

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.72 OF 2024

Aliasgar Ramzan Dekhani
Being the Managing Trustee of
Haji Mohammad Jawad Ispahani
Imambara Trust & Ors.Applicants
V/S
Maharashtra State Board of Waqfs & Ors.Respondents

**WITH
CIVIL REVISION APPLICATION NO.252 OF 2023**

Haji Mohammad Jawad Ispahani
Imambara Trust & Ors.Applicants
V/S
The Maharashtra State Board of Waqfs & Ors.Respondents

**WITH
CIVIL REVISION APPLICATION NO.178 OF 2023**

Haji Mohammad Jawad Ispahani
Imambara Trust & Ors.Applicants
V/S
The Maharashtra State Board of Waqfs & Ors.Respondents

Mr. Anil Anturkar, Senior Advocate i/b Mr. Ranjit Shinde with
Mr. Sagheer A. Khan *for the Applicant in CRA 72 of 2024.*

Mr. Sagheer A. Khan with Ms. Simran Rathod, Mr. Aqil S. Khan,
Mr. Dawood Khan, Ms. Tasmiya i/b M/s. Judicare Law Associates for
Respondent Nos.4 and 9 in CRA 72 of 2024 and for Applicant in CRA
252 of 2023 and CRA 178 of 2023.

Mr. Abdul Hafeez Yakub Kotwala *for Respondent No.1.*

Ms. Shraddha Vavhal with Mr. Hasnin Kazi *for Respondent No.3
in CRA 72 of 2024 and for Respondent No.2 in CRA 252 of 2023.*

**CORAM : SANDEEP V. MARNE, J.
DATE : 10 MARCH 2025.**

ORAL JUDGMENT:

1 These three Revision Applications are filed under Proviso to sub-section (9) of Section 83 of the Waqf Act, 1995 seeking to invoke revisionary jurisdiction of this Court. Civil Revision Application Nos.72 of 2024 and 252 of 2023 are filed challenging the judgment and order dated 15 February 2023 passed by the Maharashtra State Waqf Tribunal, Aurangabad, (**Waqf Tribunal**) dismissing Waqf Application No.9 of 2018 filed by the Applicants under provisions of Section 83(2) of the Waqf Act, 1995, which was filed challenging the order dated 16 January 2016 passed by the Chief Executive Officer, Maharashtra State Waqf Board, Aurangabad (**Waqf Board**) thereby registering Haji Mohammad Jawad Ispahani Imambara Trust, Pune, District Pune, (**Trust**) as a Waqf institution having Registration No. M.S.B.W./PUN/479/2017.

2 Civil Revision Application No.178 of 2023 has been filed challenging interlocutory order dated 26 December 2022 by which the Application preferred at Exhibit-52 for clubbing of Waqf Application No.9 of 2018 with the proceedings filed under Section 7 of the Waqf Act, 1995 (unregistered) were requested to be clubbed for being heard together. Civil Revision Application No.178 of 2023 has been rendered infructuous, in that sense, as Waqf Application No.9 of 2018 has ultimately been dismissed by final judgment and order dated 15 February 2023.

3 It is the case of the Revision Applicant that Haji Mohammad Jawad Ispahani Imambara Trust was formed on the basis of Trust Deed registered in the office of Sub-Registrar, Haveli No.2. The said Trust came to be registered on 27 October 1953 as a Public Trust

under the provisions of Maharashtra Public Trusts Act, 1950 (**MPT Act**). It appears that the registration is under 'B category', being a Muslim Trust.

4 Respondent No.3 apparently filed proceedings before the Joint Charity Commissioner, Pune under provisions of section 41D of the MPT Act for removal of Trustees of the Trust alleging mismanagement. During pendency of the proceedings under Section 41D of the MPT Act, Respondent No.3 was advised to file an Application before the Wakf Board under Section 43 of the Waqf Act for registration of the Trust as a Waqf. The Application of Respondent No.3 has been allowed by the Waqf Board by order dated 16 January 2016 holding that since the Trust was registered under the provisions of MPT Act, it automatically became Waqf under the deeming fiction created under Section 43 of the Waqf Act since its registration was in 'B category'. After securing order dated 16 January 2016 in his favour, Respondent No.3 later withdrew the proceedings under Section 41D of the MPT Act on 21 August 2007.

5 Aggrieved by registration of the Trust as a Waqf vide order dated 16 January 2016, the Trustees of the Trust filed Waqf Application No.9 of 2018 before the Waqf Tribunal under provisions of Section 83(2) of the Waqf Act challenging the registration order dated 16 January 2016. The Waqf Tribunal has however dismissed Waqf Application No.9 of 2018 by its judgment and order dated 15 February 2023, which is subject matter of challenge in Civil Revision Application No. 252 of 2023 instituted by the trustees of the trust (original Applicants before the Tribunal). The Tribunal's Order dated 15 February 2023 is also assailed by the Managing Trustee of the Trust (Aliasgar Ramzan Dekhani) in Civil Revision Application No.72 of 2024.

6 Mr. Anturkar, the learned Senior Advocate appearing for the Applicant in Civil Revision Application No.72 of 2024 would essentially raise three objections to the impugned judgment and order passed by the Waqf Tribunal. Firstly, he would contend that under provisions of Rule 52(13) of the Maharashtra State Waqf Rules, 2022, (**Waqf Rules**) final hearing of any matter must take place before the Full Bench of the Tribunal comprising of three Members. He would submit that the impugned judgment and order has been passed by only two learned Members of the Waqf Tribunal and the third member is shown to have been vacant. He would rely upon judgment of Single Judge of the Allahabad High Court in ***Mohd. Saleem Krodhi vs. U.P. Sunni Central Board of Waqf, Lucknow and others¹***, in support of his contention that any final order passed by the Waqf Tribunal not comprising three Members would be without jurisdiction.

7 The second submission of Mr. Anturkar is that no opportunity of hearing was given to any of the trustees while passing impugned order dated 16 January 2016 by the Waqf Tribunal.

8 The third ground raised by Mr. Anturkar is that the order dated 16 January 2016 passed by the Waqf Board was without jurisdiction as he sought to exercise jurisdiction under Section 43 of the Waqf Act which applies only in a case where there is already a Waqf registered under the provisions of the Waqf Act, 1954. He would submit that it is nobody's case that the Trust was registered as Waqf under the Waqf Act, 1954 at any point of time. That mere registration of the Trust under the provisions of MPT Act would not create a deeming fiction under Section 43 of the Waqf Act. He would therefore submit that invocation of provisions of Section 43 of the Waqf Act by

1 2017 SCC OnLine All 3024

the Waqf Tribunal itself was erroneous and that this issue has not been considered by the Waqf Tribunal while passing the impugned judgment and order.

9 On above three broad grounds, Mr. Anturkar would accordingly pray for setting aside the impugned judgment and order dated 15 February 2023.

10 Mr. Sagheer Khan, the learned counsel appearing for the Applicants in Civil Revision Application No. 252 of 2023 would adopt the submissions of Mr. Anturkar. Additionally, he would submit that mere registration of a Trust in 'B' category would not automatically convert a Trust into Waqf and would rely upon judgment of the Apex Court in ***Maharashtra State Board of Waqfs vs. Shaikh Yusuf Bhai Chawla and others***². He would further submit that though a list has been published of Waqf properties by the Waqf Board under provisions of Section 4(3) of the Waqf Act vide Notification dated 30 December 2004, erroneously including the name of the Trust at Serial No.WB-112, the Applicants have already initiated proceedings under Section 7 of the Waqf Act challenging inclusion of the name of the Trust property in the said Notification. He would submit that in fact, an Application was moved before the Waqf Tribunal to decide the Application under Section 83 of the Waqf Act alongwith the Application under Section 7 of the Waqf Act, which request came to be erroneously rejected by the Waqf Tribunal by order dated 26 December 2022, which is subject matter of challenge in Civil Revision Application No.178 of 2023. Mr. Khan would accordingly pray for setting aside the order passed by the Waqf Tribunal.

2 2022 SCC OnLine SC 1653

11 The Civil Revision Applications are opposed by Ms. Shraddha Vavhal, the learned counsel appearing for Respondent No.3, at whose instance the order dated 16 January 2016 is passed by the Waqf Board granting registration to the Trust as Waqf. She would submit that the jurisdiction under Section 43 of the Waqf Act has rightly been exercised by the Waqf Board as the Trust was already registered in B category. She would submit that the deeming fiction under Section 43 of the Waqf Act would operate in case of every registered Waqf. She would submit that registration of any Trust in 'B' category would automatically mean registration as Waqf and therefore deeming fiction under provisions of Section 43 of the Waqf Act would automatically kick in. She would therefore submit that the Waqf Tribunal's order does not warrant any interference in exercise of jurisdiction of this Court under Article 227 of the Constitution of India.

12 Mr. Abdul H. Kotwala, the learned counsel appearing for Respondent No.1-Waqf Board would also oppose the Civil Revision Applications submitting that even a single Member of Waqf Tribunal can exercise jurisdiction and decide the matters finally. In support of his contention, he would rely upon judgment of the Apex Court in **Lal Shah Baba Dargah Trust vs. Magnum Developers and others**³. He would further submit that the entity which has been granted registration as Waqf by order dated 16 January 2016 was already declared as a Waqf under the Notification issued 30 December 2004. That the Trustees rightly interpreted the said Notification dated 30 December 2004 as an order of registration of the entity as Waqf and accordingly have filed proceedings under Section 7 of the Waqf Act challenging the inclusion of the entry relating to Waqf property before

3 AIR 2016 SC 381

the Tribunal. That since the entity was already registered as a Waqf under the Notification dated 30 December 2004, all that has been done by the Waqf Board by impugned order dated 16 January 2016, was to merely grant a recognition to it under provisions of Section 43 of the Waqf Act. Alternatively, Mr. Kotwala would submit that the registration of the Trust is under 'B' category and accordingly it would automatically become a Waqf as held by this Court in ***Asfaq-ul- haq Khan vs. The Maharastghra State Board of Waqfs***⁴ decided on 3 May 2016. He would submit that this Court has held that Section 43 of the Waqf Act would apply in every case where there is a previous registration as Waqf under any law for time being in force. That therefore there is no requirement that the institution must be registered as a Waqf under Waqf Act, 1954 for the purpose of application of deeming fiction under Section 43 of the Waqf Act. He would accordingly pray for dismissal of the Civil Revision Applications.

13 Rival contentions of the parties now fall for my consideration.

14 Though Mr. Anturkar has strenuously contended that the order of the Tribunal be set aside on the point of erroneous constitution thereof, instead of going into that issue first, it would be expedient to take up for consideration, the third issue canvassed by him about registration of the Trust as Waqf under provisions of Section 43 of the Waqf Act.

15 Section 43 of the Waqf Act creates a deeming fiction and provides as under:

4 Civil Revision Application No.924 of 2014

43. Auqaf registered before the commencement of this Act deemed to be registered:

Notwithstanding anything contained in this Chapter, where any waqf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the waqf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

16 Thus, where a Waqf has already been registered before commencement of the Waqf Act, 1995 under any law for time being in force, it shall not be necessary to register the Waqf under the provisions of Waqf Act, 1995 and said such registration made before the commencement of the Act shall be deemed to be a registration made under the Act. Therefore, to invoke provisions of Section 43 of the Waqf Act, it must be proved that there has been a registration as a Waqf before commencement of the Waqf Act, 1995. Such registration may be either under the provisions of Waqf Act, 1954 or under any law for time being in force. In the present case, it is nobody's contention that any registration was granted in respect of the Trust as a Waqf prior to coming into force of the Waqf Act, 1995. Therefore, it becomes difficult to believe that the present case would satisfy the requirement of registration as a Waqf before commencement of the Waqf Act, 1995. However what is contended by the contesting Respondents is that a waqf already existed qua the property on twin factors of (i) inclusion of the property in the list published vide Notification dated 30 December 2004 and (ii) registration as 'B' category Muslim trust under the provisions of MPT Act.

17 Perusal of the order passed by the Waqf Board on 16 January 2016 would indicate that the solitary factor considered by the Board is the registration of the Trust under Registration No. B-112. Thus

registration of the Trust is Muslim Trust under 'B' category is possibly a factor taken into consideration by the Board for the purpose of inferring that it was a Waqf registered under the provisions of the MPT Act. Ms. Vavhal as well as Mr. Kotwala have also suggested that use of the expression 'under any law for time being in force' used under the provisions of Section 43 of the Waqf Act would obviously include registration granted under the provisions of the MPT Act. Judgment of Single Judge of this Court in ***Asfaq-ul-haq Khan*** (supra) is relied upon in support of the contention that a 'B' category Trust could also be registered as Waqf under Section 43 of the MPT Act. In ***Asfaq-ul-haq Khan*** (supra) a Coordinate Bench of this Court (*R.G. Ketkar, J.*) has held in paragraph nos. 21 to 27 as under:

“21. In the present case, clause 3 of the Scheme clearly lays down that the Waqf properties belong to and rest in Almighty. The objects of the former Trust are, among others, to maintain Mosque and Dargahs. In view thereof, I am clearly of the opinion that the former Trust was registered as a Waqf under the B.P.T. Act. The scheme of the Act shows that there are three modes prescribed for registration of a Waqf. The first mode prescribed is under Sections 4 and 5 of the Act. After carrying out preliminary survey under Section 4, the list is to be published under Section 5 thereof subject to disputes under Section 6 to be resolved by the Tribunal. The second mode is by making application for registration by the Mutawalli under Section 36 of the Act and the third mode is Section 43. Under Section 43 of the Act, the Waqf, which is already registered under any law for the time being in force, has to be treated as registered under the Act due to deeming fiction.

22. By Section 43, the Legislature has created a legal fiction. The Legislature is quite competent to create a legal fiction, in other words, to enact a deeming provision for the purpose of assuming existence of a fact which does not really exist provided a declaration of nonexistent facts as existing does not offend the constitution. In interpreting the provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. The purpose of Section 43 is obvious, namely, a Waqf which is already registered under any law for the time being in force, is treated as if the same is registered under the Act holding fresh enquiry. After ascertaining the purpose, "full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end "it would be proper and even necessary to assume all those facts

on which alone the fiction can operate." In an oft quoted passage, Lord Asquith stated: "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence -and incidents which, if the putative stage of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

23. Mr. Khan submitted that without holding any enquiry, C.E.O. of the Board registered the former Trust as a Waqf under the Act. No notice was issued to the applicant and no hearing was given. In short, he submitted that the registration was made in gross violation of principles of natural justice. I do not find any merit in this submission. Section 43 of the Act reads thus,

"43. Auqafs registered before the commencement of this Act deemed to be registered.- Notwithstanding anything contained in this Chapter, where any waqf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the waqf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act."

24. **I have already held that the former Trust was registered as a Waqf.** In view of Section 43 of the Act, as the former Trust was registered as a Waqf under the B.P.T. Act, it shall not be necessary to register the Waqf under the provisions of the Act and the registration made before the commencement is deemed to be a registration made under the Act.

25. In the case of **Baba Bangal Dargah & Masjid Wakf Committee** (supra), the learned Single Judge of this Court has observed thus,

"... Further under section 43 of the Wakf Act the wakf which was already registered under the Bombay Public Trust Act could have been treated as registered due to deemed registration under this provision. Thus there was no question of starting fresh inquiry in the present matter or giving hearing to the present respondent. In view of all these circumstances, the Board simply informed to present trustees that there was no need of such inquiry and the trust was already registered with Wakf Board. ..."

26. **In view thereof, there is no question of holding fresh enquiry or giving any hearing to the parties.** In the case of **M. L. Sethi Vs. R. P. Kapur, 1972 (2) SCC 427**, the Apex Court has considered the scope of Section 115 of C.P.C. It was observed in paragraph 12 as under,

"... The jurisdiction of the High Court under Section 115 of the C.P.C. is a limited one. As long ago as 1884, in **Rajah Amir Hassan Khan v. Sheo Baksh Singh, [1884] L.R. II I.A. 237**, the Privy Council made the following observation on Section 622 of the

former Code of Civil Procedure, which was replaced by Section 115 of the Code of 1908 "The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

In **Balakrishna Udayar v. Vasudeva Aiyar, AIR 1917 PC 71**, the Board observed:

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved." In **N. S. Venkatagiri Ayyangar v. Hindu Religious Endowments Board, Madras, AIR 1949 PC 156**, the Judicial Committee said that Section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on those three matters, it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law.

This Court in **Manindra Land and Building Corporation Ltd. v. Bhutnath Banerjee and others, AIR 1964 SC 1336** and **Vora Abbashhai Alimahomed v. Haji Gulamnabi Haji Safibhai, A.I.R. 1964, S.C. 1341** has held that a distinction must be drawn between the errors committed by sub-ordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said Court, and errors of law which have no such relation or connection. In **Pandurang Dhoni Chougute v. Maruti Hari Jadhav, 1966 (1) SCR 102**, this Court said:

"The provisions of Section 115 of the 'Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed, to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted

before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of *res judica* is a plea of law which concerns the jurisdiction of the Court which tries the proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court under Section 115."

27. After considering the submissions advanced by the learned Counsel appearing for the parties as also after considering the material on record, I do not find that the Tribunal committed any error in passing the impugned order. The Tribunal has correctly borne in mind the principles of law. The facts have been properly appreciated and the decision was arrived at by the Tribunal after taking all material and relevant facts in mind. The applicant was not in a position to demonstrate that the findings recorded by the Tribunal are perverse being based on no evidence or that on the basis of evidence on record, no prudent man could have come to that conclusion. The decision of the Tribunal does not lead to miscarriage of justice. The High Court while exercising the powers under Section 83(9) of the Act cannot substitute its own view in place of that of the Tribunal because it considers to put better view. In the light of the aforesaid discussion, I do not find any merit in this Application. Hence, Application fails and the same is dismissed.

(emphasis and underling added)

18 Thus, in ***Asfaq-Ul-Haq Khan*** (supra), this Court has held that a trust, which is already registered as a waqf under any law for time being in force, has to be registered under the Waqf Act, 1995 under Section 43 thereof due to the deeming fiction. In my view, the judgment of Coordinate Bench in ***Asfaq-Ul-Haq Khan*** can firstly be distinguished on facts as this Court has recorded a finding on fact in paragraph 21 that *'In the present case, clause 3 of the Scheme clearly lays down that the Waqf properties belong to and rest in Almighty.'* Thus the judgment in ***Asfaq-Ul-Haq Khan*** proceeds on a fundamental distinguishing fact that the properties therein were to rest in the Almighty as per the Scheme framed under the MPT Act. Under Section 2(r) of the Waqf Act, the term 'waqf' is defined to mean the permanent dedication by any person, of any movable or

immovable property for any purpose recognised by the Muslim law as pious, religious or charitable. Since in ***Asfaq-Ul-Haq Khan*** the property was dedicated permanently in the Almighty, the test of waqf was clearly satisfied. In the facts of that case, this Court held that, such trust registered under the MPT Act, with permanent dedication of the property in the Almighty was bound to be registered as a waqf under Section 43 of the Waft Act. It is well settled position of law that observations in a judgment are not to be construed as statute and that the observations must be read in the context in which they appear to have been stated. In ***Haryana Financial Corpn. v. Jagdamba Oil Mills***⁵, the Apex Court has held as under:

19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737 : (1951) 2 All ER 1 (HL)] (at p. 761) Lord MacDermot observed : (All ER p. 14C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge.”

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21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

(emphasis added)

19 The above principle is reiterated by the Apex Court in ***Ashwani Kumar Singh v. U.P. Public Service Commission***⁶. In my view therefore the judgment of this Court in ***Asfaq-Ul-Haq Khan***

⁵ (2002) 3 SCC 496

⁶ (2003) 11 SCC 584

rendered in peculiar facts of the case, cannot be read in support of an absolute proposition of law that every 'B' category trust registered under provisions of MPT Act, would attract the deeming fiction under provisions of Section 43 of the Waqf Act.

20 In any case, the view taken by the coordinate bench of this Court in *Asfaq-Ul-Haq Khan* does not appear to be in consonance with the law subsequently enunciated by the Apex Court in *Maharashtra State Board of Wakfs vs. Shaikh Yusuf Bhai Chawla*. In paragraph 24 of the judgment in *Asfaq-Ul-Haq Khan*, this Court has held that the former Trust therein was registered as Waqf under the provisions of the MPT Act and this finding proceeds on a footing that a Muslim Trust registered under the provisions of MPT Act is to be treated as a Waqf. Under the MPT Act, the Trust can be registered either in 'A category' (Hindus) or in 'B category' (Muslims). Irrespective of the category in which the Trust is registered, the same would ultimately remain a Trust and would not automatically become a Waqf. The law in this regard is expounded by the Apex Court in its judgment in *Maharashtra State Board of Wakfs vs. Shaikh Yusuf Bhai Chawla* (supra) in which the Apex Court has held in paragraph 220 as under:

“220. We articulate the choices which are available before us. It is the appellant's case that Wakf properties need to be rigorously and lawfully regulated. However, there are public Trusts registered under the 1950 Act which are in fact, Wakf which fall under Section 28 of the 1950 Act. They must undoubtedly come within the regime of the Central Act viz., the Wakf Act, 1995. **The converse also must be stated and highlighted viz.; a Muslim Public Trust registered under the 1950 Act need not be a Wakf under the Act.** It would be certainly contrary to the unbroken line of judgments of this Court which contemplate such a division between two categories to paint all Muslim Public Trusts with the same brush and glean them as Wakfs. We have elucidated the position however with reference to the impact of the amendment to Section 3(a) of the Wakf Act, 1954.”

(emphasis added)

21 In view of authoritative pronouncement by the Apex Court that in Muslim public trust registered under the MPT Act need not be a Waqf under the Waqf Act, it cannot be contended that mere registration of the Trust in 'B' category would automatically make it a Waqf registered under the provisions of MPT Act. In my view therefore, the judgment in ***Asfaq-ul-haq Khan*** (supra) rendered in the peculiar facts and circumstances of that case cannot be cited in support of an absolute proposition of law that in every case where the Trust is registered as a Muslim Trust, the same would automatically become a Waqf registered under the provisions of the Waqf Act, 1955 by operation of deeming fiction under Section 43. In any case, the finding recorded by the Apex Court in paragraph 220 in ***Maharashtra State Board of Waqfs vs. Shaikh Yusuf Bhai Chawla*** would prevail over the view taken by Single Judge of this Court in ***Asfaq-ul-haq Khan***.

22 I am therefore unable to accept the contention of Ms. Vavhal and Mr. Kotwala that grant of registration in 'B' category as a Muslim Trust would automatically make it as a Waqf registered under the provisions of MPT Act or that therefore deeming fiction under provisions of Section 43 of the Waqf Act would become applicable in the present case.

23 In my view therefore, Section 43 of the Waqf Act has no application in the present case as there is no registration as a Waqf under provisions of any law for time being in force for the purpose of application of deeming fiction. Respondent No.3 could have filed an application under provisions of Section 36 of the Waqf Act for registration as a Waqf. Section 36 of the Waqf Act contemplates a detailed procedure before registration as a Waqf, which *inter alia*

includes issuance of notices and grant of opportunity of hearing to the affected parties. Section 36 of the Waqf Act provides thus:

“36. Consultation under sub-section (1) of section 69 of the Act relating to scheme for administration of waqf.- (1) Where the Board takes a decision to frame a scheme for the administration of a waqf under sub-section (2) of section 69 of the Act, it shall issue a notice in Form 47 to the mutawalli concerned, managing committee or the applicant.

(2) The proposed scheme shall contain the following details, namely:-

- (a) name of the waqf;
- (b) address;
- (c) whether under the management of the mutawalli or managing committee or under the direct management of the Board;
- (d) details of the scheme or proposal, shall inter-alia contain,-
 - (i) expenditure involved;
 - (ii) income to be generated.

(3) The proposal of the mutawalli or the managing committee or the applicant shall be considered by the Board who shall accord approval to the scheme with such modification as it may deem fit and shall communicate the same within fifteen days to the mutawalli or managing committee or the applicant.

(4) Every scheme framed by the Board under sub-rule (1) shall be published in Urdu, Marathi or any other local language newspaper having circulation in the area and on website of the Board.”

24 In the present case, Respondent No.3 who was seeking removal of the Trustees by filing proceedings under Section 41D of the MPT Act apparently changed the course and filed Application under Section 43 of the MPT Act which has absolutely no application to the present case. This was apparently done by him in order to circumvent the provisions of Section 36 of the Waqf Act. If he was to file an application under Section 36 of the Waqf Act for registration as Waqf, the Board would have followed the elaborate provision of issuance of notices and granted opportunity of hearing to the affected parties. With the objective of avoiding doing so, Respondent No.3 appears to have filed Application under Section 43 of the MPT Act.

25 So far as the contention of Ms. Vavhal and Mr. Kotwala that the Trust was already declared a Waqf under provisions of Notification dated 30 December 2004 is concerned, the said Notification published list of Waqfs under Section 5(2) of the Waqf Act and invited objections by the affected parties. It appears that name of Haji Mohammad Jawad Ispahani Imambara Trust has been included at Serial No.WB-112 in the said list. It appears that the Trustees have already filed a dispute under provisions of Section 7 of the Waqf Act before the Tribunal, which has jurisdiction to determine disputes regarding Waqf. Section 7 of the Waqf Act provides thus:

“7. Entry of auqaf in revenue record. - (1) The Government, after receipt of the list of auqaf from the Board under sub-section (2) of section 5 of the Act, shall publish in the Official Gazette and send it within a period of one month to the revenue authorities.

(2) On receipt of the lists under sub-rule (1) from the Government, the revenue authorities shall,-

(i) include the list of auqaf referred to in sub-section (2) of section 5 of the Act, while updating the land records; and

(ii) take into consideration the list of auqaf referred to in sub-section (2) of section 5 of the Act, while deciding mutation in the land records and submit a copy of such entries to the Board within a period of six months from the date of receipt.

(iii) If no intimation is sent by the revenue authorities to the Board within six months, the entry in the land record in mutation thereof shall be deemed to have been made.

(iv) The revenue authorities shall ensure that, in case of Waqf properties, in all concerned revenue records like 7/12 extracts, PR cards, etc., only the name of concerned Waqf Institution shall be entered in the ownership rights column and a stamp reading "Pratibandhit Satta Prakar" shall be affixed in the other rights column and in case some other names or entries in the said columns are already into existence, such entries shall be removed by following due procedure of law.

(v) Whenever a new property is registered by the Board, the Board shall send the details of such newly registered waqf property to the concerned revenue authorities and the said revenue authorities shall follow the procedure as mentioned in clauses (i) to (iv) above.

(3) The State Government and the Board shall maintain a record of the lists published under sub-section (2) of section 5 of the Act, from time to time.”

26 In fact, the Trustees of the Trust had made a request before the Tribunal to club the proceedings filed under provisions of Section 83 of the Act together with the proceedings filed by the Trustees under Section 7 of the Waqf Act for being decided together. The Tribunal however erroneously rejected the said request by order dated 26 December 2022 and thereafter proceeded to finally dismiss the Waqf Application No.9 of 2018 by impugned final judgment and order dated 15 February 2023 which is challenged in the present two Revision Applications. Thus, inclusion of the name of the Trust in the Notification dated 30 December 2004 is already subject matter of challenge in proceedings filed by the Trustees under Section 7 of the Waqf Act. In those proceedings, the validity of the said entry in the Notification would be decided by the Waqf Tribunal. Additionally, if Respondent No.3 believes that a Waqf must be registered, he would be at liberty to file proceedings under provisions of Section 36 of the Waqf Act. However, exercise of jurisdiction under provisions of Section 43 of the Waqf Act is something which was clearly unwarranted in the present case.

27 Since the exercise of jurisdiction by the Waqf Board under provisions of Section 43 of the Waqf Act is found to be not in order, it is not really necessary to go into the technical issue of final decision of Waqf Application No.9 of 2018 by two Members of the Waqf Tribunal. The issue is left open to be decided in an appropriate proceeding.

28 Thus while passing the impugned order the Waqf Tribunal has exercised jurisdiction with material irregularity, warranting interference by this Court under Proviso to Sub-section (9) of Section 83 of the Waqf Act.

29 The Civil Revision Applications accordingly succeed, and I proceed to pass the following order:

i) Judgment and order dated 15 February 2023 passed by the Waqf Tribunal in Waqf Application No.9 of 2018 is set aside and the Waqf Application No.9 of 2018 is allowed.

ii) Consequently, the order dated 16 January 2016 passed by the Waqf Board under provisions of Section 43 of the Waqf Act registering the Waqf is set aside.

iii) The proceedings filed by the Trustees under provisions of Section 7 of the Waqf Act shall be decided by the Waqf Tribunal uninfluenced by any of the observations made by this Court in the present judgment and order.

iv) Similarly Respondent No.3 would be at liberty to file such proceedings as may be available in law if he desires registration of Waqf, including proceedings under provisions of Section 36 of the Waqf Act. Such proceedings shall also be decided without being influenced by any of the observations made by this Court in the present judgment and order.

30 With the above directions, Civil Revision Application Nos.72 of 2024 and 252 of 2023 are allowed. Civil Revision Application No.178 of 2023 is rendered infructuous. All the Civil Revision Applications are accordingly **disposed of**.