the death of such person, any objection to such dedication is raised by one or more of his legal representatives:]

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

- (a) summoning and examining any witness;*
- (b) requiring the discovery and production of any document;*
- (c) requisitioning any public record from any court or office;*
- (d) issuing commissions for the examination of any witness or accounts;*
- (e) making any local inspection or local investigation;*
- (f) any other matter which may be prescribed.*

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

[(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to

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such survey as they apply to a survey directed under sub-section (1):

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

Section 5. Publications of list of wakfs

(1) On receipt of a report under sub-section (3) of Section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish, in the Official Gazette, a list of wakfs [in the State, or as the case may be, the part of the State, whether in existence at the commencement of this Act or coming into existence thereafter,] to which the report relates, and] containing such particulars as may be prescribed.

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Section 56. Notice of suits by parties against the Board

No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

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22 Considering the arguments advanced by the parties in light of the above, even though the learned counsel for the respondents-plaintiffs has argued that the mandate of Section 56 is applicable only with respect to an Act of Board and that publication of the notification under Section 5 of the Wakf Act is an act of the Government and as such, notice is not required. However, a complete reading of the aforesaid statutory provision shows that so far as the act of publication of list of wakf properties in the official gazette is concerned, the same is to be got published by the Board itself.

23 The act of the Government under the Wakf Act, 1954 is to forward the survey report to the Board which then publishes the same in exercise of powers under Section 5 (2) of the Wakf Act, 1954. The notification is thus an act of the Board.

24 The Government thus only becomes the publisher of the gazette and the act of publishing is not an act of the Government. The act of the Board gives rise to the applicability of Section 56 of the Wakf Act, 1954. Hence, the institution of the suit without any prior notice was barred. The contention of the respondents-plaintiffs that issuance of notice was not required is thus not sustainable as per plain reading of the provisions of Sections 5 and 56 of the Wakf Act, 1954. I am also supported in my aforesaid view from the judgment of this passed in **RSA No.1845 of 2016 titled as “Sialkot National High School and another Vs. Punjab Wakf**

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Board and another, decided on 03.12.2017. The relevant paras No.9 to 12 are extracted as under:-

“9. The suit was filed primarily against the Wakf Board. Defendant No.2 was impleaded by name as an Estate Officer. The plaintiffs had prayed for injunction against the defendants. Therefore, the main defendant in the case was the Punjab Wakf Board. As per [Section 89](#) of the 1995 Act, no suit can be instituted against the Wakf Board without service of prior notice.

10. Learned counsel for the appellants has relied upon the judgement passed by this Court, reported as Arya Prithinidhi Sabha (Punjab), Jullundur Now Haryana Sirsa Vs. Punjab Wakf Board, Ambala Cantt. and others, 2000(1) PLR 92 to contend that the suit could continue against defendant No.2.

11. I have considered the submission of the learned counsel for the appellants and gone through the judgement passed by this Court.

12. In the aforesaid judgement, this Court was deciding revision petition against the order rejecting the plaint. This Court found out that the 3 of 5 suit could continue against defendants No.2 to 10. The facts in that case were entirely different. The aforesaid judgement does not as a proposition of law, lays down that if in a suit apart from the Wakf Board, its officials are also impleaded as a party then the suit against such officials can be maintained even without notice. Learned counsel for the appellants has further referred to the judgement passed by the Himachal Pradesh High Court reported as [The Jawali Harijan Co-operative Agricultural Society Vs. Maghu,](#)

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1992 AIR (H.P.) 34. A careful reading of this judgement shows that the Court did not hold as sought to be projected. Therefore, findings of the Courts below that the suit was not maintainable is upheld.”

25 Reference is also being placed on the judgment in the matter of **Arya Prithinidhi Sabha (Punjab) Jullundur Now Haryana Sirsa Vs. Punjab Wakf Board, Ambala Cantt. and others, reported as 2000 (1) PLR 92**, where the suit was dismissed for want of statutory notice. Relevant para No.9 of the judgment reads as under:-

“9. If the trial Court came to the conclusion that the mandatory notice was required on the part of the plaintiff, it could reject the plaint of the plaintiff with regard to defendant No. 1 only and not with regard to the other defendants. In this view of the matter, an illegality has been committed by the Court below. The entire suit of the plaintiff has been dismissed.”

26 Similar position was also followed by the Karnataka High Court in the matter of **Syed Abdul Jabbar and others Vs. The Board of Wakfs in Karnataka and others, Regular First Appeal No.127 of 1980 decided on 25.02.1991** as well as in the matter of **C.A. Khaja Mohidden Sahib and others Vs. Madras State Wakfs Board, passed in Second Appeal No.1432 of 1968 and 1604 of 1969 decided on 21.11.1972**. Further, it is not in dispute that the revenue record pertaining to property shows that the same was **Gair Mumkin Kabristan** and is in possession of **Ahle Islam**.

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The revenue record had never been challenged by the plaintiff. The list of Wakf properties published in the gazette has been held to be final act and conclusive qua the record as per the judgment of this Court in **Punjab Wakf Board, Ambala Cantt. and others (supra)**. The respondents-plaintiffs never raised a challenge to the revenue record and as such, validity thereof cannot be denied or disputed. Even though Section 4 of the Wakf Act, 1954 stipulated conducting of survey of wakf properties existing on the date of the commencement of the Act, however, the said issue does not arise in the facts of the present case since no such objection to the report or the Notification has ever been raised. Even the legality and validity of the revenue record reflecting the property as having been dedicated to wakf and having been used as *Gair Mumkin Kabrastan* even prior to 1947 has not been disputed.

27 The judgment of the Division Bench of this Court in Punjab Wakf Board Vs. State Development Committee, relied by the respondent is not applicable to the facts of the present case, not only in view of the authoritative pronouncement by the Hon'ble Supreme Court but also on factual matrix. In the said case, the land stood in the name of Gram Panchayat in the revenue record and was notified. Against the same, the revenue record of the property showed it as Gair Mumkin Kabristan. The respondent-plaintiff has failed to adduce any evidence as to how and under what circumstances it came in possession over the land and that it was not an encroacher the land. The respondent-plaintiff was required to discharge

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the said burden. However, the Courts have presumed ownership of the respondent-plaintiff over the land on account of the Shops having been got constructed by them and tax being paid by them as per House Tax Assessment Register of the Municipal Committee, Jind.

28 It is well settled position in law that the House Tax Assessment Register is not a proof of ownership and is only for ascertaining the tax liability. Reference in this regard may be made to the judgment of the Punjab and Haryana High Court in the matter of **Inderjit Singh Vs. Gurinderpal Singh, reported as 2017 SCC Online P&H 1938**, and the relevant extract thereof reads thus:-

“13. On perusal of findings recorded by both the Courts below and also the evidence available on record, it has been proved on record by the plaintiff that he is owner in possession of the property in dispute as per conveyance deed Ex.PW5/A and defendants have failed to produce any document to prove as to how they came into possession of the suit property. Onus was upon the plaintiff to prove his right over the property. As per case of the plaintiff, he came to know about the wrong entries made in the Municipal Corporation record subsequently and immediately filed the suit on 02.09.1997. It cannot be said that the suit was not filed within the period of limitation as the limitation is to be counted from the date of knowledge. Although defendant No.1 while appearing as DW1 deposed regarding his peaceful and continuous possession over the suit property but he did not place on record any document to show his ownership over the land in dispute and also with regard to transfer of property. Defendants No. 1 and 2 have only placed

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on record copy of TS-1 register qua assessment of house tax reflecting their names as they have claimed possession over the property on the basis of that entry made in the house tax register. However, the entry in the house tax register does not confer any title. On the basis of said entry made in the house tax register, no relief of declaration can be claimed. The plaintiff has proved on record the conveyance deed Ex.PW5/A. However, defendants have placed on record an agreement dated 11.05.1985 executed inter-se but plaintiff was not a party to that agreement and it does not confer any title over the property in dispute. On the basis of evidence available on record and even in the arguments raised by learned counsel for the defendants, it has not been proved on record as to how and in which manner, they came into possession of the suit property. Even defendants No.1 and 2 have miserably failed to prove that they purchased any piece of land from the mother of plaintiff-respondent No. 1.

29 It was required to be kept in view that the land in question was a part of “recorded land” and not within “Lal Dora.” Hence, the revenue documents showing ownership, possession and its use were being maintained in the regular course of business. Hence, there had to be a valid document establishing transfer of title or possession in favour of the respondent, more-so when title is not being claimed by an adverse possession. The said burden having not been discharged by the respondent-plaintiff and the notification issued under Section 5 of the Wakf Act, 1954 not having been challenged, the finding declaring the respondent-plaintiff as

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the owner is not based on a correct reading and interpretation of law to the facts and evidence brought on record. The finding with respect to Issue No.2 is bad and liable to be set aside.

30 While referring to the findings recorded by the Courts on Issue No.1 as to whether the Notification under Section 5 of the Waft Act, 1954 is illegal, it would be relevant to advert to consideration and finding on the said issue by the trial Court. The same is extracted as under:-

18. I find force in the contention of learned counsel for the plaintiffs. Perusal of EX.PW9/A clearly shows that the map of the shops which are on the disputed site, was got sanctioned by Guru Ravi Dass Sabha. In the House tax Assessment Register of Municipal Committee Pundri, Guru Ravi Dass Sabha has been shown as owner of the same. All the PWs who appeared on behalf of the plaintiff's have categorically stated that from the time immemorial there is a temple of Guru Ravi Dass and it is Guru Ravi Dass Sabha who in managing the affairs of this temple. Previously the site underneath the shops was used to be a passage to the temple and now construction of the shop has been raised over the same by Guru Ravi Dass Sabha. Foundation stone of the Dharamshala was laid down in the site in dispute in the year 1971 by Shri Neki Ram, the then Revenue Minister of Haryana. This fact has been admitted by defendant No.2. According to defendant no.I, the site underneath the shops was allotted by him to different occupiers but nothing has been placed on the file to prove this contention. DW.1 has also admitted that no Mohammedan was buried in his presence in the disputed land. He is not aware as to whether any Mohammedan was buried in the disputed site for the last

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40 years. PW.1 1 has stated categorically that there was no Mohammedan in Pundri prior to 1947 and after the partition of the country there is also no Mohammedan and the site in dispute was never used as grave-yard. The site in dispute was never used as grave-yard. It is never dedicated for the use of the same as grave-yard. No doubt in the revenue record, owner of the site in dispute has been shown as Ahle-Ishlam Central Government and the site in dispute has been shown as gair mumkin Kabristan. Admittedly there are shops on the site in dispute, therefore authority on which reliance in being placed by the counsel for the defendant no.1 are not identical to the present case. Plaintiffs are seeking to get the impugned notification declared null and void, therefore there was no need to issue notice under section 56 of the Wakf Act before filing the present suit. Plaintiffs are not the Mohammedan, therefore this notification is binding upon them, hence the condition for filing the suit within one year, is not binding upon the plaintiffs. They being the strangers and as they are not seeking any relief from the Wakf board and they only want to get the notification declared null and void, therefore condition for filing the suit within one year is not binding upon them

19. Taking into consideration the aforesaid discussion, I decide this issue in favour of the plaintiffs and against the defendants.”

31

Further, the appellate Court recorded as under:-

9. As regards the merits of the case Mandir Guru Ravi Dass brought the suit against the Punjab Wakf Board and

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Baba Seva Dass. Baba Seva Dass also took a stand that he is in possession of the suit property for the last many years. However, after the decision of the trial court he has not filed any appeal and the appeal has been preferred only by Punjab Wakf Board, and the Punjab Wakf Board took a stand that the suit land comprising in Khasra No.330 measuring 1 Kanal 8 Marlas is a Wakf Property as it was being used by the Muslims as a graveyard. It is admitted fact that the disputed portion over which the shops are existing is part of Khasra No.330. The temple Guru Ravi Dass is in existence on the adjoining land since long and the members of Guru Ravi Dass community were using the suit land as a passage to the temple. In the year 1971, Shri Neki Ram laid the foundation stone of the Dharamshala at the disputed place and the gate of Dharmashala exists there. Further some 13 shops were also constructed in the year 1971. There is no dispute about the shops but the case of the appellant Punjab Wakf Board is that they leased out the land in favour of several persons and they constructed the shop with their own funds and they started paying them the rent. But the stand of the plaintiff-respondents is that the shops were constructed by Ravi Dass Sabha and then the same were leased out to different tenants. It was pointed out that these tenants earlier brought the suits against Punjab Wakf Board and other persons jointly wherein they took a stand that the suit land vested in the Punjab Wakf Board and they obtained the land and constructed their shops. But the trial court held that the land on which the construction of the shops was raised belongs to Guru Ravi Dass Sabha. However, it was held that those persons were tenant under the Punjab Wakf Board, despite the fact that those persons failed to establish that Guru Ravi Dass Sabha was owner of the

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property or that the Sabha had rented out the shops in dispute to the plaintiffs. So, the suit of the tenants were decreed restraining the members of Guru Ravi Dass community from interfering with their possession over the shop in dispute. Against that Judgment Madan etc. members of Guru Ravi Dass community preferred appeal against the tenants well as Punjab Wakf board and in that appeal it was held that the question of title was not necessary for the decision of those suits, and it was ordered that the question as to whether or not the Sabha has become the owner of the suit property by adverse possession or as to whether the shops had been constructed by Ravi Dass Sabha and were given on rent to the plaintiffs (in that case) by the Sabha shall be deemed to have not been decided in those proceedings. Punjab Wakf Board was also defendant and finding was recorded against it that the plaintiffs in those suits failed to establish that the Wakf Board was owner of the suit Land. Wakf Board had not preferred and appeal against the finding.

10. In the revenue record, the suit land comprising in khasra No.330 (1-8) has been shown to be in possession of "Makbuzahle Islam" and the nature of the land has been shown as Gair Mumkin Kabristan, and such entries continued upto jamabandi Ex.P10 for the year 1975-76. It was also notified under section 5 (2) of the Wakf Act to be the Wakf property. Copy of notification is Ex.D14. In this document Khasra numbers 330, 331, 332, 333, 335, 336 to 350 total measuring 200 kanals 8 Marlas has been shown as grave yard existing at village Pundri. However, except an entry in the revenue record there is no other evidence on the file to establish that the land of Khasra No.330 was being used and is

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being used as Kabristan. As regards notification under section 5, it does not bind the defendant Ravi Dass Sabha who is a stranger and in possession of the property. It was held, in Punjab Wakf Board Vs. Natha Singh, 1988 PLJ 10 that in case of any dispute between the Wakf Board and the third person the notification under Section 5 (2) of the Act would not be binding upon such third person, for the list becomes final and conclusive against those third persons. It was not necessary for them to file any suit within a period of one year of the publication of that list. Such list can be challenged by such persons in a suit for declaration even after the expiry of period of one year, if the necessary of filing such suit arises.

11. The plaintiff Ravi Dass Sabha examined several witnesses who all deposed that neither any Mohammedan resided at Pundri the suit land was being used as graveyard and that it was being used as a passage for going to Guru Ravi Dass Temple. It has also come in their statements that since the year 1971 the shops were constructed and the foundation stone for Dharamshala was laid by the then Hon'ble Revenue Minister of Haryana. On the other hand, Punjab Wakf Board examined Mohammed Faruq, Aukaf Officer who deposed that according to the record the suit land is wakf property. He admitted that he has no personal knowledge as to whether any Mohammedan was ever burried in the suit land or not but he has stated that there are some signs of old graveyards in the suit land. However, no photograph of any such graveyard or remains thereof have been placed on the file. He did not ever saw the suit land more than a period of one year prior to his appearing in the witness box. To a specific question he stated that he was not aware whether any person was burried in the suit land or

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not during the past 40 years. Janipur s/o Manupuri who appeared as DW.2, however, stated that some Muslims were buried in the suit land in his presence. He named those persons as Basira, Sardani, Zafar Ali and one mother of Bindu besides some other persons. In the cross-examination, he stated that Baba Sewa Dass constructed the temple some 15-20 years ago. He also stated that the persons named above were buried in the suit land some 40-45 years ago. He appeared as a witness at the request of Nikka tenant. He is, thus, interested person because the tenants have claimed that they were given land by Punjab Wakf Board and they constructed the shops of their own and that they are not the tenants of Ravi Dass Sabha. Moreover, even in the statement of this witness it has come that no Muslims were buried in the suit land for the last 40-45 years. The defendant's case in not the suit land was Wakf by user. They have not proved it was the Wakf by dedication. So, they have to show that the suit land was ever used as Wakf property or that any person of the Muslim community buried there. No Mohammedan is residing at Pundri, otherwise any one of them could appear in the witness box. It is the respondent's version that no Muslim is ever resided at Pundri. There is Municipal Committee at Pundri for the last about 60-65 years. So, some documentary evidence could be led that some Muslims resided at Pundri. In case there were any Muslim family residing at Pundri before partition, their property must have fallen to custodian and so the evidence regarding that property could be led that the custodian sold it to any person. No voters list, house tax assessment register, Chuhla tax record, has been produced on the file that any Muslim ever resided at Pundri earlier to the partition of the country. So, it does not stand established that the suit land was

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ever used as a graveyard either prior to the partition of the country or thereafter. It has come in the statement of DW.2 Janipuri that no Muslim was burried within a period of last 40-45 years. The Temple Guru Ravi Dass exists there for the last about 30-40 years. The shops exist since the year 1971-72. So, the notification issued under section 5 of the Wakf Act is not binding upon the plaintiffs and the plaintiffs Mandir Guru Ravi Dass is owner in possession of the suit property. So, the finding of the learned trial court on Issues No.1 and 2 is upheld.”

32 It is evident from a perusal of the same that the Courts have failed to appreciate a position in law and have been swayed merely by the House Tax Assessment Register, construction of shop and collection of rent by the respondent-plaintiff.

33 For raising a challenge to the notification, it is required to be established that the notification is unconstitutional, violates statutory provisions or was moved without following the proper procedure or is published exceeding the authority. Besides, the challenge has to be before the competent Forum. A challenge to the notification under a special Statute can only be raised before the specific forum and any other forum cannot exercise a jurisdiction not vested on it as per law.

34 In this regard, reference to “Section 6” and “Section 6-A” of the Wakf Act, 1954, shall be relevant. The same are extracted as under:-

6. Disputes regarding wakfs :-

(1) If any question arises whether a particular property specified as a wakf property in a list of wakfs published under

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sub-section (2) of section 5 is a Wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final:

Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of section 5 .

Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, such suit may be entertained by the civil court within the period of one year from such commencement.

Explanation.- For the purposes of this section and section 6A, the expression "any person interested therein", occurring in sub-section (1) of this section and in sub-section (1) of section 6A, shall, in relation to any property specified as wakf property in a list of wakfs published, under sub-section (2) of section 5, after the commencement of the Wakf (Amendment) Act, 1984, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section.

(2) Notwithstanding anything contained in sub-section (1), no

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proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

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

(4) The list of wakfs published under sub-section (2) of section 5 shall unless it is modified in pursuance of a decision of the civil court under sub- section (1), be final and conclusive.

(5) On and from the commencement of the Wakf (Amendment) Act, 1984 in a State, no suit or other legal proceeding shall be instituted or commenced in a civil court in that State in relation to any question referred to in sub-section (1).

6A. Power of Tribunal to determine disputes regarding wakfs :-

(1) If, after the commencement of the Wakf (Amendment) Act, 1984, any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of Section 5 is wakf property or not, or whether a wakf specified in such list is a Shia Wakf or a Sunni Wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that-

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(a) in the case of the list of wakfs relating to any part of the State and published or purporting to have been published after the commencement of the Wakf (Amendment) Act, 1984, no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs under sub-section (2) of section 5; and

(b) in the case of the list of wakfs relating to any part of the State and published or purporting to have been published at any time within a period of one year immediately preceding the commencement of the Wakf (Amendment) Act, 1984, such an application may be entertained by the Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not reopen such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5) no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or of any appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Wakf Commissioner shall not be made a party to any application under sub-section (1).

(4) The list of wakfs published under sub-section (2) of section 5, and where any such list is modified in pursuance of a

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decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Wakf (Amendment) Act, 1984, or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, Proceeding or appeal, as the case may be.”

35 Section 6 conferred the power on the Civil Court to rule on the issue but limitation to the challenge was one year from the date of publication of the notification under Section 5 (2) of the Wakf Act, 1954. Undisputedly, the Notification under Section 5 (2) of the Wakf Act, 1954 (Ex.D-14) was published in December 1970 while the suit was filed in the year 1983. The respondent-plaintiff although sought a declaration as an owner but never sought a declaration to the effect that the notification was bad and liable to be set aside. The cause of action being available and having still not challenged would estop the respondent-plaintiff from discrediting the Notification or even for the Court to declare the same as null and void, notwithstanding the bar of limitation. Both the Courts failed to consider that the Notification under Section 5 (2) of the Wakf Act, 1954 is a proof of ownership of the Wakf and that unless a challenge is made to

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the Notification as being bad and not binding on the rights, the respondent-plaintiff could not be declared as the owner. The cardinal principle and essential step has been overlooked thus causing an erroneous conclusion.

36 There being no challenge, no admissible evidence pertaining to constitutionality, legality or competence has been brought before the Court. Yet, the jurisdiction has been exercised and the notification has been set aside by implication. The law needs no elaboration that what cannot be done directly cannot be done indirectly. The above legal position finds a reiteration in the judgment of the Hon'ble Supreme Court in the matter of **Delhi Administrator Vs. Gurdip Singh Uban and others, reported as (2000) 7 SCC 296.** The relevant extract thereof reads thus:-

"17. We next come to applications described as applications for 'clarification', 'modification' or 'recall' of judgments or orders finally passed. We may point out that under the relevant Rule XL of the Supreme Court Rules, 1966, a review application has first to go before the learned Judges in circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be issued.

"Order XL. R3 states as follows:

Order XL .R3: Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any arguments, but the petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite party...."

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In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of Court and to preclude frivolous review petitions being filed and heard in open Court. However, with a view to avoid this procedure of 'no hearing', we find that sometimes applications are filed for 'clarification', 'modification' or 'recall' etc. not because any such clarification, modification is indeed necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in Chambers by way of circulation. Such applications, if they are in substance review applications, deserve to be rejected straightway inasmuch as the attempt is obviously to by-pass Order XL. Rule 3 relating to circulation of the application in Chambers for consideration without oral hearing. By describing an application as one for 'clarification' or 'modification', - though it is really one of review - a party cannot be permitted to circumvent or by-pass the circulation procedure and indirectly obtain a hearing in the open Court. What cannot be done directly cannot be permitted to be done indirectly. [See in this connection a detailed order of then Registrar of this Court in Sonelal and Ors. v. State of UP: 1981 (1982) 2 SCC 39,8 deprecating a similar practice.]”

37 Both the Courts have clearly fallen in an error due to a crafty pleading in the suit and failed to appreciate the true nature of the relief. Every Court needs to sift the actual dispute and portrayal thereof and then return the findings. The respondent-plaintiff was clearly aware of the limitation to challenge the notification and hence resorted to a deft and

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clever drafting to achieve the end result in a circuitous manner and to overcome the bar of limitation. The Courts failed to find any error in the procedure or competence to issue the notification and also failed to notice that the undisputed revenue entries also showed in favour of the appellant. They also failed to understand that the legal position with regard to the property of Wakf is as per the initial dedication and not on the basis of the user to which it may be put over a period of time. There is no mandate that a Wakf property must continue to be put to one use only for all times and the same cannot even be read into law. Hence, any subsequent change of user cannot change the ownership of the property and it cannot be said that it is no longer a Wakf property.

38 Surprisingly, the Courts chose to disregard the revenue record despite noticing the same. The finding on the said issue is also liable to be set aside for the above reasons as the same are not supported by the position in law.

39 Besides, the foundation stone laying ceremony with respect to the Mandir is stated to have taken place in the year 1971. It would be incomprehensible that the if the Mandir, as alleged would have been in existence on the above said land, the said factual aspect would have been reflected in the khasra girdawaris. It probably seems that the property was taken possession around the year 1971 only by way of laying of foundation stone by the then Minister without any valid document. Since Muslim population of that area had already left after partition, hence, the said land

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may not have actually been used as a Kabristan, however, the testimony of the witnesses have still supported that there had been certain burials that took place at the site. Janipuri who appeared as DW.2 deposed that there has been no burial of Muslims during the last 40-45 years. It has however been averred in the testimony of the said witness that the temple of Guru Ravi Dass Ji was constructed later in point of time and was of recent existence. Both the Courts have acknowledged that the revenue record pertaining to the land in dispute shows the suit property to be in possession of *Ahle Islam* and as *Gair Mumkin Kabristan*. Hence, issuance of notification by the Board was on the basis of the revenue record maintained even prior to the Independence. Mere change of user later in point of time, on account of exigencies, cannot change the nature and character of the property.

40 The present regular second appeal is accordingly allowed for the aforementioned reasons. Judgments and decrees passed by both the Courts are set aside. The suit of the respondents-plaintiffs seeking declaration as owners in possession of the suit property is dismissed.

41 Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

August 02, 2024.

raj arora

(VINOD S. BHARDWAJ)

JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No