

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 419 OF 2024

1. Zubaida W/O. Kadar Memon
2. Kadir S/o. Kadar Memon
3. Shahanaj W/o. Kadir Memon
4. Salim S/o. Kadar Memon
5. Shafik S/o. Kadar Memon
Applicants No.1 & 3 to 5 through
Their General Power of Attorney
Kadir S/o. Kadir Memon
(Applicant No.2 above)

....Applicants
(Original Defendants No.1 to 5)

: *Versus* :

1. Khan Mubeen Ahmed Ali
2. Shaikh Jan Mohammad Shaikh
3. Kamruddin Masjid (Jamiyatul Kubra)
Camp, Pune
4. Maharashtra State Waqf Board.

....Respondents
(Respondent Nos.1& 2 are Original
Plaintiffs No.1 & 2 and Respondents
No.3 & 4 are Original Defendant
No.6 & 7 respectively)

Mr. Anurag Mishra *i/by. Ms. Pooja Kankariya, for the Revision Applicant.*

Mr. Altaf Khan *with Mr. Mazhar Khan, for Respondent Nos.1 and 3.*

Mr. Rahimtulla Momin *with Ms. Divya Parab, for Respondent No.4.*

CORAM : SANDEEP V. MARNE, J.

Judgment Reserved on : 16 April 2025.

Judgment Pronounced on : 29 April 2025.

JUDGMENT :

1) Applicants have invoked revisionary jurisdiction of this Court under sub-section (9) of Section 83 of the Waqf Act, 1995 for setting up a challenge to the judgment and order dated 15 May 2024 passed by the Maharashtra State Waqf Tribunal, Aurangabad. The Tribunal has decreed the suit filed by Respondent Nos.1 and 2 and has directed the Applicants to deliver vacant possession of the suit property to Respondent No.3-Waqf Institute with further direction to conduct enquiry into mesne profits under Order 20 Rule 12 of the Code of Civil Procedure, 1908 (**the Code**).

2) It is the case of the Plaintiffs (*Respondent Nos.1 and 2*) that Kamruddin Masjid (Jamaiyatul Kubra) Camp, Pune is a Waqf Institute. Plaintiffs claim that they are Muslims professing Islam and are interested persons in the said Waqf Institute. House No.1870, Ground floor, Gaffar Baig Street, Near Kamruddin Masjid, Kamathipura admeasuring 350 sq.ft. is the 'suit property'. Plaintiffs' case is that the suit property belongs to the Waqf Institute, which is also the property included in Schedule-I thereof. The Waqf Institute allowed Applicant No.1 to use the suit property on lease basis for a tenancy of 11 months on payment at the rate of Rs.200/- per month. That the lease was not renewed under the provisions of Section 56 of the Waqf Act. That Applicant No.1 sublet the suit property to Applicant Nos. 2 to 5 without the consent of the Waqf Institute. Plaintiffs therefore branded Applicants/Defendants as the encroachers over the suit property. It was Plaintiffs' case that despite being requested, the members of the Defendant No.6-Institute failed to take steps to recover possession of the suit property. Therefore, on 1 December 2016, Respondent Nos.1 and 2

called upon the Applicants to handover possession of the suit property. Upon failure of the Applicants to do so, Respondent Nos.1 and 2 instituted Waqf Suit No.16/2017 before the Waqf Tribunal, *inter-alia* seeking recovery of possession of the suit property from the Applicants.

3) The suit was resisted by the Applicants/Defendant Nos.1 to 5 by filing Written Statement, in which they did not dispute that the suit property belongs to the Waqf Institute. They however pleaded that the father-in-law of Applicant No.1 and grandfather of Applicant Nos.2 to 5 was put in possession of the suit property by the Waqf Institute in the year 1960 as a tenant. That after demise of Umar Abdul Shakur Memon in the year 1990, his son Gulam Kadar Umar Memon, who is the husband of the First Applicant and father of Applicant Nos.2 to 5 continued to remain in possession of the suit property with the consent of the Waqf Institute on payment of agreed rent. That Gulam Kadar Umar Memon passed away on 11 May 2011, whereafter his widow (*Applicant*) and children (*Applicant Nos.2 to 5*) continued to remain in use and occupation of the suit property. This is how Applicants claimed that there are encroachers in respect of the suit property. Applicants also questioned the *locus-standi* of the Plaintiffs to file and maintain the suit. They pleaded that Plaintiffs were facing criminal prosecutions. Applicants prayed for dismissal of the suit. The suit proceeded *ex-parte* against Defendant Nos.6 and 7 (*Respondent Nos. 3 and 4*). Based on pleadings, the Tribunal framed issues. The parties led evidence in support of their respective contentions. Plaintiffs examined Khan Mubeen Ahmed Ali as P.W.1. Defendant Nos.1 to 5 (*Applicants*) examined Kadeer Gulam Kadar Memon as D.W.1. During pendency of the suit, Original Plaintiff No.2 passed away and his name was deleted from the cause-title of the suit. Applicants filed application at Exhibit-59

seeking dismissal of the suit on the ground that the sole Plaintiff came to be elected as trustee of the Trust in the year 2018 and he started accepting rent from the Defendants. The application at Exhibit-59 was directed to be decided alongwith the main suit.

4) After considering the pleadings, documentary and oral evidence, the Tribunal proceeded to decree the suit by judgment and order dated 15 May 2024. While decreeing the suit, the Tribunal considered the application at Exhibit-59 filed by the Applicants and dismissed the same. The Tribunal has directed the Applicants to handover vacant and peaceful possession of the suit property to Respondent No.3-Waqf Institute within 3 months. The Tribunal has further directed conduct of enquiry into future *mesne* profits under Order 20 Rule 12 of the Code. Applicants have filed the present Revision Application challenging the judgment and decree of the Tribunal dated 15 May 2024.

5) Mr. Mishra, the learned counsel appearing for the Revision Applicants would submit that the Tribunal has grossly erred in decreeing the suit. He would submit that the Plaintiffs lacked *locus-standi* to file and maintain suit for removal of encroachment in respect of the suit property of the Waqf Institute. He would rely upon the provisions of Sections 54 and 55 of the Waqf Act in support of his contention that only Chief Executive Officer (CEO) can make a reference to the Waqf Tribunal for removal of encroachment from the Waqf property. He would therefore submit that a person interested in Waqf Institute who is otherwise entitled to make an application under sub-section (2) of Section 83 of the Waqf Act to the Tribunal, cannot maintain a suit for removal of encroachment in view of special

provisions under Sections 54 and 55 of the Waqf Act. He would submit that if a total outsider is permitted to maintain a suit for removal of encroachment from Waqf property, the special provisions made under Sections 54 and 55 of the Waqf Act would be rendered *otiose*. He would submit that the proper course of action was to move an application by the Plaintiffs before the CEO, who would have issued notice to the Applicants and made a *prima-facie* enquiry into the nature of possession of Waqf property by the Applicants and only after being satisfied that Applicants are encroachers, he could have made an application to the Tribunal for grant of order of eviction for removal of such encroachment. He would submit that Applicants cannot bypass the mechanism provided for under Sections 54 and 55 of the Act and directly file a suit for removal of encroachment from Waqf property. He would rely on Division Bench Judgment of Madhya Pradesh High Court in Masjid Chandal Bhata Prabandh Committee Versus. Secretary, Local Self Department¹ in support of his contention that Sections 54 and 55 of the Waqf Act are complete Code in itself.

6) Mr. Mishra would further submit that Applicants cannot be treated as 'encroachers' within the meaning of Section 3(ee) of the Waqf Act. He would rely upon judgment of the Apex Court in P. V. Nidhish and others Versus. Kerala State Wakf Board and another² in support of his contention that there is no automatic presumption of a lessee becoming an encroacher only on account of expiry of lease. He would submit that the present case is squarely covered by the Apex Court judgment in P.V. Nidhish. He would rely upon rent Receipt No. 80 dated 11 September 1939 issued in the name of Shakoor in support of his contention that the suit property is in valid occupation of the family

¹ MANU/MP/0285/2010

² 2023 SC Online SC 519

members of the Applicants right since 1938 i.e. before coming into effect of the Waqf Act. That the fact situation in the present case is identical to the one involved in *P.V. Nidhish*. He would further submit that the Plaintiffs came out with a false case before the Tribunal that Applicants were inducted as lessees for a tenure of 11 months in the year 1997, which case has been rejected by the Tribunal. That once Plaintiffs' case of induction of Applicants as lessees in the year 1997 is rejected, the Tribunal ought to have dismissed the suit. Mr. Mishra would accordingly pray for setting aside the impugned decree of the Waqf Tribunal.

7) The Revision Application is opposed by Mr. Altaf Khan, the learned counsel appearing for Respondents Nos.1 and 3. He would submit that the Tribunal has passed the impugned decree in exercise of jurisdiction vested in it and that in absence of any jurisdictional error or element of perversity, there is no scope for this Court to exercise revisionary jurisdiction for setting aside the impugned decree. He would submit that the Tribunal has recorded a finding of fact of Applicants being encroachers in respect of the Waqf property. He would rely upon provisions of Section 56 of the Waqf Act, under which there is a specific prohibition on creation of any lease in respect of waqf property for a period exceeding 30 years. That there is no concept of tenant holding over in respect of waqf property. That every person who continues to occupy waqf property after expiry of tenure of lease automatically becomes an encroacher within the meaning of Section 3(ee) of the Waqf Act. He would rely upon judgment of this Court in *Shaikh Shafiq s/o. Shaikh Osman Versus. Kishan Laxman Waghmare and others*³ in support of his contention that tenancy land of religious trust is not heritable. Mr. Khan would also rely upon judgment of this

3 Civil Revision Application No.143/2004 decided on 30 August 2004. (Aurangabad Bench)

Court in Arjun s/o Bhimaji Lakare (Kahar) deceased through L.R.s and another Versus. Hindustani Momin Banarasi Jaatichhe Panch Mandali and Ors.⁴

8) So far as *locus-standi* of Plaintiffs to maintain the suit is concerned, Mr. Khan would submit that both the Plaintiffs are person interested in the Waqf Institute and were entitled to file an application before the Tribunal under sub-section (2) of Section 83 of the Waqf Act. He would submit that if the Waqf Institute does not show any interest in removal of encroachment, every person interested in Waqf Institute is entitled to move proceedings before the Tribunal for protecting the property of Waqf Institute. He would submit that the Courts have general *parens patriae* jurisdiction over religious and charitable trusts and that the usual objection of locus is not applicable *qua* protection of properties of Trusts and Waqf Institutes. That it is the obligation of the Court to protect the property of the Trust without going into the technicalities of *locus-standi*. He would rely upon judgment of Madras High Court in Rajagopal Versus. Balachandran, Uma Maheswari & Padmini⁵ and of the Apex Court in Executive Officer, Arthanareswarar Temple Versus. R. Sathyamoorthy and others.⁶ He would pray for dismissal of the Revision Application.

9) Rival contentions of the parties now fall for my consideration.

4 Civil Revision Application No.229 of 2012 decided on 25 February 2014. (Aurangabad Bench)

5 2001 1-3 L.W. 637

6 2001-3-L.W. 649

10) The first issue strenuously contended by Mr. Mishra is about locus of the two Plaintiffs to file and maintain suit for removal of encroachment under Section 83 of the Waqf Act. He has also questioned the locus of sole surviving Plaintiff to maintain the suit after death of the second Plaintiff. In their Complaint, Plaintiffs pleaded that they are Muslims professing Islam and are interested persons in the Waqf Institute. Under Section 83(2) of the Waqf Act, a Mutawalli or a person interested in Waqf or any other person aggrieved by an order made under the Waqf Act, can make an application to the Waqf Tribunal. Section 83 of the Act provides thus :

83. Constitution of Tribunals, etc.—

(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.

(2) Any mutawalli or person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf.

(3) Where any application made under sub-section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the [waqf] or any other person interested in the waqf or the waqf property to transfer such application to any other

Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred, shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

[(4) Every Tribunal shall consist of—

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member;

and the appointment of every such person shall be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as *ex officio* members shall be such as may be prescribed.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

11) Thus, for making of an application to the Waqf Tribunal, following three categories of persons are recognised under sub-section (2) of Section 83 :

- (i) Mutawalli,
- (ii) person interested in Waqf and
- (iii) any other person aggrieved persons by an order made under the Act.

Thus, a person interested in Waqf is entitled to maintain an application before the Waqf Tribunal. Applicants do not dispute the jurisdiction of the Waqf Tribunal to entertain and try the suit for removal of encroachment. All that they question is the *locus-standi* of the two Plaintiffs to file suit for removal of encroachment. Applicants sought to deny the assertion of Plaintiffs about they being interested persons in the Waqf Institute. Applicants did not make any serious attempt to prove that Plaintiffs did not have any connection with the Waqf Institute. In fact, during pendency of the suit, Applicants filed application at Exhibit-59 seeking dismissal of the suit on the ground that Plaintiff No.1 was elected as a trustee of Defendant No.6-Waqf Institute. Therefore, it can hardly be said that Plaintiffs were not persons interested in the Waqf Institute. In fact, during the course of his submissions, Mr. Mishra has not seriously disputed the position that Plaintiffs were persons interested in the Waqf Institute. Mr. Mishra's objection of *locus-standi* is based on provisions of Sections 54 and 55 of the Waqf Act. He has contended that a person interested in the Waqf Institute cannot directly maintain a suit for removal of encroachment in the light of existence of special provisions under Sections 54 and 55 of the Waqf Act.

12) It would therefore be necessary to examine the Applicants' contention that a person interested cannot directly file a suit/application under Section 83(2) of the Waqf Act for removal of encroachment in the light of creation of special machinery for removal of encroachment under Section 54 and 55 of the Waqf Act. Section 54 of the Waqf Act deals with removal of encroachment from waqf property and provides thus :

54. Removal of encroachment from waqf property.—

(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is waqf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is waqf property and that there has been an encroachment on any such waqf property, he may, make an application to the Tribunal for grant of order of eviction for removing such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the waqf.

(4) The Tribunal, upon receipt of such application from the Chief Executive Officer, for reasons to be recorded therein, make an order of eviction directing that the waqf property shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the waqf property:

Provided that the Tribunal may before making an order of eviction, give an opportunity of being heard to the person against whom the application for eviction has been made by the Chief Executive Officer.

(5) If any person refuses or fails to comply with the order of eviction within forty-five days from the date of affixture of the order under sub-section (2), the Chief Executive Officer or any other person duly authorised by him in this behalf may evict that person from, and take possession of, the waqf property.

13) Thus, under the provisions of Section 54 of the Waqf Act, the CEO of the Waqf Board can either entertain any complaint or act on his own motion in respect of any encroachment on Waqf property and serve a notice upon the encroacher calling him upon to show cause as to why an order for his removal shall not be made. A copy of such notice is also required to be given to the concerned Mutawalli. The CEO thereafter is supposed to conduct an enquiry and record his satisfaction that the property in question is Waqf property and that there has been encroachment on such waqf property and thereafter the CEO is required to make an application to the Tribunal for grant of order of eviction.

14) Section 55 of the Waqf Act deals with the procedure for enforcement of order made under Section 54 of the Waqf Act and provides thus :

55. Enforcement of orders made under section 54.—

Where the person, ordered under [sub-section (4)] of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may [refer the order of the Tribunal to the Executive Magistrate] within the local limits of whose jurisdiction the land, building, space or other property, is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

15) The issue for consideration is whether there is any bar for the three categories of persons specified under sub-section (2) of Section 83 to directly make an application to the Tribunal for removal of encroachment and whether it is mandatory that such an application for removal of encroachment can only be made by the CEO alone.

16) Section 54 has been amended by the Act 27 of 2013. Under unamended sub-section (3) of Section 54, the CEO was earlier vested with jurisdiction to pass an order for removal of encroacher. The words '*he may, by an order, require the encroacher to remove*' have been replaced by the words '*he may, make an application to the Tribunal for grant of order of eviction for removing such encroachment*'. Thus, the scheme of the unamended Act empowered the CEO to make an order for removal of encroachment and person aggrieved by such order was entitled to file a suit before the Tribunal for establishing his right, title and interest in the Waqf property under sub-section (4) of Section 54. Now, the CEO is empowered to only make an application to the Tribunal seeking removal of encroachment from the Waqf property. Thus, the CEO is no longer empowered to himself make an order for removal of encroachment. Thus, whether there is an encroachment or not would ultimately be decided by the Tribunal. The satisfaction recorded by the CEO under sub-section (3) of Section 54 about property being Waqf property and whether there has been an encroachment on Waqf property is ultimately subject to the finding that would be recorded by the Waqf Tribunal. Thus, the Waqf Tribunal is the ultimate authority, who would adjudicate whether there is an encroachment on waqf property or not.

17) Though, Section 54 of the Waqf Act empowers the CEO to make an application to the Waqf Tribunal for removal of encroachment, sub-section (2) of Section 83 does not impose any prohibition or restriction on the three categories of persons to move an application before the Waqf Tribunal. In my view, therefore in absence of any restriction or prohibition on a Mutawalli or person interested in Waqf to make an application for removal of encroachment, it cannot be held that the suit instituted by a person interested in Waqf Institute would be not maintainable.

18) Mr. Khan has relied upon judgment of Madras High Court The President, Ameerunnisa Begum Sahiba Endowments Triplicane, Chennai - 5 Versus. D. Ganesan⁷ in which the issue before the Single Judge of Madras High Court was whether a Mutawalli can maintain a suit for eviction and for recovery of mesne profits and damages for use and occupation. The Madras High Court relied upon judgment of Division Bench of Andhra Pradesh High Court in A. S. Abdul Khader Wakf Versus. Saber Miah⁸ and held in paras-44 to 47 as under :

44. That apart, in yet another Judgment from the Andhra Pradesh High Court, where a Division Bench in the matter of **A.S.Abdul Khader Wakf v. Saber Miah**, reported in (2003) AIR AP 528, has framed the following substantial question of law in a second appeal.

"20. The substantial questions of law which arise for consideration in these Second Appeals are :

1. Whether the view taken by the appellate Court that the suit is not maintainable, is sustainable in law ?
 2. Whether a Mutawalli can maintain the suit for eviction and for recovery of mesne profits or damages for use and occupation ?
 3. Whether a managing Mutawalli or a joint Mutawalli can maintain a suit ? If so, under what circumstances ?
- and it has been held as follows :

⁷ C.R.P.(PD)No.3723/2019 decided on 8 May 2020.

⁸ (2003) AIR AP 528

21... It is pertinent to note that the appellate Court had reversed the judgments and decrees of the Court of first instance on the ground of the maintainability of the suits since those were not instituted by the Wakf Board, but they were instituted by the managing Mutawalli. Suffice for us to state that the Mutawalli who is the person incharge of the affairs of the Wakf in relation to supervision and management and who is normally interested in the Maintenance and management of the Wakf and the Wakf properties, in the interest of the Institution, can definitely maintain a suit for eviction, recovery of mesne profits or damages for use and occupation.

"25. In the present case, the managing Mutawalli who is interested in safeguarding the interests of the Wakf and its properties had instituted the suits praying for appropriate reliefs. It is also pertinent to note that the managing Mutawalli is permitted to institute these suits by the Wakf Board as evidenced by Ex. A-4. A Mutawalli is a person who will manage and supervise, the Wakf properties. In view of the R.C. Rev. 377/2011 11 | P a g e same, it cannot be said that a Mutawalli cannot maintain a suit in relation to Wakf property at all and the Wakf Board alone should institute the suit. Hence, we are of the considered opinion that a Mutawalli can definitely institute a suit for recovery of possession of the Wakf property from tenants and also for appropriate reliefs.

26. ...

27. The position of a Mutawalli is just akin to a Trustee. It is no doubt true that a Mutawalli cannot act adverse to the interests of the Wakf. A Mutawalli is expected to administer and manage the properties of the Wakf keeping in view the wishes of the founder and a Mutawalli is expected to protect the interest of the beneficiaries as well. When there are more than one Mutawallis, we are also of the opinion that one of the Mutawallis can definitely maintain a suit representing the other Mutawallis as well unless there is conflict of interest otherwise. A co-owner can definitely maintain, a suit for the relief of eviction and even in the case of Mutawallis, when there are more than one Mutawalli, one such joint Mutawalli can definitely maintain a suit. The principle applicable in the case of a co-owner in this regard can be extended even in the case of Mutawallis...."

45. Apart from these Judgments, though number of decisions have been referred by the learned counsel appearing for the revision petitioner, most of the said Judgments are related to the issue, whether a Civil Court has got jurisdiction to entertain the suit, despite the bar in the provisions of the Waqf Act and other related issues. Because those issue is not substantially in issue in the present case, as here, it is the only issue as to whether the Mutawalli or President of the Waqf like the President / petitioner instead of CEO of the Waqf Board as contemplated under Section 54 of the Act can approach the Tribunal seeking for an order of eviction of a tenant in default / encroacher or not ?

46. The aforesaid Judgments which have been specifically referred to and have been discussed herein above, almost taken a view that, the role of a Mutawalli in so far as the notified and registered Waqf is concerned is paramount and important and the importance of the role of Mutawalli or

President of the notified Waqf cannot be taken away abruptly or completely merely because of the procedure contemplated under Section 54 of the Act, in so far as it relates to seeking eviction of the tenant in default / encroacher.

47. When that being the position, I am of the considered view that, the decision taken by the Tribunal through the impugned order to state that, the OA filed by the revision petitioner is not maintainable because it was filed by the President / Mutawalli of the Waqf and not by the CEO as contemplated under Section 54 of the Waqf Act, is an erroneous view or decision, therefore it requires interference.

19) Thus, the judgment of Madras High Court in *The President, Ameerunnisa Begum Sahiba Endowments Triplicane* (supra), holds that a Mutawalli can individually maintain suit for eviction without invoking machinery under Section 54 of the Waqf Act for removal of encroachment.

20) Going further, Mr. Khan has relied upon judgment of Single Judge of Madras High Court in *M. K. Sulthan & others Versus. Hameed Shafi & others*⁹ in which it is held in paras-23 to 25 as under :

23. In order to dispel the contention put forth on the side of the Appellants/Defendants 1 to 4, the learned Counsel appearing for the Respondents 1 to 11/Plaintiffs has befittingly drawn the attention of the Court to the decision reported in *Syed Khersha Sajanshah Mutvalli, Bhuj Kutch v. The Bhuj Municipality*, AIR 1986 Guj. 1, wherein the decision reported in *Bibi Siddique Fatima v. Saiyed Mohammad Mahmood Hasan*, AIR 1978 SC 1362, has been followed. In *Bibi Siddique Fatima v. Saiyed Mohammad Mahmood Hasan*, AIR 1978 SC 1362, the Hon'ble Apex Court has observed as follows:

“Under the Mahomedan Law, which is a personal law, the Mutawalli has right to file a Suit in respect of the ex-wakf property. This right has not been taken away by Statute. In other words, the mere fact that Section 36 of the Wakf Act does not speak about the management and administration of the wakf property as one of the duties of Mutawalli, does not imply that the Mutawalli has no right to file a Suit in respect of Wakf property. Nor do the provisions of Section 55 of the Wakf Act disentitle a Mutawalli from instituting a suit in respect of wakf property. The definition of Mutawalli under Section 3(f) of the Act presupposes that the first and foremost duty of the Mutawalli would be to manage or administer the property. The Mutawalli has to

9 2013 (3) MWN (Civil) 20

perform two types of duties, religious duties and secular duties. The religious duties may be in the nature of offering prayers, dupe, etc., while secular duties would include the collection of rent, managing the property, keeping the property in good condition, preparation thereof, administering the property and if somebody encroaches upon the wakf property then to protect those rights. Thus, the fact that Section 36 does not speak about the management and administration of the property as one of the duties of Mutawalli is immaterial. One has to take into consideration the very purpose for which the Act is enacted. It is clearly in the preamble that it is an Act to provide for the better administration and supervision of Wakfs. Therefore, the Legislature intended that in addition to their duties under the Personal Law there must be further statutory duties and these duties are prescribed under Section 36 of the said Act. Therefore, whatever the rights or duties the Mutawalli has under the personal law cannot be said to have been taken away merely because they are not so expressly provided as duties and powers of Mutawalli under the provisions of the Wakf Act."

24. A close reading of the dictum given by the Hon'ble Apex Court, it is made clear that a Muthavalli can very well institute a Suit so as to protect interest of Wakf or its properties.

25. In *Bibijan v. Anwarsha Idgah & Mosque Avuila Durgah, Panruti*, 2008 (8) MLJ 365, this Court has dealt with similar question and ultimately found that even worshippers can file a Suit to protect wakf property or property of other religious institutions. They are entitled to maintain a suit for preserving trust property or restoring the property to the trust."

(emphasis added)

21) Thus, in *Bibijan and 49 others Versus. Anwarsha Idgah & Mosque Avuila Durgah, Panruti and 70 others*¹⁰, the Madras High Court has held that even a worshiper can file a suit to protect a waqf property.

22) During the course of his submissions, Mr. Mishra has fairly not disputed the position that a Mutawalli can directly file a suit for eviction of encroacher. This Court, therefore raised a query as to how a Mutawalli would stand on a better footing than the one who files an application under Section 83(2) of the Waqf Act. Mr. Mishra has relied upon provisions of Section 50 of the Waqf Act in support of his contention that one of the duties of a Mutawalli is to allow inspection of

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waqf properties and that therefore towards fulfillment of that duty, a mutawalli can directly institute a suit for removal of encroachment. I am not impressed by the submission of Mr. Mishra. Section 50(c) casts a duty on mutawalli to '*allow inspection of waqf property*'. Therefore, the provisions of Section 50(c) do not put a mutawalli on a better footing as compared to a person interested in the purpose of maintaining an application before the Tribunal under Section 83(2) of the Waqf Act. If mutawalli can directly maintain a suit for removal of encroachment, I do not see any difficulty why a person interested in Waqf Institute cannot maintain such application.

23) In fact, as rightly contented by Mr. Khan, the proceedings for removal of encroachment from waqf property are not proceedings of adversarial nature. The Courts exercise general *parens patriae* jurisdiction over Trust of charitable and religious nature. His reliance on the judgment of the Madras High Court in *Rajagopal* (supra) in this regard is apposite. Viewed from the angle of the Waqf Tribunal exercising general *parens patriae* jurisdiction over the property of the Waqf and interest of the Waqf being a supreme consideration, in my view the suit cannot otherwise be dismissed on technical objection of *locus-standi* of the Plaintiffs to maintain the suit.

24) Mr. Mishra has relied upon judgment of Madhya Pradesh High Court in *Masjid Chandal Bhata Prabandh Committee* (supra) in support of his contention that Sections 54 and 55 of the Waqf Act are complete Code in itself. It is held by the Division Bench of Madhya Pradesh High Court in para-6 as under :

6. Thus, from perusal of Sections 54 and 55 of the Wakf Act, it is clear that the Act itself provides an adequate and efficacious remedy to an aggrieved person. Supreme Court in the case of *Guruvayoor Devaswom Managing Committee v. C.K. Rajan*, (2003) 7 SCC 546, while setting aside the order of the High Court passed in public interest litigation held as under:

“60..... That may be so but the Act is a self-contained code. Duties and functions are prescribed in the Act and the Rules framed thereunder. Forums have been created thereunder for ventilation of the grievances of the affected persons. Ordinarily, therefore, such forums should be moved at the first instance.”

25) However, the judgment in *Masjid Chandal Bhata Prabandh Committee* (supra), is rendered in the unique facts and circumstances where a Public Interest Litigation was instituted for seeking removal of encroachment at the Masjid through Municipal Corporation. It is in the light of the prayer for removal of encroachment through the machinery of Municipal Corporation that the Madhya Pradesh High Court has made observations that there were adequate and efficacious remedies under Sections 54 and 55 of the Waqf Act and accordingly refused to entertain the PIL. Therefore, reliance by Mr. Mishra on judgment of Madhya Pradesh High Court in *Masjid Chandal Bhata Prabandh Committee* does not assist the case of the Applicants.

26) In my view, the correct and harmonious way of interpreting the provisions of Sections 54 and Section 83(2) of the Waqf Act is to hold that a mutawalli or a person interested have an option of either filing a complaint of encroachment with the CEO of the Board, who can then make an inquiry into existence of waqf property and whether there is encroachment and then file an application before the Waqf Tribunal under sub-section (3) of Section 54 of the Act to the Tribunal, which then adjudicates the issues of existence of waqf property and existence

of encroachment. This course of action can be resorted to by any person without need of establishing that he/she is a mutawalli or person interested. Also, such complainant, after filing complaint under Section 54(1) of the Act, leaves the matter to the CEO, who then conducts the preliminary enquiry and files and prosecutes the reference before the Tribunal. The Complainant under Section 54(1) does not have to spend time, energy or funds in prosecuting the reference before the Tribunal. On the other hand, a mutawalli or a person interested can directly sue the encroacher under Section 83(2) of the Waqf Act and seek his/her eviction. This course of action is restricted only to a mutawalli or a person interested and cannot be adopted by an ordinary complainant under Section 54(1). Also, a mutawalli or a person interested needs to personally prosecute the application/suit under Section 83(2) by spending time, energy and funds for such prosecution.

27) Therefore, it cannot be contended that a mutawalli or a person interested must take a route of Sections 54 and 55 of the Waqf Act for removal of encroachment and that they are incapable themselves for suing the encroacher under Section 83(2) of the Waqf Act. In my view therefore, even a person interested can maintain a suit for removal of encroachment under Section 83(2) of the Waqf Act without resorting to the machinery under Section 54 and 55 thereof.

28) Coming to the merits of the case, the Waqf Tribunal did not accept the pleaded case of the Plaintiffs that Defendant No.1 was inducted as a lessee in the year 1997 for a period of 11 months and the lease had expired at the end of tenure of 11 months. The Defendants, on the other hand, came out with a pleaded case as under :

That the Umar S/o. Abdul Shakur Memom who is father in law of the defendant no.1 and grand father of defendant no.2 to 5 was put into possession of suit property by the defendant no.6 wakf institution in the year 1960 as tenant who enjoyed possession of suit property by paying agreed rent till his demise which occurred in 1990 and after his demise his legal heir his son Gulam Kadar S/o. Umar Memom who is husband of defendant no.1 and father of defendant no. 2 to 5 continued to be in possession of suit property with the Consent of defendant no.6 Wakf institution on payment of agreed rent and enjoyed possession of suit property by paying rent to the defendant no.6 till his demise which occurred on 11th May 2011 and thereafter defendant no.1 being widow of Gulam Kadar and his legal heir defendant no. 2 to 5 is continued in use and enjoyment of suit property as tenant with the consent of defendant no.6 wakf institution. The copies of payment of rent receipt paid to the wakf institution i.e. defendant no.6 till date are filed herewith.

29) Thus, the pleaded case of the Defendants in the Written Statement that the father-in-law of the First Defendant was put in possession of the suit property by the Waqf Institute in the year 1960. By the year 1960, the Waqf Act, 1954 had already been enacted. In that sense, reliance by Mr. Mishra on judgment of the Apex Court in *P.V. Nidhish* (supra) which has dealt with a case where the lease was created in favour of the Appellant therein even before the Waqf was created and even before the Waqf Act, 1995 was enacted is misplaced. In order to invoke the ratio of the judgment in *P.V. Nidhish*, Mr. Mishra has sought to rely upon Rent Receipt No. 80 dated 11 September 1938 to suggest that the suit property has been in possession of the Defendants since the year 1938. However, such admission on the part of the Defendants is contrary to their own pleaded case where it is averred that the father-in-law of the First Defendant was put in possession of the suit property by the Waqf Institute for the first time in the year 1960. Applicants cannot be permitted to lead evidence contrary to the pleadings in the Written Statement.

30) Section 56 of the Waqf Act puts total prohibition on creation of lease in respect of Waqf property for a period exceeding 30 years and such lease is deemed to be void. Section 56 of the Waqf Act provides thus :

56. Restriction on power to grant lease of waqf property.—

(1) A lease for any period exceeding thirty years of any immovable property which is [waqf] property, shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided that a lease for any period up to thirty years may be made for commercial activities, education or health purposes, with the approval of the State Government, for such period and purposes as may be specified in the rules made by the Central Government:

Provided further that lease of any immovable waqf property, which is an agricultural land, for a period exceeding three years shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect:

Provided also that before making lease of any waqf property, the Board shall publish the details of lease and invite bids in at least one leading national and regional news papers.

(2) A lease for a period of one year but not exceeding thirty years of immovable property which is waqf property shall, notwithstanding anything contained in the deed or instrument of waqf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or renewal thereof under this section review the terms and conditions on which the lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct:

Provided that the Board shall immediately intimate the State Government regarding a lease for any period exceeding three years of any waqf property and thereafter it may become effective after the expiry of forty-five days from the date on which the Board intimates the State Government.

(4) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule

should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

31) Even under the Waqf Act 1954, there was similar provision making leases in excess of three years void. Therefore even going by the pleaded case of Defendants that the lease was created in the year 1960, the same was otherwise void. In *Shaikh Shafiq Shaikh Osman* (supra) the Co-ordinate Bench of this Court has held in paras-10 to 12 as under:

10. Plain reading of Section 56 of the Act of 1995, prohibits lease or sub-lease of the Wakf Property for any period exceeding 3 years in relation to any immovable property, which is Wakf Property. This prohibition is, notwithstanding anything contained in the deed or instrument of Wakf or any other law for the time being in force. Sub-section (1) of Section 56 ultimately makes such lease or sub-lease void and of no effect. Sub-section (2) of Section 56 further provides that the lease or sub-lease for a period exceeding one year and not exceeding 3 years, of immovable property, which is Wakf property shall, notwithstanding anything contained in the deed or instrument of Wakf or any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board. Regarding grant of sanction, sub-section (3) of Section 56 lays down that the Board shall, in granting sanction for lease or sub-lease or renewal thereof, under this section, review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and makes its approval subject to the revision of such terms and conditions in such manner as it may direct. Therefore, the intention of Section 56, putting restriction on the Board regarding grant of lease of the wakf property, is an important feature of this Section 56. The modalities of Section 56, if considered, the grant of lease or sub-lease for the period of more than one year but less than 3 years, regarding immovable property, i.e. Wakf Property, is only permissible even with the previous permission of the Board. Exceeding the period of 3 years, even with the previous permission of the Board, if any lease or sub-lease is executed by the Board regarding Wakf Property, the said deed or instrument is void and consequence of the said document is of no effect. Regarding lease or sub-lease exceeding one year but not exceeding three years, it is provided that said deed or instrument shall be legal, provided it is made with the previous sanction of the Board. Sub-section (2) gives power for lease or sub-lease for a period of exceeding one year, but not exceeding three years. Sub-Section (3), thereafter, gives power to the Board to take a review of the entire fact situation and terms and conditions and thereafter only, grant lease or sub-lease or renewal thereafter.

11. The intention of the legislature, therefore, is to put restrictions on the Board for grant of lease or sub-lease. This section has also employed the phraseology, "notwithstanding anything contained in the deed or instrument of Wakf and or any other law for the time being in force". It is provided that, even one cannot resort to provision laid down in the instrument of Wakf itself, or no one can resort to the provision of any other law and claim any protection. In my view, the non-obstante clause is important and the same is inserted with an intention to preserve and protect the wakf property. The contention of the learned counsel for the petitioner regarding Section 116 of Transfer of Property Act, cannot be isolatedly considered and accepted. The provision laid down under Section 56 of the Act of 1995, has to be considered while assessing the rights under Section 116 of the Transfer of Property Act. In other words, Section 116 of the Transfer of Property Act, is not having overriding effect in relation to Section 56 of the Wakf Act, 1955. The provision laid down under Section 56 of the Wakf Act being a special legislation, it shall prevail and will have to be taken into consideration. In this view of the matter, in my considered view, there is no substance in the contention raised on behalf of the petitioner that the petitioner is the tenant holding over and entitled to retain possession so long as rent is being regularly paid.

12. It is to be noted that the Wakf property is not left at the mercy of the officers or the persons concerned, having management over the wakf property. IN other words, if the persons in management of the Wakf Board are blindly or for some other reasons, accepting the rent from the tenant/lessee, they cannot be permitted to defeat the provision laid down under Section 56 of the Wakf Act, 1995. Therefore, despite the fact that the learned counsel Mr. Kazi has pointed out the observations of the learned Judge of the Tribunal that the plaintiff has paid rent regularly for the year 1995 to 2003, it shall not confer status or right of a lessee on the plaintiff. The plaintiff, therefore, was lessee in the suit property for the period of 11 months from 28.11.1992. He cannot claim possession as holding over referring to Section 116 of the Transfer of Property Act. The learned Judge of the Tribunal has rightly held that the plaintiff cannot be said to be a person in lawful possession of the suit property. The plaintiff, therefore, is not entitled to seek decree for perpetual injunction against the defendant.

32) Thus, even if a person in management of the Waqf accepts rent from a tenant or lessee, provisions of Section 56 of the Waqf Act are not defeated. This Court has also not accepted the theory of tenant holding over when the lease is found to be in violation of provisions of Section 56 of the Waqf Act. In fact, under the definition of the term '*encroacher*' under Section 3(ee) of the Waqf Act, every person who

remains in possession of the waqf property after expiry of the lease automatically becomes an encroacher. The term '*encroacher*' as defined under Section 3(ee) of the Waqf Act is as under:

(ee) "encroacher" means any person or institution, public or private, occupying waqf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board;

33) Mr. Mishra contends that the definition of the term '*encroacher*' came to be incorporated in the Statute by way of Amendment of 2013 and that therefore the said definition would not apply to the Applicants who have been occupying the waqf property much prior to the year 2013. In my view, mere incorporation of definition of the term '*encroacher*' vide Act 27 of 2013 would not protect unlawful possession of the Applicants in respect of waqf property. It is not that the very concept of removal of encroachment by invoking the provisions of Waqf Act came to be introduced for the first time by way of Amendment of 2013. Sections 54 and 55 dealing with removal of encroachment from waqf property existed in the Statute book from the date the Waqf Act was enacted. There were similar provisions for removal of encroachment under the Waqf Act 1954 as well. As discussed above, the only change that the 2013 Amendment Act brought was to take out jurisdiction from CEO to pass an order of eviction and to invest the Waqf Tribunal with jurisdiction to do so. It therefore cannot be contended that introduction of definition of the term '*encroacher*' by 2013 Amendment Act would offer protection to unlawful occupation of waqf property by the Applicants.

34) Mr. Mishra has heavily relied upon judgment of the Apex Court in *P. V. Nidhish* (supra) in support of his contention that the 2013

Amendment Act introducing definition of the term '*encroacher*' under Section 3(ee) of the Waqf Act does not cover occupation of waqf property prior to the said amendment. In *P. V. Nidhish* the premises were leased in the year 1951 i.e. before coming into effect of the Waqf Act, 1954. The CEO of the Waqf Board had initiated several proceedings against the Appellants for eviction. The first attempt was made in 2004 in which it is held that the Appellants were not in unauthorised occupation and could not be evicted. Another proceedings were filed in the year 2006 before the Waqf Tribunal for eviction of Appellant, which were decreed but in the revision, the Kerala High Court ruled that the Waqf Tribunal lacked jurisdiction and that the Appellants could be evicted only through civil proceedings before a competent Civil Court. Therefore, Civil Suit was filed in the year 2012, during pendency of which, Waqf Act was amended w.e.f. 1 November 2013 by incorporating definition of the term '*encroacher*' under Section 3(ee), as well as introducing Section 52A in the Waqf Act. Under Section 52A person unauthorisedly taking possession of Waqf property without prior sanction of the Board is made liable to be punished with rigorous imprisonment upto two years. In the light of this factual position, it was contended that since the Appellant came in possession of the property even before the Waqf was created, they cannot be treated as encroachers merely on account of introduction of the term '*encroacher*' under Section 3(ee) of the Act by the 2013 Amendment. In the light of these unique facts, the issue before the Apex Court was whether Section 52A of the Act introducing criminal liability w.e.f. 1 November 2013 would apply to a case where the leases of waqf property had expired in the past and where the tenants/lessees were in physical possession and facing civil proceedings at the time when 2013 Amendment Act came into force. In my view, the judgment of the Apex Court in *P. V. Nidhish* cannot be

read in support of an absolute proposition that every illegal occupation of a waqf property prior to introduction of definition of the term 'encroacher' by 2013 Amendment Act would be protected. It can also not be read in support of the proposition that only cases where lease expires after 1 November 2013 the occupation of waqf property after expiry of lease would become 'encroachment' within the meaning of Section 3(ee) of the Waqf Act.

35) In Nazir Shah s/o Yakub Shah and others Versus. Thadi Masji, Bundelpura and another¹¹ this Court has dealt with similar contention by relying on Apex Court judgment in *P. V. Nidish* as sought to be raised by the Applicants and had held in para-8 as under :

8. The learned Counsel for the petitioners further submitted that tenancy of the petitioners over the suit land is not at all terminated, and therefore, they are not the encroachers as held by the learned Tribunal. For that purpose he relied on the judgment in the case of **P. V. Nidhish & ors vs Kerala State Wakf Board** (supra). He pointed out that as per Section 3 (ee) of the Waqf Act, definition of 'encroacher' is as follows :

"encroacher means any person or institution, public or private, occupying wakf property, in whole or part, without the authority of law and includes a person whose tenancy, lease or licence has expired or has been terminated by mutawalli or the Board".

Thus, the learned Counsel for the petitioners is claiming that the Tribunal has not considered this aspect and directed possession of the suit land to be delivered by ignoring the fact that the tenancy of the petitioners over the suit land is not yet terminated. However, on going through the impugned judgment, it appears that the learned Tribunal has clearly held that the land is exempted under Section 129-B of B.T.A.L. Act from the applicability of the provisions of Tenancy Act, and therefore, treated the petitioners as 'encroachers'. It is specifically submitted by the learned Counsel for respondent No.2-Board that the amendment in definition of encroacher under Section 3 (ee) of the Waqf Act has come in force from 01.11.2013 and prior to that a person whose tenancy was expired or terminated, was not included in the same. The learned Tribunal has already discussed in it's judgment impugned and ultimately held that prior to 2013 amendment there

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could not be any tenancy in relation to the property belonging to Waqf. Thus, the claim of the petitioners that even after death of Yakub Shah they continued the tenancy by sending certain amount to respondent No.1, is definitely illegal. It is specifically held by this Court in the case of Abdul Hamid Shaikh Safdar vs Darushifa Masjid Farmanpura in Civil Revision No. 116 of 2008 that after coming into force of Waqf Act, lease for a period of exceeding three years cannot at all be created and cannot exist. Under such circumstances, continuation of possession of the property by the petitioners without any lease, even for a period of less than one year by the Trust, would be of an encroacher.

36) Thus, a lessee whose lease has expired cannot claim that he is entitled to remain in possession for all times to come.

37) Another contention of Mr. Mishra that the decree passed by the Waqf Tribunal is a hollow decree incapable of being executed on account of suit proceeding *ex-parte* against Defendant Nos.6 and 7. The contention is misplaced. In fact, Plaintiffs filed a suit for removal of encroachment with a specific complaint that Defendant Nos.6 and 7 were not taking steps for protection of Waqf property. Once locus of Plaintiffs to maintain the suit is recognised, merely because the Waqf Institute shied away from defending the suit would not render the decree incapable of being executed. Plaintiff can apply for and get the decree executed for the benefit of the Waqf.

38) After considering the overall conspectus of the case, I do not find any element of perversity in the findings recorded by the Waqf Tribunal. The Tribunal has passed the impugned order in exercise of jurisdiction vested in it. Therefore, there is no scope for interference in the impugned order passed by the Tribunal in exercise of revisionary jurisdiction under sub-section (9) of Section 83 of the Waqf Act.

39) The Civil Revision Application is devoid of merits. It is accordingly **dismissed** with no order as to costs.

[SANDEEP V. MARNE, J.]

40) After the judgment is pronounced, Mr. Mishra, the learned counsel appearing for the Revision Applicants, would pray for stay to the execution of the decree for a period of eight weeks. The request is opposed by Mr. Khan, the learned counsel appearing for Respondent Nos.1 and 3. Considering the fact that execution of the decree would result in eviction of the Applicants from residential house, the decree shall not be executed for a period of four weeks.

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[SANDEEP V. MARNE, J.]