



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 100 OF 2021

Suresh s/o Premchand Mutha
Age 63 years, Occ. Business,
R/o. Plot No. 81, Samarth Nagar,
Aurangabad.

... **Applicant**
(Original Deft.No. 1)

VERSUS

- 1) Adil Bin Sayeed Bin Hilabi,
Age 42 years, Occ. Business,
R/o. Bukkalguda, Shaha Bazar,
Behind Hindi Vidyalaya, Aurangabad.
- 2) Vyankateshwar Gangadhar Kakade,
Age 35 years, Occ. Business,
R/o. N-3, CIDCO, Aurangabad.
- 3) Maheboob Khan s/o Nazir Khan,
Age 52 years, Occ. Rickshaw Driver,
r/o. Peer Bazar, Osmanpura, Aurangabad.
- 4) Azar Khan s/o Nazir Khan,
Age 48 years, Occ. Rickshaw Driver,
R/o. Peer Bazar, Osmanpura, Aurangabad.
- 5) Zafar Khan s/o Nazir Khan, ... Deleted.
- 6) Mazhar Khan s/o Nazir Khan,
Age 43 years, Occ. Rickshaw Driver,
R/o. Peer Bazar, Osmanpura, Aurangabad.
- 7) Shahanaz Begam w/o Saheb Khan,
Age 65 years, occ. Household,
R/o. Opp. Sagar Hotel, Buddi Lane,
Aurangabad.
- 8) Mumtaz Begam w/o Mohammad Hanif ... Deleted.
- 9) Qadeer Khan s/o Sher Khan,
Age 74 years, Occ. Business,
R/o Peer Bazar, Osmanpura, Aurangabad.

- 10) Sayyad Azimuddin s/o Syed Habibuddin ... Deleted.
- 11) Fayyaz Khan s/o Ahmed Khan,
Age 68 years, Occ. Business,
R/o. Opp. Basara Hotel, Raja Bazar,
Shahgunj, Aurangabad.
- 12) Syed Halimuddin s/o Syed Ishaquddin ... Deleted.
- 13) Ehtesham Ahmed Shuttari s/o Farooq
Ahmed Shuttari, Age Major, occ.
Business, r/o. Nawabpura, Raza Bazar,
Aurangabad.
- 14) Rizwan Ahmed Shuttari s/o Farooq Ahmed
Shuttari, Age Major, Occ. Business,
R/o. Nawabpura, Raza Bazar,
Aurangabad.
- 15) Aqib Ahmed Shuttari s/o Farooq Ahmed
Shuttari, Age Major, occ. Business,
r/o. Nawabpura, Raza Bazar, Aurangabad.
- 16) Azam Khan s/o Afzal Khan ... Deleted.
- 17) Mohammad Yusuf s/o Abdul Karim ... Deleted.
- 18) Maharashtra State Board of Wakfs
Panchakki, Aurangabad ... Respondents
(Resp. No. 1 -original plaintiff and
resp.no. 2 to 18 original defts.
2 to 18).

...

Mr. Anand P. Bhandari Advocate for Applicant
Mr. Afzal Hussain M. Vakil, Advocate for Respondent no. 1.
Mr. V.D. Sapkal, Senior Advocate a/w Mr. Atharva D. Khwedkar, learned
advocate i/by Mr. Shaikh Tarek Mobin H. for Respondent no. 9
Mr. Shrimant Mundhe, Advocate for Respondent nos. 13 to 15
Mr. N.E.Deshmukh, Advocate for Respondent no. 18.

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 26.08.2025

PRONOUNCED ON : 03.09.2025

JUDGMENT :

Heard both sides finally with their consent.

2. The applicant/original defendant no. 1 is questioning common order dated 07.09.2021 passed by Maharashtra State Waqf Tribunal, Aurangabad, below Exh, 52 and 53 in Waqf Suit No. 66/2020, rejecting both applications filed under Order VII Rule 11 of the Code of Civil Procedure. Respondent no. 1 is the plaintiff and respondent no. 18 is the Maharashtra State Board of Wakf, who are contesting parties. Application (Exh. 52) was submitted by defendant no. 1 and application (Exh. 53) was submitted by defendant no. 9. The parties re referred to by their original status in the suit.

3. The controversy pertains to 8648 square meters of Survey Nos. 51 and 52 (Gat No. 292 and 293) of CTS No. 14503/1 situated at Usmanpura, Tq. & Dist. Chhatrapati Sambhajinagar, which are claimed to be the property of Waqf Dargah Hajrat Shahanoor Hamvi Reh. The reliefs of declaration, possession and injunction are solicited by the plaintiff. The plaintiff claims to be devotee of Dargah and participants of religious rites at Dargah. He is said to be espousing a cause for protection of the Waqf properties.

4. The plaintiff has filed suit under Section 83 of Waqf Act, 1995 (hereinafter referred as 'Act of 1995') stating that Survey Nos. 51 and 52 are service Inam lands and Waqf properties within meaning of Section 3(k) of the Act. In the year 1983, an order is stated to have been obtained by one Nazirkhan in respect of the suit land showing his name, though it was a Waqf property. On the basis of record of right, illegal sale transactions are alleged to have taken place in favour of defendant no. 1, 10, 11, 16 and 17. It is contended that those transactions are illegal and without permission of Waqf Board. The occupants of the waqf property, on the basis of void transactions are encroachers. The cause of action is stated to have arisen on 11.09.2020, when plaintiff came across illegal possession of defendant no. 1 and he further learnt about illegal transactions. Following reliefs are sought

in the suit:

- “A) Suit of the Plaintiff may kindly be decreed with costs.
- (B) It be declared that, suit property Old Survey Nos.292 and 293, New Survey Nos.51 and 52, now its parts C.T.S. No.14503/1, admeasuring 8648.00 square meters Wakf Property of Dargah Hazrat Shahnoor Hamvi Reh., situated at Osmanpura, Aurangabad is service-inam-land/property of the said Dargah.
- (C) The Defendant Nos. 1 to 17 be directed to handover the vacant and peaceful possession of the suit property No. 18/Wakf Board, to the Defendant”

5. The suit is contested by defendants including present applicant by filing written statements. The common thread of defence is that Survey No. 51 and 52 are not the waqf properties. Those were not included in the list notified. Those are tried to be brought in the list. The defendants have purchased the lands by registered sale-deeds and they are lawfully in possession of the same.

6. The applications, Exh. 52 and 53, were submitted under Order VII Rule 11 of the Code of Civil Procedure on the count that suit land is not a waqf property. There is no government gazette disclosing Survey Nos. 51 and 52 as enlisted properties. Suit is barred by limitation prescribed by Proviso to Section 6 of the Act of 1995. There is no cause of action and whatever cause shown in the plaint is illusory and camouflaged by cleaver drafting. The suit is stated to be vexatious and meritless.

7. Plaintiff contested the applications by filing say. It is reiterated that a letter dated 11.12.1979 is a gazette publication. A corrigendum disclosing inclusion of Survey Nos. 51 and 52 would indicate them to be waqf properties. The judgment dated 21.10.2009 rendered by Chief Executive Officer of respondent no.18-Board unequivocally refers that those are waqf

property. Further reference is made to the judgment passed in Regular Civil Suit No. 81/2017. Reliance is also placed on Section 107 of Act of 1995. It is contended that there is sufficient material on record to corroborate claim of the plaintiff and full-fledged trial is required to arrive at any conclusion.

8. The learned counsel Mr. Bhandari appearing for the applicant has canvassed following submissions:

(i) No material is on record to indicate that Survey Nos. 51 and 52 are the waqf properties. The letter dated 11.12.1979 and the order of Chief Officer of the Board cannot be treated to be gazetted list.

(ii) In the absence of the procedure contemplated by Section 4 to 6 and merely on the basis of a letter dated 11.12.1979, no corrigendum can translate any property into a Waqf property.

(iii) No recourse is taken to Section 27 of the Act of 1954 or Section 40 of Act of 1995 to include the suit properties when those were not included in the Government notification dated 17.05.1973.

(iv) The suit filed after 48 years claiming relief of declaration, to treat suit properties as Waqf properties, is hopelessly barred by time as per Section 6 of the Act.

(v) There is absence of cause of action. Whatever is posed as a cause is in fact, illusory, articulated by cleaver drafting.

(vi) The predominant relief in the suit is barred by Section 107 of that Act.

(vii) The registered sale-deeds executed in favour of defendants are sought to be challenged without there being any prayer to that effect.

(viii) There is inordinate delay and the plaintiff is selective in choosing the property to the extent of 8684 square meters only.

(ix) Impugned order is unsustainable due to perverse findings.

9. The applicant has placed reliance on written submissions filed on record on 05.08.2025 and cited judgments.

10. Mr. V.D. Sapkal, learned senior counsel for respondent no. 19, who had filed application (Exh. 53), adopts the above submissions and additionally makes following submissions :

(a) The suit is mainly filed for declaration, which cannot be saved by Section 107 of the Act of 1995.

(b) Trial Court's finding that the suit properties are Waqf property is perverse.

(c) A stale claim has been brought before the Court.

(d) Respondent no. 18-Board did not take recourse to Section 27 of the Act of 1954 or Section 40 of the Act of 1995, and no prima facie material is placed on record so as to include the suit properties in the list.

11. Per contra, the learned counsel Mr. Afzal Vakil for plaintiff has vehemently opposed the above submissions as follows :

(I) Adequate material is placed on record in the form of

corrigendum dated 11.12.1979, order dated 21.10.2009, decision in Regular Civil Suit No. 81/2007 and the revenue record to show that suit properties are Waqf properties.

(II) The suit lands are Service Inam lands and they are covered by Section 3(k) of the Act. Government gazette of 1979, is not challenged till this date.

(IV) The suit is within limitation as per Section 107 of the Act.

(V) Meaningful reading of the plaint would indicate cause of action. The suit is tenable.

(VI) The defendants are the encroachers and have illegally purchased the parcels of the suit lands. They are liable to hand over the possession.

(VII) The contentious issues raised by the defendants can be dealt with after full-fledged trial.

12. Mr. N.E. Deshmukh, learned counsel appearing for the respondent no. 18-Board has supported the plaintiff. He would submit that limitation is the mixed question of law and facts. Similarly, whether any survey or enquiry was conducted or not can be gone into after full-fledged trial. It is submitted that letter dated 11.12.1979 is in fact a notification. It is further submitted that no ground is made out to invoke power under Order VII Rule 11 of the Code of Civil Procedure.

13. I have considered the rival submissions of the parties. I have gone through original record and proceedings with the assistance of the counsels appearing for the parties. At the outset it needs to be made clear that this being enquiry under Order VII Rule 11 of the Code of Civil Procedure, the averments of the plaint and documents annexed alongwith it have only been

taken into consideration. No extraneous material has been taken into account for deciding present revision.

14. A Government gazette published on 17.05.1973 shows the enlisted properties of Dargah Hajrat Shahanoor Hamvi Reh. But Survey No. 51 and 52 are not included therein. The total area would come to about 38 acres, however, the reliefs are restricted to 8648 square meters. A letter dated 11.12.1979 produced along with plaint is addressed by secretary of respondent no. 18-Board to Manager Printing Press Government Book Depot, Nagpur. It is accompanied by a corrigendum disclosing Survey No. 51 and 52 as enlisted Sunni Waqf properties in part 'B' published in Government gazette dated 17.05.1973. Banking on these, it is sought to be claimed that suit properties are Waqf properties. Neither any Government gazette is placed on record to show Survey Nos. 51 and 52 are included in the list nor any material is placed on record to show that a procedure was followed for including those properties in the list. It is a bold claim of the plaintiff and respondent no. 18-Board that letter dated 11.12.1979 itself is a gazette, which cannot be countenanced. Plaintiff's had ample opportunity to file convincing material on record, which could be a public document to show that by way of Government gazette, the suit lands are included in the list but no endeavor has been made to that effect.

15. Plaintiff is relying on order dated 21.10.2009 passed by the Chief Executive Officer of the respondent no. 18-Board. Those are the proceedings in respect of Survey No. 37. Incidentally, there is a reference to corrigendum showing Survey Nos. 51 and 52 as Waqf properties. This order would not enure to the benefit of the plaintiff because no source is disclosed for the corrigendum. Similar is the case with the judgment dated 26.09.2019 passed in Regular Civil Suit No. 81/2017. That was a suit for injunction. The issue, as to whether the suit lands are Waqf properties or not was not germane in the proceedings. No reliance can be placed on the judgment for treating the suit properties as Waqf properties. Similarly, various revenue

entries and record are pressed into service by the plaintiff, but those are not decisive and helpful to treat that suit properties are the Waqf properties. Both counsels Mr. A.P. Bhandari and Senior Counsel Mr. V.D. Sapkal are right in contending that the foundation to maintain a suit is lacking. The plaintiff has not produced a public document, which could have been made available to him at any point of time to show that suit lands are Waqf properties. Hence, suit suffers a fundamental defect and renders it untenable.

16. My attention is adverted to Section 4 and 5 of the Act of 1954, as well as Act of 1995, which lays down the procedure for appointing Survey Commissioner or the competent Officers for conducting survey and submitting report. After receiving the report, the State Government would forward the same to the Board, then the Board under Section 5 sub Section (2) is empowered to publish it in the official gazette, a list of Waqf. It reveals from record that as per Section 5 of the Act of 1954 the list is published in the Government gazette on 17.05.1973, which does not include Survey Nos. 51 and 52. Plaint does not spell out any procedure undertaken to include the suit lands. No documents are placed on record to suggest as to when and how the statutory procedure was followed to include the suit lands in the list after 17.05.1973.

17. Another recourse available was procedure under Section 27 of Act of 1954 or Section 40 of Act of 1995. It is neither case of plaintiff nor that of defendant no. 18-Board that after conducting enquiry and undertaking a procedure under Section 27 or 40, the suit lands were subsequently included in the list. If such is the scenario, then the so-called corrigendum pressed into service by the plaintiff is lacking any legal sanctity. In the absence of any pleadings or prima facie material on record, there is a reason to infer that suit lands are not the Waqf properties. The finding of the Tribunal that the suit properties are published in the Government gazette in view of letter of the Board by way of corrigendum and there are documents to support the contention that those are Waqf properties is perverse.

18. Plaintiff is repetitively referring to letter dated 11.12.1979 and the corrigendum referred in the order dated 21.10.2009 as the documents indicating Waqf properties. In absence of any procedure undertaken by the competent authorities, these documents do not translate Survey No. 51 and 52 into Government gazette and culminate them into enlisted Waqf properties. In this regard, I find substance in the submission of learned counsel for the applicant and the learned Senior Counsel Mr. Sapkal. I am of the considered view that suit properties are not trust properties and suit under Section 83 of the Act is not tenable.

19. Plaintiff has filed present suit on 23.09.2020. He is claiming declaration that the suit properties be declared as Waqf property. Had the suit property been included either in notification dated 17.05.1973 or any other subsequent gazetted notification, such a relief would not have been claimed or required to be claimed. If a particular property is left out of the notified list prepared under Section 5 of the Act, then suit before the Tribunal under Act of 1954 before Civil Court or before Tribunal under Act of 1995 is permissible to be filed under Section 6. However, the Proviso prescribes a limitation of one year from the date of publication of the list of the Waqf under Section 5 (2) of the Act. Admittedly, the list under Section 5(2) was published on 17.05.1973 and the suit is filed after 47 years. Such a suit is manifestly barred by time. No further enquiry on facts is required to hold that suit is barred by time.

20. I have carefully gone through averments of the plaint. The alienations made by one Nazir Khan in favour of defendant nos. 1 and *inter se* to defendant nos. 10, 11, 16 and 17 are stated to be illegal and without permission of the Board. The interest created in those defendants are sought to be challenged without there being any relief of declaration, challenging the sale-deeds. If the declaration sought by the plaintiff is granted, that will nullify the right or interest created in the defendants by registered sale-deeds. The property extract produced on record shows that sale-deeds were

executed way back in the year 1985 and 1988. Couple of lease deeds were also executed in 1985 and 2004. The registered sale transactions came to be challenged impliedly by filing suit on 23.09.2020. It is relevant to notice the pleadings from plaint as follows:

“3) The plaintiff submits that, in the year 1983, one Nazir Khan s/o Sher Khan obtained one so-called Order from the Tahsildar, Aurangabad and mutated his name in the property record [PR. Card] of CTS No.14503/1 to the extent of 8648.00 square meters, but he has concealed the above said facts and documents that, the said properties are belonging to Dargah Hazrat Shahnoor Hamvi and he has mutated his name as per the said so-called order of Tahsildar and after mutating his name in the PR. Card, he executed some illegal documents about the suit property in favour of defendant no.1, defendant no.10, defendant no.11 and another defendant namely Shuttari and defendant nos.16 and 17 without permission of the Wakf Board. The defendant nos.16 and 17 i.e. Azam Khan and Mohammad Yusuf illegally transferred the wakf property in favour of defendant no.2 for the period of 999 years. Without prior permission and sanction of the Wakf Board and by contravention of Wakf Act, therefore, all the above transactions of the defendants are illegal, null void and ab-initio and it is liable to be cancelled, as all the defendants are the encroachers over the suit wakf property.”

21. The above referred pleadings are absurd. In order to overcome the bar of limitation instead of challenging independent sale-deeds a declaration has been solicited claiming that the suit properties be declared as Waqf properties. I find substance in the submissions of the applicant that it is a case of clever drafting. The interest created in the defendants long back is

sought to be reopened by the manner which is impermissible in law. The cause of action shown in para No. 4 to 6 is fall out of cleaver drafting. The bar of limitation is camouflaged by devious drafting of the plaint. A useful reference can be made to **K. Akbar Ali Vs. K. Umar Khan; (2021) 14 SCC 51.**

22. The plaintiff relied on Section 107 of the Act of 1995 to contend that the Limitation Act 1963 is not applicable. The section reads as follows :

“ 107. Act 36 of 1963 not to apply for recovery of wakf properties- Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property.”

23. Present suit is filed for declaration, possession and injunction. I have already recorded that the predominant relief is the declaration. Other reliefs are consequential. The reliefs of declaration and injunction do not fall within the purview of Section 107. At the most, it can be said that suit land will be barred by limitation to the extent of relief of possession. But the substantive relief in the suit appears to be not barred by time.

24. In this regard, submissions are made by the applicant that the stale claim cannot be reopened by implication of Section 107. To buttress the submission, reliance is placed on the judgment of the Supreme Court in the matter of **T. Kaliamurthi and anr Vs. Five Gori Thaikal Wakf and Ors; 2008 AIR SCW 8142.** Following are the relevant paragraphs :

“22. Section 107 lays down that nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any Wakf or for possession of any interest in such property. Thus it can be said that this section virtually repeals the Limitation Act,

1963 so far as the Wakf properties are concerned. Therefore, it can be concluded without any hesitation in mind that there is now no bar of limitation for recovery of possession of any immovable property comprised in a Wakf or any interest therein. In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right. At this juncture, we may again note Section 6 of the General Clauses Act, as reproduced herein earlier. Section 6 of the General Clauses Act clearly provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, or affects the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed.

23. From the above, it is clear that the right of action, which is barred by limitation at the time when the new Act comes into force, cannot be revived by the change in the law subsequently. In *Ram Murthi and Ors, vs. Puran Singh s/o Attra Singh and Ann* [AIR 1963 Punjab 393], it has been held that Section 107 renders the Limitation Act, 1963 inapplicable to suits for possession of immovable properties comprised in any Wakf or any interest therein but the right of a person to institute such a suit which is already barred at the commencement of this Act cannot revive. It was further held that his title is extinguished and a good title is acquired by the person in possession and that where the title of the true owner is extinguished in favour of the wrongdoer, it is not revived by that person again getting into possession. There is no remitter to the old title.

33. After considering this submission of the learned counsel for the respondents, it may appear that the controversy has narrowed down to the point whether Section 6 of the General Clauses Act would apply in this case or not. That is to say, it may appear that if we answer this question in the negative thereby holding that Section 112 is self-contained, the appeal would fail because then the question of reviving a barred claim would not arise at all because Section 112 does not contemplate or provide for any such provision. However, if we answer this question in the affirmative, the inevitable result would be that the appeal would have to be allowed because on all other points, discussed herein-earlier, the arguments of the learned counsel for the appellants have been accepted. However, in our view, the authorities relied upon by the

respondents deal only with the question of repeal and savings but do not answer the question raised by the learned counsel for the appellants, i.e., whether Section 107 can revive an extinguished right. We may note that the authority relied upon by the learned counsel for the appellant reported in *Yeshwantrao Laxmanrao Ghatge and another (supra)* cannot be ignored. That decision was not a case of repeal and accordingly, there was no reference to Section 6 at all in that Act. Nevertheless, it was held in that case that a right extinguished under Section 28 of the Limitation Act, 1963 cannot be revived by Section 52-A. Similarly, in the present case, we are of the opinion that applicability of Section 6 is inconsequential because admittedly, there was an extinguishment of rights under Section 28 and Section 107 cannot revive those extinguished rights.

34. In view of the above discussions, we are, therefore, of the view that Section 107 cannot revive a barred claim or extinguished rights.”

25. I am bound to follow the ratio laid down by the Supreme Court that Section 107 can have no retrospective effect. The relief of declaration in the present case should have been sought within one year from 17.05.1973. All the reliefs in the plaint can be said to be barred by limitation at the time when Act of 1995 came into effect. I have also observed that relief of possession and injunction are consequential in nature. The time barred relief cannot be reopened by implication of Section 107. In that view of the matter, I find that the applicant is bound to succeed in the revision.

26. It is vehemently contended that the objection raised by the defendants are disputed questions of facts, which require objective scrutiny

during trial. I have not considered the submissions pertaining to disputed facts namely; as to why suit is restricted to 8648 square meters when total area is about 38 acres, as to the *locus standi* of the plaintiff, as to the copies of certain orders were obtained in 1982 and suit is filed in 2020 and as to the possession is directed to be handed over to the Board etc. Considering the averments of the plaint and the documents produced along with it, I have tested the submissions of the parties in coming to the conclusion that the impugned order is liable to be quashed.

27. The plaintiff has articulated the pleadings and prayers so as to overcome legal impediments of limitation, bar of Section 6 or 107 of the Act. In very absurd manner, sale transactions executed in favour of the defendants are sought to be avoided. This is a case of not only illusory cause of action by cleaver drafting but an abuse of process of law. There is no point in dragging the parties to the full-fledged trial where the pleadings are trickarious and the intentions are oblique. This is a fit case to invoke power under Order VII Rule 11 of the Code of Civil Procedure. The Tribunal has committed patent error of jurisdiction in rejecting the application.

28. Reliance is placed on the judgment of the Supreme Court in the matter of **Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal; (2017) 13 SCC 174** by the applicant. The appellant before the Supreme Court was defendant No. 1, who had filed application under Order VII Rule 11 of the Code of Civil Procedure before the Waqf Tribunal in a suit filed by the respondent-plaintiff. It was a suit for cancellation of sale-deed on the pleadings that it was a Waqf Property. The application under Order VII Rule 11 was allowed by the Tribunal. In revision, High Court reversed the order of the Tribunal. Hence, defendant was before the Supreme Court. Appeal was allowed by the Supreme Court and the Tribunal's order was maintained. In that case also it was contended that the property in question was not a Waqf property as it was not notified in the Gazette of 1962. The Supreme Court considered sections 4 to 6 of Act of 1954 as well as Act of 1995.

Following are the relevant extracts :

“17. Thus it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the official gazette by the State under 1995 Act, (it was by the Board under 1954 Act). As mentioned supra, the list would be prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a Wakf Property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of it's mind and only thereafter the same will be sent to Government for notifying the same in the Gazette. Since the list is prepared and published in the official Gazette by following aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's report. Since the surveyor's report was required to be considered by the State Government as well as Wakf Board (as the case may be), prior to finalisation of the list of properties to be published in the Official Gazette, it was not open for the High Court to conclude that the Surveyor's report will have to be reconsidered. On the contrary Surveyor's report merges with the Gazette Notification published under Section 5 of the Wakf Act.

18. As held by the Tribunal as well as the High Court, the property in question does not find place in the Gazette

notification published under Section 5 of the Wakf Act. In other words, the property in question is not notified in the official Gazette as Wakf property. If anybody including the Wakf Board or the plaintiff was aggrieved by such non-inclusion of the property in the list notified, the aggrieved person should have raised the dispute under Section 6 within a period of one year from the date of publication of the Gazette notification in the matter. The plaintiff has practically questioned the non-inclusion of the property in the list and the validity of the list notified in the official gazette dated 28.06.1962 after the lapse of about 50 years, i.e. in the year 2013 by filing the present suit.

19. As per Section 27 of 1954 Act (Section 40 of 1995 Act), the Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not the Board after making such enquiry as it deems fit, decide the question. The decision of the Board on any question under sub-section (1) of Section 27 of 1954 Act (or under Section 40(1) of 1995 Act) shall, unless revoked or modified by the Civil Court, be final. The effect of Section 27 of 1954 Act or Section 40 of 1995 Act is that, if any property had been omitted to be included in the list of auqaf by inadvertence or otherwise, then it was/is for the Wakf Board to take action, as per said provision. In this context, it is relevant to note the observations by this Court in the case of T.N. Wakf Board vs Hathija Ammal [1] which read thus:

“In the event, any property has been omitted by inadvertence or otherwise, then it is for the Wakf

Board to take action as provided under Section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any question arises whether a particular property is a wakf property or not, it may, after making such enquiry as it may deem fit decide the question and such decision of the Wakf Board shall be final unless revoked or modified by a civil court. Such action has not been taken by the Wakf Board in this case.”

29. In the case at hand plaintiff has not expressly questioned the non-inclusion of the property in the list dated 17.05.1973, but the relief of declaration is on the similar line. In the present case also the Board did not undertake procedure under Section 27 of the Act of 1954 and Section 40 of the Act of 1995. Then it is not open for the Tribunal to treat the suit land as a Trust property. The things, which are prohibited to be done directly cannot be done indirectly. Following the ratio laid down in above case I am of the considered view that applicant is entitled to succeed in the matter.

30. Further reliance is placed on latest judgment of the Supreme Court in the matter of **Uma Devi Vs. Anand Kumar; AIR Online 2025 SC 196**. It is submitted that if the entire and meaningful reading of the plaint it is found that the suit is vexatious and meritless in the sense of not disclosing cause of action then Court should exercise power under Order VII Rule 11 of the Code of Civil Procedure. The ratio is applicable to the present case.

31. The learned counsel Mr. Afzal Vakil for the plaintiff relied on following judgment:

(1) **P. Kumarakurubaran Vs. P. Narayanan; AIR ONLINE 2025 SC 641**. I have gone through paragraph Nos. 12, 13, 14 and 15 of

the judgment. In that case the appellant before the Supreme Court was plaintiff whose plaint was sought to be rejected on ground of limitation. The Trial Court had rejected application of respondent/defendant under Order VII Rule 11 of the Code of Civil Procedure. But High Court in Revision, allowed it. Supreme Court allowed appeal because it was held that knowledge to gain essential facts was crucial. The judgment is distinguishable on facts. The averments of the plaint taken at their face value and assumed to be true would not bring the suit in case at hand within limitation. The judgment is not helpful to the plaintiff.

(2) **Shakti Bhog Food Industries Limited Vs. Central Bank of India and Another; 2020(5) Mh.L.J. 1.** The facts of cited case are different. In the present case limitation prescribed by Section 6 or 107 of the Act of 1995 is under consideration. This judgment will not help the respondent.

(3) **Sayyed Ali and others Vs. A.P. Wakf Board, Hyderabad and others; AIR 1998 Supreme Court 972.** My attention is adverted to paragraph Nos. 8, 9 and of this judgment. The facts are distinguishable. That was not a case of enquiry under Order VII Rule 11 of the Code of Civil Procedure. The ratio cannot be made applicable to the present case.

32. The analysis of above discussion is that, the paint is liable to be rejected. I therefore, pass following order:

Order

(a) The Civil Revision Application is allowed.

(b) The impugned common order dated 07.09.2021 below Exh. 52

and 53 passed by the learned Chairman, Waqf Tribunal in Waqf Suit No. 66/2020 is quashed and set aside and plaint in Waqf Suit No. 66/2020 stands rejected.

(c) There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

33 After pronouncement of judgment, learned counsel for the respondent No. 1 prays for grant of stay to the operation and implementation of the judgment pronounced.

34 Learned counsel Mr. Bhandari for the petitioner opposes the prayer on the ground that the same is not executable one.

35 Plaint in Wakf Suit No. 66 of 2020 is rejected. Plaintiff is anxious to approach Hon'ble Apex Court.

36 Operation and execution of the judgment shall stand stayed for a period of four (04) weeks from today. It is clarified that after expiry of four weeks, stay granted today shall stand vacated without reference to the Court.

(SHAILESH P. BRAHME, J.)

mkd/-