

C.R.P.(MD)No.268 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	Pronounced on
09.07.2025	04.08.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.R.P. (MD) NOS. 247 OF 2008 & 1051 OF 2017

AND

TR. A.S. (MD) NO. 222 OF 2009

C.R.P. (MD) No.247 of 2008

1. Golden Educational Trust

Through its Trustee Sivakami Murugan

W/o Murugan

Residing at Sakthi Bavanam

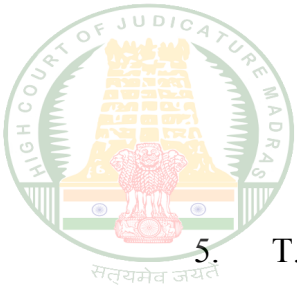
Door No.B-19, 5th Main Road

Maharaja Nagar, Tirunelveli – 11.

2. M. Siva Sankar

3. K.Vijayalakshmi

4. M.Naga Subbulakshmi



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5. T.Kanthiah Thevar

.. Petitioner

WEB COPY (P-2 & 4 are represented by

their power agent, P-1)

- Vs -

1. Tamil Nadu Wakf Board

Chennai, through its Chief Executive Officer

7/4, 9th Cross Street, Indra Nagar

Adayar, Chennai 600 020.

2. M.S.Srinivasa Iyer

3. Appadurai (Died)

4. Kumara Verghees Raj

5. Esakkiammal

6. Ponthangam

7. Velumurugan

8. Sasikala

9. Revathi

10. Vetrivel

11. Ponraj

12. Muthuselvam

.. Respondents

(RR-5 to 12 brought on record as

2/60



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WEB COPY LRs of deceased R-3 vide order dated
30.06.2025 in CMP (MD) No.10807,
10808, 10810, 10811 to 10813/24)

C.R.P. (MD) No.1051 of 2017

1. Appadurai (Died)
2. J.Bewin Oral
3. Binula Christy

.. Petitioners

(P-1 & P-2 rep. Through their Power
Of Attorney G.Justin Thambi)

(P-2 & P-3 impleaded as per order

Dated 30.06.2025 in CMP (MD) Nos.

16172 & 16173/2023 in CRP (MD)

No.247/2008 &CMP (MD) No.16174/2024

In AS (MD) No.222/2009)

- Vs -

1. Tamil Nadu Wakf Board

Chennai, through its Chief Executive Officer

7/4, 9th Cross Street, Indra Nagar



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Adayar, Chennai 600 020.

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2. Golden Educational Trust

Through its Trustee Sivakami Murugan

W/o Murugan

Residing at Sakthi Bavanam

Door No.B-19, 5th Main Road

Maharaja Nagar, Tirunelveli – 11.

3. M. Siva Sankar

4. K.Vijayalakshmi

5. M.Naga Subbulakshmi

6. T.Kanthiah Thevar

7. M.S.Srinivasa Iyyer

8. Kumara Varghees Raj
Respondents

..

TR. A.S. (MD) No.222 of 2009

Golden Educational Trust

Through its Trustee Sivakami Murugan

W/o Murugan



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Residing at Sakthi Bavanam

Door No.B-19, 5th Main Road

Maharaja Nagar, Tirunelveli – 11.

.. Appellant

- Vs -

1. Appadurai (Died)
2. Esakkiammal
3. Ponthagam
4. Velumurugan
5. Sasikala
6. Revathi
7. Vetrivel
8. Ponraj
9. Muthuselvam

.. Respondents

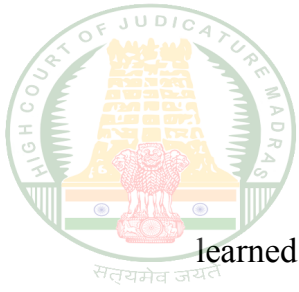
(RR-2 to 9 brought on record as

LRs of deceased R-3 vide order dated

30.06.2025 in CMP (MD) No.10807,

10808, 10810, 10811 to 10813/24)

C.R.P. (MD) No. 247 of 2008 has been filed under Article 227 of the Constitution of India praying this Court to set aside the judgment and decree of the



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learned Wakf Tribunal (Principal Sub Judge), Tirunelveli, dated 27.4.2007 made

in O.S. No.128 of 2005.

C.R.P. (MD) No. 1051 of 2017 has been filed under Article 227 of the Constitution of India praying this Court to set aside the judgment and decree of the learned Wakf Tribunal (Principal Sub Judge), Tirunelveli, dated 27.4.2007 made in O.S. No.128 of 2005.

Transfer A.S. No.222/2009 has been filed u/s 96 Order 41 Rule 1 of the Code of Civil Procedure praying to set aside the judgment and decree of the learned Principal Subordinate Judge, Tirunelveli, made in O.S. No.159 of 2004 dated 27.4.2007.

For Appellant / : Mr. M.P.Senthil Kumar in
Petitioners

CRP 1051/2017

Mr. M.S.Suresh Kumar in

CRP 247/2008 & AS 222/2009

For Respondents : Mr. M.S.Suresh Kumar for RR-2 to 6
in CRP 1051/2017

Mr. S.Kumar for R-8 in CRP 1051/17

Mr. G.Chandrasekaran for R-1

In CRP 247/2008

Mr. S.Kumar for R-4 in CRP 247/2008

No Appearance for RR-2 & 3 in CRP
247/2008



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COMMON JUDGMENT

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The revision petitioner in CRP (MD) No.247/08 and CRP (MD) No. 1051/2017, have assailed the judgment and decree in O.S. No.128/2005 passed by the Wakf Tribunal/Principal Sub Judge, Tirunelveli, while the appeal in TR A.S. No.222/2009 has been filed by the revision petitioner in CRP (MD) No.247/2008 against the judgment and decree in O.S. No.159/2024 passed by the Principal Sub Court, Tirunelveli.

2. Since the facts and the relief sought for in all the revision petitions and the appeal are interconnected and the outcome of revision petitions determines the outcome of the appeal, they are taken up together and disposed of by this common judgment.

3. For the sake of convenience, the revision petitioner in CRP (MD) No. 247/08, who is the appellant in Tr. A.S. No.222/09 will be referred to as 'the Trust' and the revision petitioner in CRP (MD) No.1051/17 will be referred to as 'third party/revision petitioner' and the 1st respondent in CRP (MD) No.247/08 will be referred to as 'Wakf Board'.

4. The properties, which is the subject matter of the present *lis* is alleged to



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have been dedicated to a wakf, which has hitherto fore landed at the hands of the Trust and other private individuals upon alienation by the power agent of the Muthavalli, which is one of the group and it is also claimed to have been sold to the third party/revision petitioner, which has further been alienated as claimed by the other group. The entire facts revolve around the properties, which have been, according to the Wakf Board, dedicated for religious and charitable purposes and are intricately interconnected.

5. It transpires from the facts culled out by the trial court in CRP No.247/08 that the suit schedule properties originally belonged to one Mohd. Meeran, who is alleged to have created a wakf in and by which the properties, which have been specified in Schedule – 1 to the wakf deed were dedicated for the purpose of religious and charitable purposes as spelt out in Schedule – 2 to the wakf deed. The said Mohd. Meeran was the first Muthavalli of the wakf and hereditary succession of Muthavalli was provided for in the wakf deed and right to change the manner in which the Muthavalli is appointed was vested in the said Mohd. Meeran alone. The Wakf Deed also provided that the said properties, which have been dedicated to the wakf shall not be alienated by any means by the Muthavalli.

6. The Wakf Deed was executed as Document No.2279 on 4.9.1919. The first Muthavalli was Mohd. Meeran and after his life time, his daughter, Fathima Sugara Beevi took over as Muthavalli and she was administering the properties of

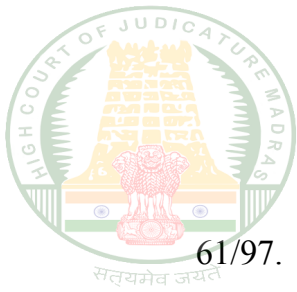


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the wakf. The said Fathima Sugara Beevi breathed her last on 26.10.1929 leaving behind her four daughters and on the basis of the recitals in the wakf deed dated 4.9.1919, the eldest daughter, Amathul Jaffer Fathima took over as Muthavalli of P.M.Mohd. Meeran Wakf. The wakf was surveyed by the Wakf Board and registered as G.S. No.718/9 WB and was published in the Government Gazette.

7. Amathul Jaffer Fathima was the last Muthavalli of the wakf, as due to her ailing health, she executed a registered power of attorney dated 3.2.1982 in favour of her son, Nazrudeen. A.J.Fathima, at the fag end of her life, was residing with her second son Fareed. On the basis of the power of attorney, Nazrudeen sold the property to six different persons under six different sale deeds and registered the same in favour of defendants in O.S. No.128/2005 on various dates between 11.12.1995 and 1.5.1996. A.J.Fathima, the last Muthavalli of Mohd. Meeran Wakf breathed her last on 15.12.1996. The alienation of the properties belonging to the wakf by Nazrudeen was brought to the notice of the Wakf Board by the Sub Registrar, Melapalayam, vide his letter dated 15.12.1996.

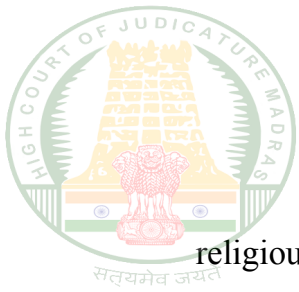
8. Since neither the Muthavalli nor any of her descendants had any right to alienate the properties belonging to Mohd. Meeran Wakf, the Wakf Board, while took action against Nazrudeen for alienating the property, though as per the Wakf Deed, Nazrudeen has to succeed as the Muthavalli of Mohd. Meeran Trust, and removed him from the post of Muthavalli on the basis of the Resolution No.



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61/97. The appeal against the said resolution by Nazrudeen in C.M.A. No. 46/1998 was dismissed. Thereafter, the persons who had purchased the property under various registered sale deeds from Nazrudeen had, by way of gift deed dated 19.3.2000, gifted the property to the Trust. As the 7th defendant in O.S. No. 128/2005 claimed that the suit schedule property was purchased by him and started interfering with the peaceful possession of the Trust, the Trust filed O.S. No. 159/2004 praying for a permanent injunction against the 7th defendant. As the 6th defendant in O.S. No.128/2005 had alienated the property in favour of the 8th defendant on 14.1.2004, the 8th defendant was brought in as a party defendant in the aforesaid suit.

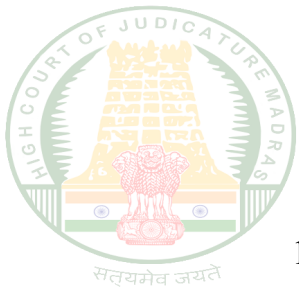
9. The suit in O.S. No.128/2005 was resisted by the defendants on the ground of non-joinder of parties; that the suit is barred by limitation as the suit ought to have been filed within three years from 13.12.1995, the date of the registration of the first sale deed; that the Wakf Board has no authority to file the suit and, therefore, the suit is not maintainable; that the suit schedule properties were not fully dedicated for religious and charitable purposes and, therefore, the wakf is not a wakf in its strictest sense; that the wakf was created for the family and that only wakf which are totally and fully dedicated for religious and charitable purposes would partake the character of wakf; that the present wakf is one which was created for the family, but which also included carrying out



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religious and charitable activities; that the suit schedule properties were purchased by paying fair and reasonable consideration by the purchasers; that the Wakf Board had granted permission for the sale of the properties and to that end, the necessary payments have been made by way of demand draft to the Wakf Board. Therefore, it was claimed that the plaintiff/Wakf Board had no right to file, much less maintain the suit.

10. The suit in O.S. No.159/2004 has been filed by the Trust averring that the suit schedule properties were purchased by Mohd. Meeran and his brother on 26.09.1915. Since the brother of Mohd. Meeran died without leaving any issues, his wife, Jainabu Beevi executed a release deed dated 7.5.1921 in favour of Mohd. Meeran. Mohd. Meeran created a registered private wakf in respect of the suit schedule properties based on which A.J.Fathima became the last Muthavalli of the properties. Since the properties did not yield the necessary income, the said A.J.Fathima executed a power of attorney in favour of her son Nazrudeen for selling the properties so as to make out a corpus for the said wakf. Based on the said power of attorney, Nazrudeen sold the suit schedule properties to the various respondents in CRP (MD) No.247/08. Some of the purchasers released the portion of the property purchased by them in favour of the Trust and the Trust is in peaceful possession and enjoyment of the properties and is paying all the statutory dues.



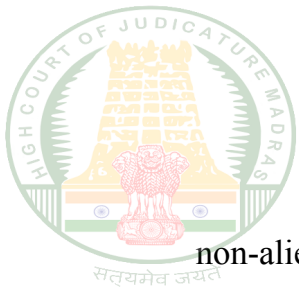
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11. While that being so, the defendant in the suit/third party created documents as if the properties were purchased by him from one S.K.Ahmed Ali and S.K.Mohammed Mohideen and based on the said documents filed O.S. No. 134/1995 before the II Addl. District Court, Tirunelveli and obtained injunction. In the said suit, the Trust is not a party. Coming to know of the fraudulent transaction by S.K.Ahmed Ali and S.K.Mohammed Mohideen, criminal complaints were also lodged. Based on the said documents, the third party/defendant in O.S. No.159/2004 is causing hindrance to the Trust in its peaceful possession of the properties and, therefore, the suit has been laid seeking permanent injunction.

12. The third party/defendant in O.S. No.159/2004 contested the suit submitting that all the averments with regard to purchase of the property by Mohd. Meeran, creation of wakf, selling of the properties allegedly by Nazrudeen are all false. It is the further averment that the purchase by the defendant is proper and that O.S. No.134/1995 was filed by the defendant in which an order of injunction was granted in favour of the defendant. From the date of purchase of the property, the property has been in possession and enjoyment of the defendant.

13. On the basis of the above pleadings, oral and documentary evidence, the trial court, in O.S. No.159/04 held that the suit schedule property is a private wakf, which was created for the purpose of religious and charitable purposes and it is



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non-alienable and, therefore, the sale of the said properties is against the provisions of the Wakf Act (for short 'the Act') and the recitals in the wakf and held that the properties belong to the wakf as the properties have been dedicated to the wakf as per Section 3 (r)(iv) of the Act and, accordingly, cancelled the documents by which the suit schedule properties were sold.

14. Insofar as O.S. No.159/2004 is concerned, the trial court held that no proper and acceptable documents have been placed before the Court to show that the properties were either purchased by the plaintiff therein or by the defendant therein and in the absence of such documentary evidence, the claim of the Trust for permanent injunction was negated.

15. Aggrieved by the aforesaid judgment and decree, the Trust, which is the 1st defendant and the 7th defendant in O.S. No.128/2005 have filed CRP (MD) No. 247/08 and CRP (MD) No.1051/2017 assailing the said judgment and decree. However, the rejection of permanent injunction sought for in O.S. No.159/2004 by the Trust has resulted in the Trust filing the appeal in A.S. No.222/2009, before the District Court, Tirunelveli, against the third party/revision petitioner in C.R.P. (MD) No.247/08, which, upon transfer to this Court has been numbered as Tr. A.S. No.222/2009 and listed before this Court.



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Submissions of the Revision Petitioner in CRP (MD) No.247/2008 :

WEB COPY 16. Learned counsel appearing for the revision petitioner submitted that Ex.A-7 under which the Muthavalli Nazrudeen was removed and steps were taken to recover the properties u/s (2) and (3) of Section 52 of the Act, the said document has been signed only by the Chairman and the signature of the members are not available, which makes the document invalid, as the same is in violation of Section 27 of the Act. In the absence of a special order passed by the Board in writing permitting the Chief Executive Officer to file a suit for recovering the properties, the filing of the suit is not maintainable in view of the bar u/s 27 of the Act.

17. It is the further submission of the learned counsel that Section 7 (3) of the Act provides that the Chief Executive Officer shall not be made a party to any application u/s 7 (1) of the Act. Such being the case, the suit in O.S. No.128/2005 at the behest of the Wakf Board by the Chief Executive officer is not maintainable, as Section 7 (3) acts as a bar for the Chief Executive Officer from being a party to the suit or application.

18. It is the further submission of the learned counsel that even for the sake of argument it is accepted, without admitting that Ex.A-7 resolution has been passed by the Board directing the District Collector to take action to recover the suit properties, however, till 10.7.2025, no order have been passed and the

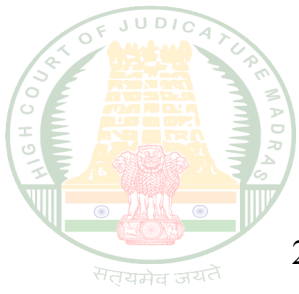


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defendants in the suit have a right of appeal against the said order and, therefore, this Court may, if it considers necessary, remand the revision and direct the District Collector to pass orders giving opportunity to the revision petitioner and, thereafter, against any such order passed, the revision petition, if aggrieved, may file an appeal to the Wakf Tribunal u/s 52 (4) of the Act.

19. It is the further submission of the learned counsel that the Wakf Board cannot institute the suit because the wakf is not notified in the Gazette, as no documentary evidence has been placed to show such notification. It is further submitted that the Wakf Board has not marked any exhibit in the suit to prove that the wakf is notified and any copy, which is produced across the Bar before this court cannot be construed as documentary evidence as this Court, under its revisional jurisdiction cannot receive such documents as additional evidence, as the right of the defendants, viz., the revision petitioner herein to cross examine the witness through whom the document is marked as to the contents of the publication. It is further submitted that it is mandatory that before a gazette notification is made, it is mandatory for the Commissioner to survey the properties.

20. It is the further submission of the learned counsel that the Wakf Board has no locus standi to file a suit without following the procedures contemplated u/s 27, 36, 37 and 40 of the Act.



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21. It is the further submission of the learned counsel that mere production of the gazette notification before this Court would not cure the defect of maintainability of the suit before the trial court and, therefore, the suit filed by the Wakf Board before the trial court is not maintainable. It is the further submission of the learned counsel that before filing the suit, the Wakf Board ought to have following the procedure contemplated u/s 4, 5, 6 and 27 of the Act. Neither the suit properties nor the survey numbers find place in the plaint schedule in the suit in O.S. No.128/2005. If the said suit properties are not included in the gazette notification, the Board has to collect information regarding the suit properties before filing the suit. Any decision of the Board u/s 40 (2) can be challenged or revoked or modified by the Wakf Tribunal and only thereafter, suit for possession could be filed by the Wakf Board. However, without following the said procedure, the suit has been filed, which is grossly erroneous.

22. It is the further submission of the learned counsel that the suit schedule properties along with all the survey numbers ought to be included in the Gazette notification and it is incumbent on the Wakf Board to maintain a register with regard to all the wakf properties along with copies of the wakf deeds as provided u/s 37. However, in the present case, the Board has not filed any register of the wakf to show that the suit schedule properties are included in the publication of list of wakf u/s 5. In the absence of inclusion of the same in the Register and in the absence of conducting preliminary survey u/s 4 (1)(A) of the Act, the suit in



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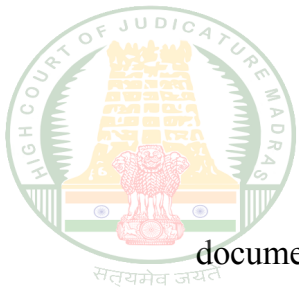
O.S. No.128/2005 has to be rejected.

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23. It is the further submission of the learned counsel that the wakf deed, Ex.A-8, is dated 4.9.1919 but on the said date, the said P.N.Mohd. Meeran, who created the wakf did not have title to the said properties, as the right to the said properties accrued to Mohd. Meeran only by means of a release deed dated 7.5.1921, the day on which Shynabu Beevi, the widow of deceased A.N.Abdul Rahim, who is the brother of Mohd. Meeran, released the properties and only on that date, Mohd. Meeran got title to the properties. Therefore, the properties under Ex.A-8, dated 4.9.1919 does not belong to Mohd. Meeran on the crucial date and, therefore, he does not have ownership to create a wakf under the said deed. To support the aforesaid submission, learned counsel placed reliance on Section 3 (r) of the Act, which defines the term ‘wakf’. On the crucial date, viz., 4.9.1919, the said Mohd. Meeran did not get the right as a Wakif and reading the other documents jointly, the existence of the Wakf Deed itself is highly doubtful.

24. It is the further submission of the learned counsel that the possession of the properties with the Trust is admitted and Ex.B-8, the patta, which has been issued in the name of the Trust.

25. It is the further submission of the learned counsel that it is settled principle that it is the plaintiff, which has to prove its case by letting in



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documentary evidence and in the absence of the same and in the absence of the last Muthavalli, Nazrudeen having not been impleaded as a party to the suit, the suit is not maintainable for non-joinder of parties and, therefore, the judgment and decree passed in the suit requires to be set aside.

26. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

- i) *M.A. Aziz – Vs – AP State Wakf Board & Anr.*
(AIR 1998 AP 61);
- ii) *Ali Akhtar Quadri – Vs – The State of Bihar* (AIR 2003 Jhar 74);
- iii) *The President – Vs – Kamaraj College of Engineering & Technology Managing Board, rep. By its Secretary* (2009 (5) CTC 289);
- iv) *Hari Singh Nalwa – Vs – Kartar Singh Bhandana* (AIR 2001 P & H 86);
- v) *Tamil Nadu Wakf Board – Vs – Hathija Ammal* (Decd.) by LRs, etc. 2001 (8) SCC 528);
- vi) *Nagoor Kaniammal @ Mahboobal Beevi & Ors. – Vs – Tenkasi Vangaru Muthu Meeran Sahib Thailka Pallivasal through its Worshippers & Jamathars & Ors.* (2015 (4) CTC 34);
- vii) *Madanuri Sri Rama Chandra Murthy – Vs – Syed Jalal* (2017 (13) SCC 174);
- viii) *Mohd. Rafi – Vs – Thiruvengadam* (2021 (2) LW 705);
- ix) *Salem Muslim Burial Ground Protection Committee – Vs – State of Tamil Nadu & Ors.*(2023 SAR



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(Civ) 694);

x) *Mahmood Hussain – Vs – State of UP & Ors.*

(Writ C. No.56238/2017 – Dated 23.02.2018);

xi) *Infrastructure Leasing & Financial Services Ltd.*

– Vs – *HDFC Bank Ltd. & anr. (AIR 2023 SC 5239);*

xii) *A. Mukram Sheriff – Vs – The Chief Executive Officer (W.P. No.3390/2002 – Dated 19.09.2003); and*

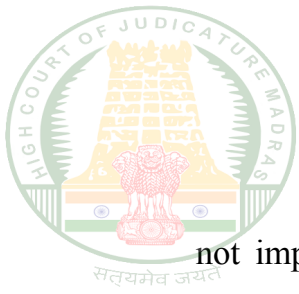
xiii) *Union of India & Ors. – Vs – Vasavi Cooperative Housing Society Ltd. & Ors. (2014 (2)SCC 269)*

Submissions of the appellant in Tr. A.S. (MD) No.222/2009

27. Learned counsel appearing for the appellant submits that the 1st respondent in the appeal claims to have purchased the property to an extent of 10 acres from S.K.Ahmed Ali and S.A.Mohd. Mohideen on 28.12.1993, in which the vendors have merely stated that it is their ancestral property and it is the duty of the 1st respondent to establish the title of his vendors and their predecessor-in-title and the appellant cannot be mulcted with responsibility to prove otherwise.

28. It is the further submission of the learned counsel that the 1st respondent has not produced any document to show that he is in absolute possession of the 10 acres of the land alleged to have been purchased from S.K.Ahmed Ali and S.A.Mohd. Mohideen.

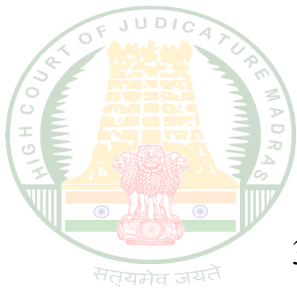
29. It is the further submission of the learned counsel that the trial court did



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not implead the Wakf Board nor had called upon the appellant to implead the Wakf Board and, therefore, non-impleadment of the Wakf Board cannot be put against the appellant. Further, the trial court though held that the appellant is in possession and enjoyment of the suit properties, however, dismissed the suit for non-joinder of parties, more particularly, when the trial court had held that the 1st respondent, Appadurai has not been able to prove his title and also establish his predecessors-in-title to the property. It is the further submission of the learned counsel that inspite of the fact that such a finding has been recorded, no appeal has been filed by the 1st respondent/Appadurai against the same.

30. It is the further submission of the learned counsel that when the Wakf Board has not produced any document to establish title and more so when the Wakf Board is not a party to the suit and no issue having been framed with regard to the properties claimed to have been belonging to the Wakf Board the trial court ought to have granted bare injunction as prayed for by the appellant. Learned counsel further submits that possession proves title, which is an essential ingredient to obtain an order of permanent injunction, which has been the ratio laid down in a catena of judgments by this Court as well as the Apex Court. However, without following the well laid down precedents, the trial court has erroneously dismissed the suit, which finding requires interference at the hands of this Court.



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31. In support of the aforesaid submissions, learned counsel placed reliance

WEB COPY on the following decisions :-

- i) *Ananthula Sudhakar – Vs – Buchi Reddy (Dead) by LRs & Ors. (AIR 2008 SC 2033);*
- ii) *V.N.Krishnasamy – Vs – E.S.Vasudevan (S.A. No. 1019/2007 (MHC) :: MANU/TN/1003/2015);*
- iii) *Nachi & Ors. –Vs – Poongodi & Ors. (S.A. No. 1761/2003 (MHC) :: MANU/TN/0293/2018);*
- iv) *S.Arumugam & Ors. – Vs – A.N.Subramaniyan & Ors. (S.A. No.340/2008 (MHC);*
- v) *Arulmigu Velukkai Sri Azagiya Singaperumal Devasthanam (S.A. Nos.1671 & 1672/2002 :: MANU/TN/3195/2020);*
- vi) *Saraswathy & Ors. – Vs –Thiyagarajan & Ors. (S.A. No.93/2008 (MHC)); and*
- vii) *Anbazhagan & Ors. – Vs – Nethaji (2022 (2) CTC 162)*

Submissions on the revision petitioner in C.R.P. (MD) No.1051/2017 & respondents in Tr. A.S. No.222/2009

32. It is the submission of the learned counsel that the title of the Wakf Board to the property as also the title of its predecessor Mohd. Meeran, who is alleged to have executed the wakf deed dated 4.9.1919, which is marked as Ex.A-8, are disputed by the revision petitioner and, therefore, the burden lies on the Wakf Board to prove its title by tracing the title of Mohd. Meeran to the property through proper and acceptable evidence. However, the Wakf Board has

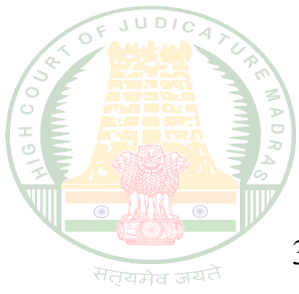


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miserably failed to prove its title, which it is tracing through Mohd. Meeran and also the title of Mohd. Meeran to the property, which fact has not been properly appreciated by the trial court, while decreeing the suit in favour of the Wakf Board.

33. It is the further submission of the learned counsel that the suit is not maintainable as the Chief Executive Officer is barred u/s 7 (3) of the Act from instituting a suit u/s 7 (1) of the Act and, therefore, the suit is liable to be dismissed as not maintainable. However, this crucial provision of law has not been properly appreciated by the trial court and, therefore, the order passed requires interference.

34. It is the further submission of the learned counsel that on the date when the wakf was created, viz., 4.9.1919, Mohd. Meeran did not have title to dedicate the properties in favour of the wakf. However, the title of the revision petitioners stands established through their purchase from their vendor, Appadurai, who purchased the same from his predecessors-in-title, viz., S.K.Mohd. Ali and S.A.Mohd. Mohideen under Ex.B-19. In the absence of establishment of title of Mohd. Meeran to the property at the time of creation of the wakf, the revision petitioners' having established their title through Ex.B-19, the suit ought to have been dismissed by the trial court.



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35. It is the further submission of the learned counsel that Ex.A-8 has been executed by Mohd. Meeran on 4.9.1919, but the gazette notification produced on behalf of the Wakf Board does not contain the details of the properties, which is the subject matter of the present suit, which is contrary to the provisions of the Act and, therefore, the Wakf Board cannot maintain its claim to the properties as wakf properties based on the gazette notification. However, all these material facts have not been properly taken into consideration by the trial court and, therefore, the judgment and decree deserves to be set aside.

Submissions on behalf of the Wakf Board in the revision petitions

36. Learned counsel appearing for the Wakf Board submitted that the main contention of the Trust with regard to the resolution not having been signed by all the members is wholly misconceived, as what is filed under Ex.A-7 is a true copy of the resolution passed by the Board, which has been approved by the Chief Executive Officer and it is not the original copy of the resolution. The Chief Executive Officer has merely communicated the resolution passed by the Board and, therefore, the validity of the resolution put in issue by the Trust is erroneous. It is only the Wakf Board, which has passed the resolution, as could be seen from the resolution, which has been marked as Ex.A-7. Therefore, Section 27 of the Act, which is alleged to have been violated is wholly erroneous.

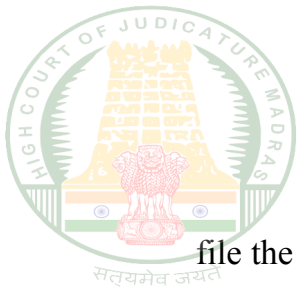
37. It is the further submission of the learned counsel that the Wakf Board



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has not violated Section 27 of the Act, as it had not delegated any powers to the Chief Executive Officer insofar as doing any work, which is within the purview of the Wakf Board, including the powers, which are specifically excluded u/s 27 of the Act. Ex.A-7 is only a copy of the resolution passed by the Board, which has been attested by the Chief Executive Officer and it is not a resolution which has been passed by the Chief Executive Officer.

38. It is the further submission of the learned counsel that the Wakf Board has been represented by the Chief Executive Officer in O.S. No.128/05, which has been filed to retrieve the property of the wakf, which has been wrongfully alienated by the power of attorney of the last Muthavalli. Placing reliance on Section 27 of the Act, it is submitted by the learned counsel that the delegation of power to the Chief Executive Officer to file the suit flows from Section 27, where the Board could delegate the power to the Chief Executive Officer to discharge the duties of the Board. Only on the basis of the said delegation, the suit has come to be filed. Further, it is the submission of the learned counsel that sub-section (3) to Section 7 of the Act only bars making the Chief Executive Officer as a party to any application made filed by any aggrieved person before the Tribunal relating to any property alleged to be belonging to a Wakf. It does not bar the Chief Executive Officer from filing any suit before the Tribunal for recovering any property, which is claimed to be the property of the Wakf. Therefore, the contention that there is a bar u/s 7 (3) of the Act for the Chief Executive Officer to



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file the suit is grossly misconceived.

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39. It is the further submission of the learned counsel that no property belonging to a wakf could be alienated without the prior sanction of the Board and in case such alienation is made procedure for recovery of the said property so transferred in contravention of the aforesaid provision is provided for u/s 52. It is further submitted that if the Board is satisfied upon enquiry that such wakf properties have been alienated, sub-section (1) of Section 52 clothes the Board with power to make a requisition to the Collector to obtain and deliver possession of the property. It is the further submission of the learned counsel that though an appeal is provided before the Tribunal u/s 52 (4) against an order passed by the Collector u/s 52 (2), however, such a contingency does not arise as inspite of the request made by the Board to the Collector, which even according to the Trust is pending and, therefore, this Court could at best remand the matter to the Collector to pass such an order so that it could be appealed before the Tribunal, the same leads only to the present scenario, as instead of the Wakf Board, which has filed the suit, the appeal would be filed before the Tribunal by the Trust, which would only be the very same exercise and, therefore, remanding of the matter does not arise, as at best, it would not only lead to multiplicity of proceedings, thereby dragging the matter and defeating the intention with which the wakf was created.

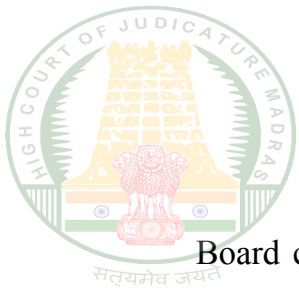
40. Learned counsel appearing for the Wakf Board further submitted that



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the no proforma report was filed by the Wakf Board as provided for u/s 4 of the Act by conducting a survey by the Survey Commissioner appointed by the Government to survey the properties of the Wakf. It is the submission of the learned counsel that what is filed under Ex.A-11 is the proforma report of the Wakf Board and is not the report, which has been submitted by the Government to the Wakf Board upon completion of the survey as mandated u/s 4 of the Act. It is the further submission of the learned counsel that Ex.A-11 proforma report has come into existence only after publication in the Government gazette and in this regard, learned counsel submits that Section 5 (2) would clearly reveal that notification would be only after examination is made of the report by the Wakf Board. Therefore, the claim of the Trust that no survey has been made and no report has been filed has no legs to stand and deserves to be rejected.

41. It is the further submission of the learned counsel that the contention of the Trust that the mere production of the Government gazette cannot be the basis for the Wakf Board to maintain the suit and further it is submitted that claim of the Trust that the gazette notification is bereft of details with regard to survey numbers as also the plaint in the suit, would not negate the validity of the suit, as the details have been provided in the proforma report and even if the survey has not been properly done, as alleged, taken for the purpose of argument, without being admitted, the Board has got powers u/s 40 of the Act to collect information regarding a property by making the necessary enquiry and the decision of the



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Board can be questioned before the Tribunal. However, the Trust has not taken any steps with regard to challenging the action of the Board before the Tribunal, if at all the Trust was aggrieved. When the Trust has not taken any steps to challenge the decision of the Wakf Board u/s 40 (2), the Trust cannot claim that unless the matter is challenged before the Tribunal no suit for possession could be filed by the Wakf Board. The silence of the Trust cannot act in detriment to the Wakf Board to question the title and possession of the Trust before the civil court, when the interest of the Wakif is sought to be defeated by clandestine means.

42. It is the further submission of the learned counsel that the contention with regard to registration of a wakf, which was created prior to the coming into force of the Wakf Act, it is submitted that mere non-registration of the wakf with the Wakf Board cannot be presumed to nullify the validity of the wakf and the intention of the Wakif with regard to dedication of the property. It is the submission of the learned counsel that what is provided for under Section 36 (8) is only to register the Wakf and non-registration of the wakf u/s 36 (8) would not invalidate the wakf as such registration is only for the purpose of Section 37 of the Act, which prescribes the succession to the office of muthavalli of the wakf and also the properties, which are dedicated to the wakf.

43. It is the further submission of the learned counsel that Mohd. Meeran, created the wakf on 4.9.1919 on which date, the properties, which have been



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dedicated were in the joint enjoyment of Mohd. Meeran and his brother and subsequent to the passing away of his brother, his wife, Shynabu Beevi, widow of P.N.Abdul Rahim had given the release deed dated 7.5.1921 in favour of Mohd. Meeran. The said Shynabu Beevai had not questioned the creation of wakf by Mohd. Meeran at any point of time nor his deceased brother, P.N.Abdul Rahim. Therefore, the dedication made on 4.9.1919 by creation of the wakf merged into one with the release deed executed by Shynabu Beevi and, therefore, on and from 7.5.1921, the wakf was handled by Mohd. Meeran till his death and, thereafter it was managed by his wife, Fathima Sugara Beevi. Therefore, the validity of the wakf was not questioned anterior in point of time by any member of the family and it had continued to be managed by the family as “*waqf-alal-aulad*” in which the properties were dedicated for religious and charitable purposes. The Trust, which is a subsequent purchaser from the power of attorney of the last Muthavalli, A.J.Fathima, cannot come and claim that the wakf was not properly created.

44. It is the further submission of the learned counsel that merely because the Trust claims to be in possession of the property and that patta under Ex.B-8 stands in the name of the Trust and Ex.B-10, land due certificate has been issued in favour of the Trust for the purpose of electricity connection cannot confer title to the properties on the Trust.

45. It is the further submission of the learned counsel that merely because



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all the properties under Ex.A-8 have not been spelt out in the gazette notification cannot invalidate the wakf nor could that be taken to mean that the properties, which have been spelt out in the wakf deed are not wakf properties is grossly erroneous. On the date when the wakf deed was created, there is a clear mention of the properties, which have been dedicated to the wakf for the purpose of religious and charitable purposes. At a later point of time, the gazette notification has been published and mere non-inclusion of the details of all the properties of the wakf would not render that the properties are not that of the wakf. Further, even a cursory perusal of the gazette notification would reveal that all the notification only details the name of the wakf and the gross income, the amount of land revenue, insofar as all the wakfs are concerned and it does not spell out the details of the properties of each and every wakf. Such being the case, if the contention of the Trust is to be accepted, then all the wakfs would have to be invalidated as the properties have not been spelt out in the gazette notification and, therefore, it is submitted that the said contention deserves to be rejected.

46. Insofar as the claim of the third party/Appadurai, who is alleged to have purchased some of the properties of Mohd. Meeran is concerned, it is submitted that the judgment and decree without the wakf being shown as a party and obtained only against the Trust would not bind the Wakf Board. It is the further submission of the learned counsel that the title of the predecessors of Appadurai has not been established and the burden for establishing the same lies on the



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revision petitioner. However, without establishing the same, the said Appadurai has sought for an injunction against the Trust and vice versa, which has been rightly negated as against both the revision petitioners and the Wakf Board being not a party in the suit filed by Appadurai, the judgment and decree of injunction granted against the Trust would not bind the Wakf Board.

47. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, as also the decisions relied on by the parties.

48. The revision petitioners have, in unison, claimed that the suit is not maintainable for non-joinder of parties, as the Muthavalli, A.J.Fathima and the power of attorney, Nazrudeen have not been added as parties. Though such a contention is advanced, it is to be pointed out that the claim of the Wakf Board is only for possession of the properties, which, as claimed by the Wakf Board, is with the Trust. It is the specific case of the Trust that the properties have been purchased from the power of attorney, Nazrudeen, but no where the Trust claims that the title to the property is with A.J.Fatima. the wakf deed is not disputed, but only the recitals in the wakf deed, which, as claimed by the Trust is a family wakf, created for the benefit of the family and that the religious and charitable commitments do not outweigh the family commitments. Therefore, what is relevant for this Court is to decide the genuineness of the wakf deed and the



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purpose for which it has been created for which it is only the deed, which is necessary and neither the Muthavalli, A.J.Fathima nor the power of attorney, Nazrudeen are necessary parties, as the presence of the said parties would in no way bolster the case of the Trust, which is predicated more on the wakf deed. Therefore, the non-joinder of A.J.Fathima, the last Muthavalli of the wakf before sale of the properties nor the power of attorney, Nazrudeen are not fatal to the suit and the suit cannot be said to be not maintainable.

49. The Trust has also attacked the maintainability of the suit on the ground of limitation claiming that the suit has not been laid within three years from the date of entering into the sale. The sale had taken place in the year 1995, but the suit has been laid only in the year 2005. The suit has been filed for recovery of possession of the suit properties. In this regard, it is relevant to peruse Section 107 of the Act, which provides that the provisions of the Limitation Act would not apply with regard to possession of immovable property comprised in any wakf or for possession of any interest in such property. In the present case, possession of the wakf properties, which are at the hands of the Trust are sought for by the Wakf Board and such being the case, Section 107 of the Act would stand squarely attracted and the provisions of the Limitation Act and more particularly the period of limitation would not be applicable with regard to recovery of possession of properties. Therefore, the contention with regard to limitation deserves to be rejected.



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WEB COPY 50. The crucial document, viz., the Wakf Deed, dated 4.9.1919 in and by which the alleged dedication is made, has been executed by Mohd. Meeran, creating the P.N.Mohd. Meeran Wakf. The said Mohd. Meeran acted as the first Muthavalli and succession was provided within the family.

51. The nature of wakf is defined sub-section (r) to Section 3, which is as under :-

“r) "wakf" means the permanent dedication by a person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes--

- (i) a wakf by user;*
- (ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;*
- (iii) “grants” including mashrut- ul- khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and]*
- (iv) a wakf- alal- aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession falls, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognized by Muslim law, and "wakif" means any person making such dedication.”*



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WEB COPY 52. The recitals in the wakf deed clearly show that the wakf falls u/s 3 (r) (iv) and is a private wakf. A perusal of Section 3 (r) (iv) reveals that beyond the extent to which the wakf is created and the properties thereon dedicated for pious, religious or charitable activities as recognized by the Muslim law.

53. In the light of the aforesaid legal position with regard to the manner in which the administration of a private wakf has to be done, in the present case the recitals in the wakf deed would have a bearing and, therefore, the recitals need to be adverted to.

54. The Wakf Deed is marked as Ex.A-8, which is document No.2279 of 1919, which has been executed on 4.9.1919 by P.N.Mohd. Meeran. The wakf deed, in clear terms states that the properties found in Schedule – I are dedicated for the purpose as specified in Schedule – II. The deed further proceeds that the income from the properties dedicated to the wakf are to be utilised for religious and charitable purposes as spelt out in the deed and the balance amount, which remains from out of the income are to be used for the purpose of family expenses.

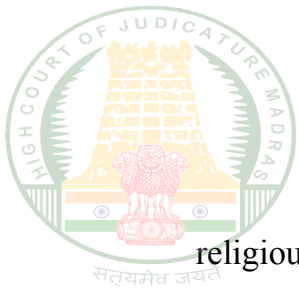
55. The deed further proceeds that the male heirs in succession shall be the Muthavalli, who shall do the religious and charitable activities from out of the income of the wakf and where male heirs are not available, the eldest female heirs



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will be the Muthavalli. The deed further proceeds that all the expenses related to education of children, marriage of the female children and other necessary family expenses should be expended from out of the income from the properties, but from the balance amount that is available after spending the income for the purposes of religious and charitable activities spelt out in Schedule – II. It has been further recorded in the deed that it is only the Wakif Mohd. Meeran, who could make changes to the said wakf deed and not other Muthavallis, who will take charge posterior in point of time. One other crucial recording in the wakf deed is that the Wakif has made a categorical assertion that the wakf properties shall not be sold, leased, pledged, etc.

56. From the above, it is clear that the income from the properties shall be used for religious and charitable purposes and whatever rest and residue is left over, the same shall be utilised for the familial expenses, including education and marriage expenses of the children in the family. Further the said wakf properties shall not be sold, leased, pledged, etc. Applying the conditions as laid down in the wakf deed to Section 3 (r) (iv) of the Act, it clearly transpires that the dedication of the property under the wakf deed relate to complete dedication so as to realise the religious and charitable activities and upon fulfilment, if any amount is left out, the same shall be used for the benefit of the family for education and marriage expenses. From the above, it is clear that though the wakf is a private wakf, however, it is not for the benefit of the family, but it is purely dedicated for

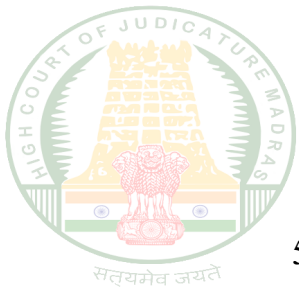


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religious and charitable purposes with a caveat that any rest and residue that is left of the income generated from out of the properties, the same could be used towards the family expenses, more particularly towards the educational and marriage expenses. In the light of the above, it could safely be concluded that the wakf is not intended for family purposes, but it is for the purpose of doing religious and charitable activities and family utilisation is only to the extent of what is left balance in the wakf. In this background, necessarily, the Wakf Board would have a say in the issue so far as the properties that are left under the wakf deed.

57. Therefore, even if the wakf created by Mohd. Meeran is a private wakf and is covered u/s 3 (r) (iv) of the Act and is a *waqf-alal-aulad*, the properties dedicated to the wakf are purely for fulfilling in entirety the wishes of the Wakif and utilisation of income from the said wakf for family purposes would only come into play after fulfilling all the religious and charitable activities which have been envisaged under the said wakf deed.

58. The ancillary contention advanced on behalf of the Trust is that the said Mohd. Meeran, on the date of execution of the Wakf Deed, viz., 4.9.1919, did not have title to the property and, therefore, the Wakf Deed would not be valid in the eye of law.



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59. The properties were joint properties between Mohd. Meeran and his brother Abdul Rahim, which was purchased in the year 1915 from one Adhinarayana Iyer. The said fact is not disputed. On and from the date when the property was purchased on 26.9.1915, Mohd. Meeran and his brother Abdul Rahim were in joint possession and enjoyment of the property. Subsequently, Abdul Rahim left his mortal coil and, thereafter, on 7.5.2021, his widow, Shynabu Beevi had executed a release deed in favour of Mohd. Meeran on certain terms. However, prior to the release deed executed by Shynabu Beevi, the Wakf Deed had come into existence on 4.9.1919. However, there is no material available on record, except for an averment in the release deed that about three years prior to the execution of the release deed, the husband of Shynabu Beevi, who is the brother of Mohd. Meeran passed away.

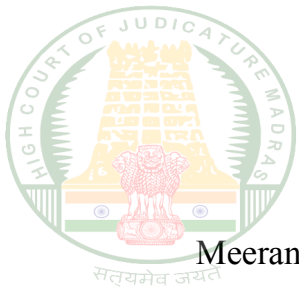
60. It is borne out by record as also from the release deed that the properties were purchased in the joint names of Mohd. Meeran and Abdul Rahim and upon the death of Abdul Rahim, the release deed had come to be executed. From the above, it reveals that the family was jointly managing all the properties in which on 4.9.1919, the said Mohd. Meeran had created the aforesaid wakf. There could be no quarrel about the fact that on 4.9.1919, Mohd. Meeran had title to the property, though it may have been a joint title with his brother Abdul Rahim. However, it cannot be claimed that the said Mohd. Meeran had no title to the said properties on the date of execution of the wakf deed.



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WEB COPY 61. The joint family properties were administered by both Mohd. Meeran and his brother Abdul Rahim, since deceased, prior to the execution of the wakf deed. The said Mohd. Meeran, on the date when the wakf deed was executed was having right and title over the properties, which cannot be disputed. For the sake of argument, at best it could be claimed that the said Mohd. Meeran did not have complete right and title to the properties, but upon the execution of the release deed on 7.5.1921, Mohd. Meeran got complete right and title over the properties and the wakf, which was created by Mohd. Meeran through the wakf deed dated 4.9.1919 stood fully crystallised, as on 7.5.1921, the said Mohd. Meeran had complete right and title to the property. Therefore, the question of validity of the wakf in its entirety, though not crystallised on 4.9.1919, cannot be said to be without any authority as on the said date, Mohd. Meeran had equal right and title over the properties along with his brother, which stood fully crystallised on 7.5.1921 upon the execution of the release deed and the object for which the wakf was created also stood realised. Therefore, the wakf deed cannot be said to be invalid or bad, merely because on the date of its execution, complete right and title was not with the said Mohd. Meeran as on 7.5.1921, the said Mohd. Meeran obtained full right and title and acted as the first Muthavalli.

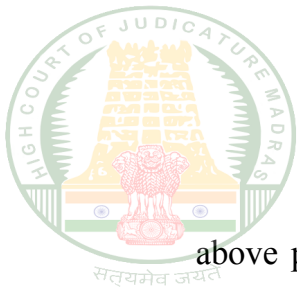
62. Further, it is to be pointed out that on the date when the wakf deed was created on 4.9.1919, though it is not clear as to whether the brother of Mohd.



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Meeran was surviving, no objection has been raised for the creation of the wakf either by his brother or his wife, Shynabu Beevi. In the absence of any objection for the creation of the wakf, the Trust, which was nowhere in the picture at the relevant point of creation of the wakf can raise any objection and attack the creation of the wakf.

63. One other aspect which is relevant to point out here is that the vendor of the Trust is the power of attorney of the Muthavalli of the wakf. The property has been sold as the property of the wakf, as the Muthavalli had executed the power of attorney as according to the averments, the daughter of Mohd. Meeran, Zohra Beevi, became the Muthavalli after the death of Mohd. Meeran and, thereafter, the eldest daughter of Zohra Beevi, viz., A.J.Fathima became the Muthavalli, who had executed the power of attorney. Had the wakf not been recognized, then no claim as an individual could be made by A.J.Fathima over the properties, as then it would become the ancestral properties of the family to which all the legal heirs of Zohra Beevi would be entitled and, therefore, the power of attorney, Nazrudeen would have no right to sell the properties and the power of attorney would itself be invalid. Therefore, if the wakf deed is not valid, the sale of the properties by the vendor to the Trust would be illegal as the property vests in all the legal heirs of A.J.Fathima, who have to sell the property collectively and if the sale is claimed to be valid, then the creation of wakf cannot be questioned by the Trust. The Trust is stopped from blowing hot and cold over the very same issue. In the light of the



above position, it is clear that the creation of wakf is valid and the Wakif, viz., Mohd. Meeran, had valid right and title over the property, which is the subject matter of wakf deed dated 4.9.1919.

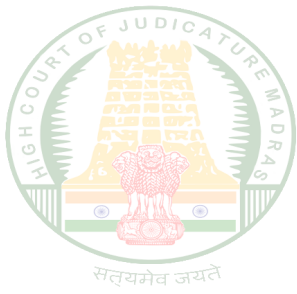
64. The next in the sequence of contention relates to the authority of the Chief Executive Officer to file a suit, as Section 7 (3) of the Act, according to the revision petitioners, viz., the Trust and the third party, precludes the Chief Executive Officer from filing a suit.

65. To address this issue, it is necessary to advert to Section 7, more particularly, sub-section (3) thereof, of the Act and for better appreciation, the same is quoted hereunder :-

“7. Power of Tribunal to determine disputes regarding 1 [auqaf].—

(1) If, after the commencement of this Act, [any question or dispute] arises, whether a particular property specified as [waqf] property in a list of [auqaf] is [waqf] property or not, or whether a [waqf] specified in such list is a Shia [waqf] or a Sunni [waqf], the Board or the mutawalli of the [waqf], [or any person aggrieved by the publication of the list of auqaf under section 5] therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:

Provided that— (a) in the case of the list of [auqaf] relating to any part of the State and published after the commencement of



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this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of [auqaf]; and

(b) in the case of the list of [auqaf] relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement: Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

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

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of 1 [auqaf] and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

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

[(6) The Tribunal shall have the powers of assessment of



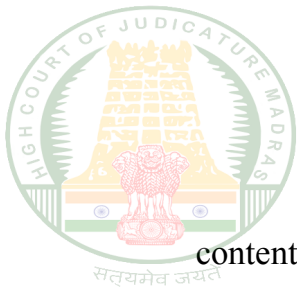
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damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector: Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.]”

66. No doubt, sub-section (3) of Section 7 of the Act bars the Chief Executive Officer from being made a party to any application u/s (1) of Section 7, however, sub-section (1) holds the caveat for the same, wherein sub-section (1) provides that insofar as the dispute pertains to whether a particular property is a wakf property or not. However, in the present case, the wakf does not question the title to the property, but based on the title to the property being vested in the P.N.Mohd. Meeran Wakf, the Wakf Board had merely sought possession of the property from the Trust by filing the suit. This clearly reveals that the wakf is clear about its title to the property and if at all any dispute is to be raised, it ought to be by the Trust and the third party, which neither of them have done. In the absence of any dispute over the title to the property, mere prayer for possession of the property would not bar the Chief Executive Officer from being made a party to a suit, as sub-section (3) of Section 7 in unambiguous terms has clearly spelt out that such a bar would operate only insofar as any application is made with regard to disputes as enumerated under sub-section (1) of Section. Therefore, the said



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contention with regard to there being a bar on the Chief Executive Officer to be a party to any application is grossly misconceived.

67. The next of the contention of the Trust relates to the resolution being signed only by the Chairman and not all the members, which is against Section 27 of the Act and, therefore, the suit laid is not maintainable. Section 27 of the Act, for better understanding, is quoted hereunder :-

*“27. **Delegation of powers by the Board.**—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Chief Executive Officer or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (j) of sub-section (2) of section 32 and section 110.]”*

68. Ex.A-7 is a copy of the resolution passed by the Board in and by which the Board has invoked Section 52 of the Act and had called upon the Secretary to take necessary action to communicate the Board's order to the Collector, Tirunelveli District to take delivery of possession of the property in addition to other directions. The copy of the resolution, is attested by the Chief Executive Officer to authenticate the document. Nowhere the said document reveals that it has been signed only by the Chairman. There is no sigh, but the order is shown to

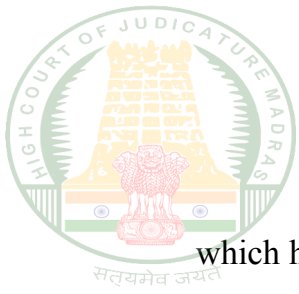


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be a 'true copy' of the resolution passed by the Board. It is not the original resolution, but is a copy of the resolution, which has been given under the attestation of the Chief Executive Officer.

69. Section 27 of the Act pertains to delegation of powers by the Board upon the Chairperson or any other members, the Chief Executive Officer or any other officer or servant of the Board or any area committee for performing certain acts, except the powers and functions of the Board mentioned under clauses (c), (d), (g) and (h) of sub-section (2) of Section 32 and Section 110. A careful perusal of Section 32, more particularly clauses (c), (d), (g) and (h) as also Section 110 does not reveal any abdication of powers by the Board, which has been bestowed on the Chairperson or any other person approved by it to do certain acts, which are specifically excluded u/s 27. Such being the case, the Board having merely exercised its power to recover possession of the property, which has been illegally transferred through the alleged purchase to the Trust by invoking Section 52 of the Act and calling upon the District Collector to recover the same, the said act of the Wakf Board cannot be said to be bad and the resolution being passed by the Board, a copy of which is marked as documentary evidence, is a valid resolution passed by the Wakf Board and the direction to the District Collector to recover and hand over possession of the property to the Board cannot be said to be erroneous.

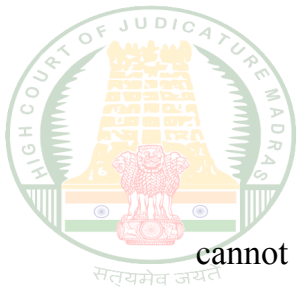
70. Further Section 52 of the Act relates to recovery of wakf property,



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which has been transferred in contravention of Section 51. There is no quarrel that as against the action of the District Collector, provision of appeal is provided to the aggrieved party to move the Tribunal. In the present case, the Wakf Board had, through its resolution dated 3.2.1998, directed the Secretary to invoke Section 52 of the Act and request the District Collector to recover and hand over possession of the property to the Wakf Board, which has been illegally transferred to u/s 51 of the Act. The said resolution has been passed on 3.2.1998 and the suit has been laid in the year 2005. A period of seven years had passed by since the resolution had been passed and even the submission of the Trust reveals that no action has been taken by the District Collector on the resolution of the Board to recover and hand over possession of the properties to the Wakf Board.

71. Sub-section (2) of the Act mandates the District Collector to issue notice calling upon the person to hand over possession of the property. However, there is no material to show that such a notice was ever issued or any action had been taken to recover the property. The inaction of the District Collector to recover the possession of the property from the Trust and hand over the same to the Wakf Board had resulted in the filing of the suit. The matter had been pending with the District Collector for more than seven years with no action having been taken to recover the properties which had prompted the Wakf Board to file the suit. Though appeal to the Tribunal is available against the order of the District Collector, but the fact remains that the inaction on the part of the District Collector



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cannot act in detriment to the Wakf Board to seek for possession of the property through the Civil Court. It is the duty of the District administration to act on the resolution of the Wakf Board and inaction on the part of the District administration has resulted in the filing of the suit, which is fair and reasonable and does not suffer any illegality.

72. The last of the contention advanced on behalf of the Trust is that the provisions of Sections 5 and 37 relating to publication of list of auqafs and maintenance of register by the auqafs relating to the properties that have been dedicated to the Wakf, it is necessary to skim through the above provisions to appreciate the above contention and, therefore, ready reference, the said provisions are quoted hereunder :-

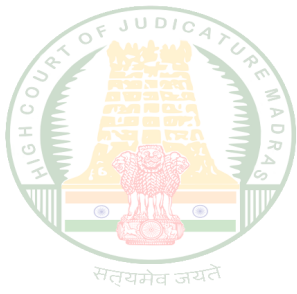
“5. Publication of list of [auqaf].—

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

(2) The Board shall examine the report forwarded to it under sub-section (1) and 5 [forward it back to the Government within a period of six months for publication in the Official Gazette] a list of Sunni [auqaf] or Shia [auqaf] in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

[(3) The revenue authorities shall—

(i) include the list of auqaf referred to in sub-section (2), while



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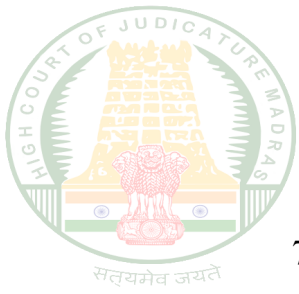
updating the land records; and (ii) take into consideration the list of auqaf referred to in sub-section (2), while deciding mutation in the land records.

(4) The State Government shall maintain a record of the lists published under sub-section (2) from time to time.

37. Register of [auqaf].—

(1) The Board shall maintain a register of 2[auqaf] which shall contain in respect of each [waqf] copies of the 1[waqf] deeds, when available and the following particulars, namely:

- (a) the class of the 1[waqf];*
- (b) the name of the mutawallis;*
- (c) the rule of succession to the office of mutawalli under the 1[waqf] deed or by custom or by usage;*
- (d) particulars of all 1[waqf] properties and all title deeds and documents relating thereto;*
- (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration;*
- (f) such other particulars as may be provided by regulations.*
- (2) The Board shall forward the details of the properties entered in the register of auqaf to the concerned land record office having jurisdiction of the waqf property.*
- (3) On receipt of the details as mentioned in sub-section (2), the land record office shall, according to established procedure, either make necessary entries in the land record or communicate, within a period of six months from the date of registration of waqf property under section 36, its objections to the Board.*



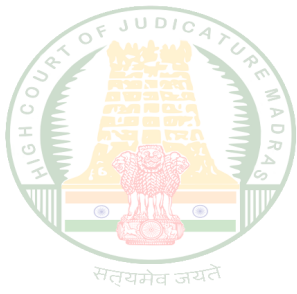
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73. Section 5 mandates that upon fulfilment of survey as prescribed u/s 4, on receipt of the report u/s (3) of Section 4, upon receipt of a copy of the report forwarded by the State Government, the Wakf Board has to act as per the provisions of sub-section (2) to (4) of the Act.

74. Section 37 mandates the maintenance of a register in relation to properties that are dedicated to the wakf and recording the particulars of such properties and all the title deeds and documents relating thereto.

75. There is no quarrel that P.N.Mohd. Meeran Wakf was created prior to the enactment of the Act. Section 4 (1-A), which has been inserted vide Act 27 of 2013, provides that every State Government shall maintain a list of auqaf referred to in sub-section (1) and the survey of auqaf shall be completed within a period of one year from the date of commencement of the Wakf (Amendment) Act, 2013, in case such survey was not done before the commencement of the Wakf (Amendment) Act, 2013.

76. According to the Trust, such survey has not been conducted and the provisions of Section 5 and 37 have not been complied with and, therefore, the possession sought for by the Wakf Board cannot be granted and to impress upon this Court, the decision of the Apex Court in *Salem Muslim Burial Ground Protection Committee case (supra)* is pressed into service.



WEB COPY 77. In *Salem Muslim Burial Ground Protection Committee case (supra)*, the relevance of Section 5 of the Act has been deliberated and in that context the Apex Court held as under :-

“28. In the case at hand, there is no iota of evidence from the very inception as to any express dedication of the suit land for any pious, religious or charitable purpose by anyone professing Islam. Therefore, on the admitted facts, the wakf by dedication of the suit land is ruled out.

* * * * *

30. The another limb of the argument is that the suit land has been declared to be a wakf property vide notification dated 29.04.1959. In this regard, it has to be noted that such a declaration has to be in consonance with the provisions of the Wakf Act, 1954 or the Waqf Act, 1995. Both the aforesaid Acts lay down the procedure for issuing notification declaring any property as a wakf.

31. The Wakf Act, 1954, which actually is relevant for our purpose, provides that, first, a preliminary survey of wakfs has to be conducted and the Survey Commission shall, after such inquiry as may be deemed necessary, submit its report to the State Government about certain factors enumerated therein whereupon the State Government by a notification in the official Gazette direct for a second survey to be conducted. Once the above procedure of survey is completed and the disputes arising thereto have been settled, on receipt of the report, the State Government shall forward it to the Wakf Board. The Wakf Board on examining the same shall publish the list of wakfs in existence with full particulars in the official



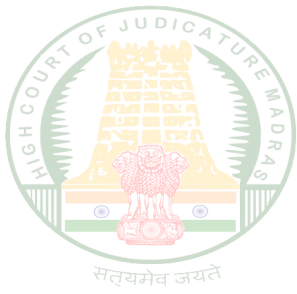
Gazette as contemplated under Section 5 of the Act. Similar provisions exist under the Waqf Act, 1995.

32. A plain reading of the provisions of the above two Acts would reveal that the notification under Section 5 of both the Acts declaring the list of the wakfs shall only be published after completion of the process as laid down under Section 4 of the above Acts, which provides for two surveys, settlement of disputes arising thereto and the submission of the report to the State Government and to the Board. Therefore, conducting of the surveys before declaring a property a wakf property is a sine qua non. In the case at hand, there is no material or evidence on record that before issuing notification under Section 5 of the Wakf Act, 1954, any procedure or the survey was conducted as contemplated by Section 4 of the Act. In the absence of such a material, the mere issuance of the notification under Section 5 of the Act would not constitute a valid wakf in respect of the suit land. Therefore, the notification dated 29.04.1959 is not a conclusive proof of the fact that the suit land is a wakf property. It is for this reason probably that the appellant Committee had never pressed the said notification into service up till 1999.

33. In Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) by Lrs. Etc., it was observed that the Wakf Board should follow the procedure as required under Section 4, 5 and 6 or Section 27 of the Wakf Act before notifying the wakfs under Section 5 of the Act.

34. In Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, it was observed as under:

“16. Thus, it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the



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Wakf Board precedes the final act of notifying such list in the Official Gazette by the State under the 1995 Act (it was by the Board under the 1954 Act). As mentioned supra, the list would be AIR 2002 SC 402 7 (2017) 13 SCC 174 prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a wakf property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of its mind and only thereafter the same will be sent to the Government for notifying the same in the Gazette....”

35. It may be noted that Wakf Board is a statutory authority under the Wakf Act. Therefore, the official Gazette is bound to carry any notification at the instance of the Wakf Board but nonetheless, the State Government is not bound by such a publication of the notification published in the official Gazette merely for the reason that it has been so published. In State of Andhra Pradesh Vs. A.P. State Wakf Board and Ors.8, this Court consisting of one of us (V. Ramasubramanian, J. as a Member) held that the publication of a notification in the official Gazette has a presumption of knowledge to the general public just like an advertisement published in the newspaper but such a notification published at the instance of the Wakf Board in the 2022 SCC OnLine SC 159 State Gazette is not binding upon the State Government. It means that the notification, if any, published in the official Gazette at the behest of the Wakf Act giving the lists of the wakfs is not a



conclusive proof that a particular property is a wakf property especially, when no procedure as prescribed under Section 4 of the Wakf Act has been followed in issuing the same.

36. In view of the aforesaid facts and circumstances, we do not find any substance in the argument that the suit land is or was a wakf property and as such would continue to be a wakf always. In the absence of any evidence of valid creation of a wakf in respect of the suit property, it cannot be recognized as a wakf so as to allow it to be continued as a wakf property irrespective of its use or disuse as a burial ground.”

78. Useful reference can also be had to the decision in *Nagoor Kaniammal case (supra)*, wherein, placing reliance on the decision of the Privy Council in *Aabadi Begum – Vs – Bibi Kama Zainab (1927 (25) LW 710*, the Allahabad High Court in the case of *Jamal Uddin – Vs – Mosque At Mashakganj (AIR 1973 All 328)*, held as under :-

*“22. In this context, it would also be relevant to refer to the decision of Lucknow Bench of the Allahabad High Court in **Jamal Uddin – Vs – Mosque At Mashakganj (AIR 1973 All 328)** wherein, the Bench relying upon the decision of Privy Council in *Abadi Begum v. Bibi Kama Zainab (1927 (25) LW 710 : 99 Ind Cas 669 : AIR 1927 PC 2* held as follows :-*

“..... where there is no document executed by the Wakif at the time of making of the alleged Wakf it is necessary that cogent evidence should be produced that he had delivered possession to the Mutawalli. An obvious method of doing so is to get the property in dispute recorded in the name of the Wakf in the records maintained by the Municipal Board”



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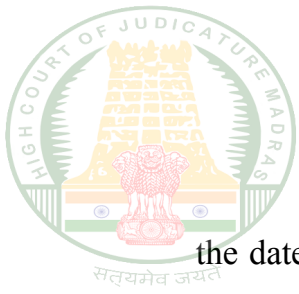
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23. In the instant case, it is an admitted fact that the land in dispute was not recorded in the name of Mosque in the records, by the Municipal Board. Further, there is no evidence to show that the said Mohammed Ismail dedicated suit 1st schedule property to the plaintiffs' mosque. Even Ex.A-2 Partition Deed dated 17.8.1946 is silent with regard to the description of the property. Therefore, the dedication intended by the said Mohammed Ismail cannot be presumed. Further, the act of Mohammed Ismail in executing the Settlement Deeds – Ex.A-4 and A-5 dated 7.5.1984 in favour of his daughters would show that he did not divest the property to the Plaintiffs' mosque. As such, we cannot infer that the said Mohammed Ismail divested his right and title with the Plaintiffs' Mosque.”

(Emphasis Supplied)

79. From the aforesaid decisions, it is abundantly clear that where there is cogent and convincing evidence which proves the creation of the wakf, then compliance with the provisions of 4, 5, 6 and 27 of the Act would not be mandatory. The provisions provided for u/s 4, 5, 6 and 27 is only for the purpose of getting the property recorded with the wakf where the dedication is not based on any documents; but where the creation of the wakf is based on the deed, then non-compliance with the provisions of Section 4, 5, 6 and 27 of the Act would not render the dedication doubtful.

80. In the present case, it is to be pointed out that the title to the property on



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the date of creation of the wakf vested with Mohd. Meeran and his brother, who, since deceased, his share was released in favour of Mohd. Meeran by Shnabu Beevi, the wife of the deceased brother and on and from May, 1921, the right and title to the property, which has been dedicated to the wakf solely vested with Mohd. Meeran, who has executed the wakf deed. Therefore the dedication is based on the deed, which is not in dispute and, therefore, the non-compliance of the provisions of 4, 5, 6 and 27 would not in any way render the dedication bad in law.

81. Further, the Wakf Act was enacted in the year 1954, whereas the wakf was created on 4.9.1919, almost four decades before the enactment of the Act. Further, upon the enactment of the Act, based on the deed, Ex.A-8, executed by P.N.Mohd. Meeran, the existence of the wakf had been published in the Government Gazette dated 13.05.1959. When the wakf had been created in the year 1919 and has also been published in the gazette on 13.5.1959, the alleged alienation of the property, which is covered under Ex.A-8, was done only in the year 1995, which is about three and a half decades from the date of publication of the wakf in the Government Gazette.

82. Further, the wakf is a private wakf, created u/s 3 (r)(iv) of the Act, which is not disputed and has been created for the purpose of carrying out religious and charitable activities, which is the main envisaged in the wakf deed.



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It is not as if the private wakf is created for family purposes and religious and charitable activities are at the wish of the family. Only the remains, after carrying out the religious and charitable activities, are to be used for the benefit of the family. Such being the case, the private wakf, which is created on the basis of a deed dated 4.9.1919, which is not disputed by the parties, cannot be held to be non-compliance with Sections 4, 5 6 and 27 of the Act, as the details of the properties of the wakf are clearly specified in the Wakf Deed dated 4.9.1919 and the same has been published in the Government Gazette dated 13.5.1959 and the mere non-mentioning of the details of the properties of the wakf in the gazette would not render the wakf nugatory and the Government Gazette has to be read along with the wakf deed, which spells out the details of the properties that have been dedicated to the wakf.

83. Though other decisions have also been relied on by the learned counsel for the Trust in support of the aforesaid contention, however, the said decisions would not be relevant to the case on hand, as in the said cases, there were no evidence, evidencing dedication for religious or charitable purposes and in view of the same the Court held that compliance of Sections 4, 5, 6 and 27 are mandatory. However, in the present case, as stated above, the wakf deed dated 4.9.1919, is not only brought on record, but is also accepted to have been executed by Mohd. Meeran, who is the Wakif and the first Muthavalli of the wakf and, therefore, the said decisions would not be applicable to the facts of the present case.



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WEB COPY 84. Once Ex.A-8, wakf deed is accepted and acted upon and all the acts have been performed on the basis of the recitals in the wakf deed, more particularly for more than six decades by the succeeding Muthavallis, in the absence of any power to the succeeding Muthavallis to alter the dedication made in the wakf deed, the alienation made by the power of attorney of the Muthavalli of the properties, which have been dedicated for the activities spelt out in the wakf deed is against the scheme of the wakf deed and the mere non-mentioning of the details of the survey numbers in the Government gazette with regard to the properties, which have been dedicated and provisioned u/s 4, 5, 6 and 27 of the Act would not in any way render the wakf deed illegal or invalid. The contention to the contra, advanced on behalf of the Trust deserves to be rejected.

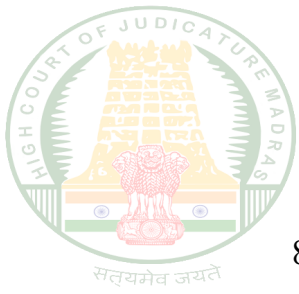
85. Insofar as the contention relating to possession of the properties being with the Trust and that the patta and electricity connection standing in the name of the Trust are concerned, it is to be pointed out that it is settled law that patta does not confer title to the property and it is a document meely evidencing possession at best. In the present case, the title to the property with Mohd. Meeran is not disputed and, thereafter, after creation of the wakf, more than 70 years had passed during which the properties were held as wakf properties. There was no breakage in title and only on the power of attorney being executed by A.J.Fathima, the Muthavalli of the wakf to her son Nazrudeen, the alienation had taken place.



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Therefore, the title to the property not being with the Muthavalli, but only administering rights were granted to the Muthavalli, the power of attorney, even if steps into the shoes of the Muthavalli, cannot alienate the property and the said alienation is grossly illegal and against the provisions of the Wakf Act. In such a backdrop, without title, possession being only illegal in nature, the suit has been laid to recover and restore possession and, therefore, the said documents will not grant any right to the Trust to hold the properties, which are alleged to have been purchased from Nazrudeen.

86. Equally, the third party, viz., Appadurai, claims his purchase from one S.K.Mohammed Ali and S.A.Mohammed Mydeen under a sale deed dated 28.12.1993, which is marked as Ex.B-19. However, neither the predecessors-in-title of the vendor of Appadurai have been mentioned nor any document evidencing such a transaction in favour of the vendor of Appadurai have been placed to prove the title of the vendor of Appadurai to the property. Though the third party also claims the very same relief and relies on the very same provisions of law to attack the judgment and decree passed by the trial court in O.S. No. 128/05, however, there is no material to substantiate the claim of the third party and the third party also stands on the very same footing as that of the Trust and, therefore, the decree, which is the subject matter of the revision petition in CRP (MD) No.1051/17 also deserves to be dismissed.

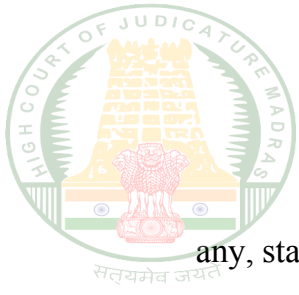


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87. Coming to the appeal preferred against the judgment and decree passed in O.S. No.159/2004, the *lis* in the said matter is between the two revision petitioners herein. This Court has already upheld the findings of the trial court in O.S. No.128/2005 and has affirmed the judgment and decree passed therein. The permanent injunction sought for in O.S. No.159/2004 by the Trust has been dismissed in line with the findings in O.S. No.128/2005. Equally the plea of the defendants therein was also dismissed on the ground that the title of the vendors of the defendants to the property has not been established and, therefore, the trial court held that no relief could be granted in favour of the defendants therein, who are third parties and the revision petitioners in CRP (MD) No.1051/2017. This Court, having concurred with the findings recorded in O.S. No.128/2005 and affirmed the same, the Tr. A.S. No.222/2009 filed by the Trust as against the negation of permanent injunction sought for does not survive any longer and the said decree passed in O.S. No.159/2004 dismissing the prayer of the plaintiff therein and holding that the defendants therein also cannot be granted any relief deserves to be sustained. This Court does not find any error or infirmity in the findings rendered in O.S. No.159/2004 and, accordingly, Tr. A.S. No.222/2009 fails and the same deserves to be dismissed.

88. For all the reasons aforesaid, both the revision petitions as also the appeal suit deserves to be dismissed and, accordingly, the revision petitions and the appeal suit are dismissed. Consequently, connected miscellaneous petitions, if



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any, stands closed. There shall be no order as to costs.

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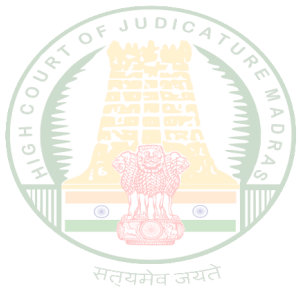
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To

The Principal Subordinate Court

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M.DHANDAPANI, J.

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JUDGMENT IN

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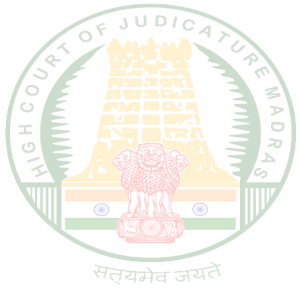
C.R.P. (MD) NO. 247 OF 2008

C.R.P. (MD) NO.1051 OF 2017

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