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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 24.02.2025  
Delivered on: 20.03.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

S.T.A(MD)No.3 of 2006  
and  
C.R.P.Nos.380 and 381 of 2006

**S.T.A(MD)No.3 of 2006**

1.Noorkhan(died)

... Petitioner/1<sup>st</sup> Respondent/1<sup>st</sup>  
Appellant

2.A.Velayutham

3.K.Mohammed Ismail(Died)

...Third Parties/Respondents 4&5/  
Appellants 2 & 3

-Vs-

1.Hussain Masthan Pallivasal  
Manapparai rep., by  
S.Mohammed Hussain,  
Son of Sheik Ibrahim  
Assistant Secretary,  
Jumma Big Pallivasal  
Manapparai.



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2.Tamil Nadu Wakf Board,  
rep., by its Secretary,  
No.3, Santhome High Road,  
Mylapore,  
Chennai-600 004.

3.Hazrath Hussain Masthan Dharga  
Wakf, Manapparai rep., by  
Muthavalli Dowlath Hussain Khan,  
Son of Rehman Khan,  
Manapparai,  
Trichy District.

...Third parties/Respondents 2 &3/  
Respondent 2 & 3

4.Mansoor Khan  
5.Abaskhan  
6.Vanithkhan  
7.Ferosdhal

*(Respondents 4 to 8 are brought on record  
as LRS of the deceased 1<sup>st</sup> appellant vide  
Court dated 01.09.2023 made in C.M.P(MD)  
Nos.11388, 113990, 11393, 11394, 11397,  
11416, 11417, 11419, 11423, 11425, 11427,  
11429, 11430, 11431, 11432, 11434 & 11435 of 2023)*

9.Samsunnisa Begum

10.Nargees Banu

11.Mohammed Ali Jinnah

*(Respondents 9 to 11 are brought on record  
as LRS of the deceased 3<sup>rd</sup> Appellant vide  
Court order dated 01.09.2023 made in C.M.P  
(MD)Nos.11388,11390, 11392, 1193, 11394, 11397,  
11416, 11417, 11419, 11423, 11425, 11429, 11429  
11430, 11431, 11432, 11434 and 11435 of 2023)*



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**PRAYER:** Appeal filed under Section 30 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, (XXX of 1963), against the judgment and decree of the Minor Inam Abolition Tribunal at Tiruchirapalli (Principal Sub-Court at Tiruchirapalli), dated 23.01.2006 passed in C.M.A.No.1 of 1989 reversing the order of the Assistant Settlement Officer, Tanjore dated 30.11.1988 passed in NA.PA.3/CE/MANAPPARAI/88/MV.

For A3 : Mr.S.Madhavan  
For A1 & A2 : Died

For R1 : Mr.A.V.Arun  
For R2 : Mr.K.K.Senthil  
For R3 : Mr.G.Prabhurajadurai,  
for M/s.Ajmal Associates  
For R4, 6,9,10&11 : No appearance

**C.R.P(MD)No.380 of 2006**

1.Noorkhan(died)  
2.A.Velayutham  
3.K.Mohammed Ismail(Died)

...Plaintiffs/Petitioners

-Vs-

1. Tamil Nadu Wakf Board,  
rep., by its Secretary,  
No.3, Santhome High Road,  
Mylapore,  
Chennai-600 004.



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2.R.Dowlath Hussain Khan  
3.Mansoorkhan  
4.Abaskhan  
5.Vanith Khan  
6.Feros Dhal  
7.Sayeedha

...Defendants/Respondents

*(Respondents 3 to 7 are brought on record as LRS of the deceased 1<sup>st</sup> petitioner vide Court order dated 01.09.2023)*

8.Samsunnisa Begum  
9.Nargees Banu  
10.Mohammed Ali Jinnah

*(Respondents 8 to 10 are brought on record as LRS of the deceased 3<sup>rd</sup> petitioner vide Court order dated 01.09.2023)*

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.01.2006 passed in Wakf O.P.No.7 of 2000 by the Subordinate Judge, Tiruchirapalli.

|               |                                                     |
|---------------|-----------------------------------------------------|
| For A1        | : Died                                              |
| For A2 & A3   | : Mr.S.Madhavan                                     |
| For R1        | : Mr.K.K.Senthil                                    |
| For R3        | : Mr.G.Prabhurajadurai,<br>for M/s.Ajmal Associates |
| For R5, 6,7,9 | : No appearance                                     |
| For R3        | : Refused                                           |



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**C.R.P(MD)No.381 of 2006**

- 1.Noorkhan(died)
- 2.A.Velayutham
- 3.K.Mohammed Ismail(Died)

...Defendants/Petitioners  
3, 5 & 6

-Vs-

- 1.Tamil Nadu Wakf Board,  
rep., by its Secretary,  
No.3, Santhome High Road,  
Mylapore,  
Chennai-600 004.

... Plaintiff/1<sup>st</sup> Respondent

- 2.Siddiq
- 3.Nijamudeen
- 4.R.Dowlath Hussain Khan

...Defendants 1, 2 & 4/  
Respondents 2 to 4

- 5.Mansoor Khan
- 6.Abaskhan
- 7.Vanith Khan
- 8.Feros Dhal
- 9.Sayeedha

(Respondents 5 to 9 are brought on  
record as LRS of the deceased 1<sup>st</sup> petitioner  
vide Court order dated 01.09.2023)

- 10.Samsunnisa Begum
- 11.Nargees Banu
- 12.Mohammed Ali Jinnah



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(Respondents 10 to 12 are brought on record  
as LRS of the deceased 3<sup>rd</sup> petitioner vide  
Court order dated 01.09.2023)

|               |                                                     |
|---------------|-----------------------------------------------------|
| For A1        | : Died                                              |
| For A2        | : No appearance                                     |
| For R1        | : Mr.K.K.Senthil                                    |
| For R4        | : Mr.G.Prabhurajadurai,<br>for M/s.Ajmal Associates |
| For R2,3,7,11 | : No appearance                                     |
| For R5        | : Refused                                           |

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.01.2006 passed in Wakf O.P.No. 6 of 2000 by the Subordinate Judge, Tiruchirapalli.

### **J U D G M E N T**

The above Special Tribunal Appeal and Civil Revision Petitions are filed against the Common order passed by the Inam Estate Abolition Tribunal ( Sub-Judge) Tiruchirapalli, vide order dated 23rd of January 2006.



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2.The land totally measuring 15.80 acres in Sevvallur Village, Manapparai Taluk, Tiuchirappalli District, is the subject matter of the dispute.

3.The said land earlier classified as inam land in the Fair Inam Register for the Title Deed No.1385. After abolition of minor inams as per Act 30 of 1963, the Assistant Settlement Officer *Suo motu* conducted enquiry and granted patta to Hussain Mustan Pallivasal, Manapparai, vide order dated 28.03.1969. The same was challenged by Noorkhan before the Special Tribunal and he partially succeeded. The tribunal, in the order dated 30.01.1988, cancelled the patta granted to Hussain Mustan Pallivasal. The matter was remanded back to the Assistant Settlement Officer, for fresh consideration. Accordingly, the Assistant Settlement Officer conducted fresh enquiry and granted patta to Noorkhan under section 8(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963(hereinafter referred to as the 'Act). Aggrieved by the order of the



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Assistant Settlement Officer, one Mr.Mohammed Hussain, as a person interested in Hussain Mustan Pallivasal, challenged the grant of patta to Noorkhan, in C.M.A.No. 1 of 1989 before the Special Tribunal for Inam Abolition Act at Trichy. Pending appeal, in respect of the same property, two declaration suits were filed and they were transferred to the Tribunal and numbered as Wakf O.P.No.6 of 2000 (filed by the Tamilnadu Wakf Board to declare the property as Wakf property and consequential injunction) and Wakf O.P.No. 7 of 2000 (filed by Noorkhan, Velayutham and Mohammed Ismail to declare the sale of the property valid and consequential injunction). In addition, the Appeal Suit in A.S.No.67 of 1992 against the dismissal of O.S.No.169 of 1991 between Muthavalli of Hussain Musthan Pallivasal and Noorkhan, in respect of the same property was also taken up together and disposed of by the Tribunal in the common order dated 23.01.2006.



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4.The Tribunal held that the grant of inam for Alikhan as Manager of Hussain Masthan Tomb was for religious purpose. The Wakf Board though have ostensible right in the property, they have no locus to maintain the suit for declaration without prior notification of the property, as per the provisions of the Wakf Act. The order of the Assistant Settlement Officer granting patta in the personal name of Noorkhan behind the back of the representatives of Hussain Mustan Pallivasal is bad. The Title Document and Inam Fair Register indicates that the land was donated to maintain Hussain Masthan tomb. Hence, the order of the Settlement Officer granting patta under section 8(1) of the Act to Noorkhan, was set aside and the C.M.A.No.1 of 1989 preferred by Hussain Musthan Pallivasal was allowed.

5In Wakf O.P.No.6 of 2000, the original petition filed under the Wakf Act by the Tamilnadu Wakf Board for declaration and consequential injunction, the Tribunal disposed it with liberty to the Wakf Board to work out the remedy after notifying the subject land under sections 4, 5, 6 and 27



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of the Wakf Act. The Wakf O.P.No.7 of 2000 filed by Noorkhan, Velayutham and Mohammed Ismail (the purchasers of the disputed land from Noorkhan) seeking declaration of title and consequential injunction was dismissed. The A.S.No.67 of 1992 filed against the dismissal of O.S.No.169 of 1991 was allowed granting injunction in favour of the Hussain Musthan Pallivasal. Noorkhan, who had the benefit of the order of Settlement Officer along with the purchasers of part of the land from Noorkhan, are the appellants. Pending Special Tribunal Appeal and Civil Revision Petitions, Noorkhan and the Mohammed Ismail died. Their legal representatives are brought on record after obtaining orders of the Court.

6.The dispute under consideration is, in respect of 15.80 acres of land at Sevvallur village at Manapparai Taluk. This land been classified as Devadayam land and given to one Ali Khan for the maintenance of the Hussain Mastan Tomb. The Fair Inam Register Extract, marked as Ex.A1, indicates that the original grantee is Alikhan, Manager Hussain Musthan



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Tomb, Manappari. The inam is a freehold grant as long as the Tomb exist. Further, the Fair Inam Register reveals that the entry mentioning the Devadayam in favour of Hussain Mastan 'Pallivasal' been corrected as 'Tomb' of Hussain Masthan. Late Noorkhan, who is one of the appellants in the Civil Miscellaneous Appeal and the two Civil Revision Petitions under consideration, claiming himself as the descendant of Ali Khan had challenged the grant of patta to the Hussain Masthan Pallivasal and got the matter remand back for fresh consideration. The earlier order dated 28.03.1969 passed in the *suo motu* enquiry, granting patta to the trustee of Hussain Mastan Palivasal was revoked, when the matter was remanded to the Enquiry Officer for *de novo* enquiry. In the *de novo* enquiry, the Assistance Settlement Officer Trichy found that there is no Ussain Mastan Pallivasal within Mannapparai municipality limits. The property been under cultivation and enjoyment of the descendants of Ali Khan. Since Noorkhan being one of the descendant of Ali Khan and in possession of the property and cultivating the land, order to grant patta under section 8 (1) of the Act to



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Noorkhan. We find that in the course of *de novo* enquiry, notice sent to Hussain Mastan Pallivasal returned with endorsement that there is no such institution in Manapparai Municipality. Thereafter, the settlement officer has proceeded with his enquiry and found that from the receipts and revenue records, the land been under cultivation of Ali Khan and his descendants. On being satisfied that the said Noorkhan being the present descendant of Ali Khan and cultivator of the land, though the land is a Devadayam land, but no charitable or pious obligation attached to the Inam, the land being under continuous cultivation by the descendants of Ali Khan for more than hundred years. Noorkhan, the descendant of Alikhan, was granted Patta under Section 8(1) of the Act in his name personally.

7.The prime contention of the learned counsel appearing on behalf of the representative of the Hussain Mastan Pallivasal is that, having issued patta in favour of Hussain Mastan Pallivasal, the Tribunal at the first instance, before cancellation and remand for fresh enquiry ought to have put



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the Pallivasal on notice. At least during the *de novo* enquiry, the Assistant Settlement Officer ought to have ensured service of the notice on the persons, who are interested in the Pallivasal. Obviously, in this case, NoorKhan, when he preferred appeal before the Tribunal, did not implead the Pallivasal. On the back of Pallivasal, he got the patta of Pallivasal cancelled and obtained the order of remand. At least, while conducting the *de novo* enquiry, the Enquiry Officer ought to have ensured that Pallivasal is represented in the enquiry proceedings. Having failed to cause due notice to the Pallivasal, the grant of Patta in the name of Noorkhan under section 8(1) of the Act, is apparently illegal. Since the land being donated for a religious purpose, the order ought not to have been under section 8(1) of the Act, which is meant for granted for non-charitable, non-religious purpose.

8.The learned Counsel appearing on behalf of the Wakf Board contents that the Title Deed No.1385 describes this property as Devadayam, which is in alienable. The said property been under the control of Jumma



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mosque of Mannaparai, otherwise called as Hussain Mastan Pallivasal and Dargah of Manapparai. This mosque is notified under Wakf Act 1954, in the District Gazatee dated 10.12.1958. While so, Noorkhan had obtained Patta Behind the back of the Wakf Board and the Muthavalli of the Wakf, who was administering the Hussain Mustan Pallivasal. Further, Noorkhan, pending appeal in S.T.A(MD)No.3/2006 against the order in C.M.A.No.1 of 1989, sold away the substantial portion of the property to Velayutham and Mohammed Ismail. The Wakf Board has appointed one Hussain Khan as the Muthavalli for Husain Mastan Dargah. Without the knowledge of the Muthavalli, Noorkhan had alienated the property. Which is illegal and non-est in law. The Enquiry Officer had erroneously held that the title deed mentions the land as Pallivasal by mistake. Also erred in holding the property was dedicated to the tomb and no specific service attached to the dedication. These observations of the Enquiry Officer were found factually incorrect by the Tribunal. In any event, when the inam was to Alikhan in the capacity as Manager, Hussain Musthan tomb, the patta ought not to have



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been given in the personal name of Noorkhan by erroneously holding that the subject land was granted for non religious.

9.The learned counsel, hence, submitted that the order of the Tribunal reversing the findings of the Enquiry Officer is substantially correct. The order of the Tribunal, cancelling the patta issued by the Enquiry Officer in favour of Noorkhan has to be confirmed. At the same time, he contended that the dismissal of the OP filed by the Wakf Board, on the ground that the disputed property not been notified following the procedure contemplated under sections 4, 5, 6 and 27 of the Wakf Act is not legally sustainable. The direction and liberty to the Board to take necessary action after notification including the property in dispute as wakf property is unwarranted and to be expunged.

10.According to the learned counsel for the Wakf Board, the property covered under Title Deed No.1385 being a Devadayam property



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and Inam granted to Alikhan not in his personal name but in a representative capacity as Manager for maintaining Hussain Musthan Tomb, it is a pious and religious service. Hence, the property naturally becomes a wakf property as per the definition of Wakf under the Act. Therefore, the order of the Tribunal for issuance of patta in favour of Hussain Masthan Dargah is most appropriate in the light of the Ex.A2. Further, he rely upon the Government notification dated 10.12.1958, wherein Jumma mosque declared as a Mosque under Muslim Wakf Act 1954. The extract of Jumma mosque registration certificate is marked as Ex.A3, which claims the property in dispute are the properties of Jumma Mosque Wakf as per Inam Fair Register based on Title Deed No.1385. He contends that, no further notification under section 5 (2) of the Wakf Act ,1954 is required.

11.Per contra the learned counsel appearing on behalf of legal heirs of the Noorkhan submitted that the Inam Fair Register does not disclose that the Devadayam Inam was for any service mentioned. No



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doubt, it is classified as Devadayam, but in the absence of any pious or religious obligation mentioned in the grant of Inam, it cannot be presumed to be a wakf property. The Tribunal had failed to consider the reasoning given by the Assistant Settlement Officer for granting Patta in favour of Noorkhan. The Inam was granted without mentioning the source and service for which Inam granted. It is not even a permanent inam. It specifically mentions that it will be in force till the tomb exist. The Tomb is well maintained. The Advocate Commissioner appointed in O.S.No.169 of 91, in his report after field visit, had categorically submitted that Hussain Mastan tomb is in existence. Hence, the tribunal ought not to have held that the property carries the trapping of a wakf. The property had been in enjoyment as a personal property of the descendants of Ali Khan for several decades. Only after due enquiry, patta under Section 8(1) of the Act, was granted by the Enquiry Officer. It is also submitted by the learned counsel appearing on behalf of Noorkhan, there is a difference between the terms 'Tomb', 'Pallivasal (that is mosque)', 'Dharga' and 'Kabarthan'. Though all tombs



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are generally revered, not all tombs are worshipped. Only tombs inhumed with saintly persons used to be worshipped. Unless the tomb is worshipped by persons of any particular sect, it does not carry the trappings of place of religious worship. The Tribunal miserably failed to take note of the fact that no evidence let in by the rival parties to prove that Hussain Mastan Tomb is worshipped and treated as a place of 'religious' sanctity. Hussain Mastan being their forefather, his tomb is maintained by the descendants with reverence. The land is continuously in cultivation of Ali Khan and his descendants as freehold inam. While so, the grant of royatwari Patta in favour of Noorkhan under section 8(1) of the Act by the Enquiry Officer has to be confirmed. The Tribunal failed to take note that the Wakf Act though enacted in the year 1954 much earlier to the Inam Abolition Act, 30 of 1963, the Jumma Mosque Wakf had not taken any steps for notifying the subject land, as their land which is mandatory. The Jumma Mosque of Manapparai is a new entity, which came into existence long time after Hussain Mustan tomb established. Jumma Mosque was never also called as Hussain Mastan



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Pallivasal. The various resolutions of the Wakf Board, in respect of the disputed property and the dispute between Hussain Mastan Dargah and the Jumma Mosque and Kabarsthan, situated in the town, would clearly show that the tomb of Hussain Mastan is a century old structure without worship. A section of Muslims in the locality, in order to grab the property, had projected themselves as representatives of Hussain Mastan Pallivaasal or Hussain Mastan Dargah or representative of Jumma mosque, which ever suits them, as and when required, claim themselves either as person interested or Muthavalli or trustees. They try to grab the property under one pretext or another. The Tribunal ought to have taken note of the fact that if at all the property in dispute was really a property meant for any service to muslim religion, the concerned wakf ought to have produced the documents to show for what service, the property was dedicated.

12.The Learned Counsel representing the legal heirs of Noorkhan, the Appellants in Special Tribunal Appeal as well as in the two Civil



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Revision Petitions, submitted that the order -in- common passed by the tribunal is contrary to the law and evidence. He prays for its reversal and to restore the order of the Assistant Settlement Officer. The property in dispute is one and the same. Four categories of persons are fighting for the property. They are:-

- a) Noorkhan and his legal heirs.
- b) Representatives of Hussain Mustan Pallivasal, Manaparrai
- c) Tamil Nadu Wakf Board and
- d) Velayutham and Md. Ismail, who are the purchasers of a portion of the land from Noorkhan in the year 1994, pending CMA before the Tribunal.

The contentions of each categories in nutshell are:-

**a) Noorkhan:** He claims to be the descendant of Ali Khan. According to him, the said Ali Khan is the original grantee (Inamdar) of the property and it was given to him as Inam as long as Hussain Mastan exist. No service attached to the grant of Inam, no religious or pious activity tagged to the inam while granting. While so, having proved to be in



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possession and enjoyment exclusively, and personally without any tag, the property cannot be termed as wakf property. By no stretch of imagination it is a grant of inam for religious purpose. Hence the grant of patta to Noorkhan under Section 8(1) of the Act, after due enquiry is to be restored. The observations and orders passed by the Tribunal in C.M.A.No.1 of 1986, O.P.No.6 of 2000 and O.P.No.7 of 2000, which is contrary to the law and facts, adverse to Noorkhan has to be set aside.

**b)Hussain Mastan Pallivasal:** The representative of the pallivasal content that, initially in the *suo motu* inquiry, the Assistant Settlement Officer found that the property granted as inam for religious purpose viz., maintenance of Hussain Mustan Pallivasal. After due enquiry following the procedure contemplated under Act 30/1963, patta was granted in favour of the trustee of Hussain Mastan Pallivasal on 28.03.1969. Before cancellation, opportunity to the Pallivasal ought to have been given. However, contrary to law and natural justice principle, patta was cancelled without notice. That apart, even in the *de novo* enquiry, no notice given to



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the pallivasal before granting patta in the personal name of Noorkhan. The Tribunal had rightly found that the fair inam register earlier mentioned the property as the property of Hussain Mastan Pallivasal, later corrected as Hussain Mastan tomb. The appointment of Ali Khan was to maintain the tomb. The grant of inam was only till the existence of the tomb. The grant of inam attached with a service, namely maintenance of the tomb. Therefore, the inam carry the ingredients required for classifying it as religious purpose. Hence, grant of patta to Noorkhan under section 8(1) of the Act is *ex facie* illegal. The Tribunal after pointing out the illegality in the order of the Enquiry Officer set- aside the illegal order of the Settlement Officer. Hence, the pallivasal is entitled for grant of patta as per the order of the Tribunal.

**c) The Tamilnadu Wakf Board:** According to the Secretary of the Tamilnadu Wakf Board, the property always been a Wakf property. It was given as inam for Hussain Mastan Pallivasal, Mannapparai. This Mosque also called as Jumma mosque. The land was classified as



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Devadayam land and covered under TD 1385. The land was dedicated for maintaining the Hussain Mustan Tomb. A Wakf is always a Wakf property. The wakf property cannot be deprived of its character, even by long possession and enjoyment by the parties. The character of property being permanent in nature, patta under section 8(1) of the Act to an individual is improper. The Tribunal has rightly held so and cancelled the patta granted to Noorkhan. At the same time, the Tribunal ought not have relegated the Wakf Board to undergo the exercise of notification under sections 4, 5 6 and 27 of the Wakf Act to establish the right before civil court.

According to the counsel for the Wakf Board, Jumma Mosque at Mannapparai otherwise called as Hussain Mustan Pallivasal and Durga is conducting annual sandals Urs at Hussain Masthan tomb regularly. Hence, the Pallivasal must be recognised as the owner of the property and patta to be granted terming it as Wakf property. It is contended on behalf of the Wakf Board that there is no necessity for the wakf to undergo the process



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mentioned under section 4, 5, 6 and 27 of the Wakf Act 1954.

**d) Velayutham and Mohammed Ismail:** They are the purchasers of the property. After the order of the Settlement Officer granting patta in favour of Noorkhan, they have purchased the property from Noorkhan on 15.01.1994. They were impleaded in the case subsequently. They claim the right through Noorkhan, who was the pattadar at the time of their purchase. Their right is subject to the outcome of the litigation and governed by Section 52 of the Transfer of property Act.

13. Heard the learned Counsels on either side and perused the records.

14. The pleadings and the documents undisputedly reveal that under Title Deed No.1385, the land in dispute was given to Alikhan, the Manager of Hussain Musthan Tomb for maintaining the tomb. The total extent of land is 15.80 acres and the inam granted was a free hold, meaning



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without any payment of dusti( tax) on a condition that the inam shall continue till the tomb exist. It is proved through the records that Alikhan and his descendants were enjoying the property absolutely.

**15.Whether the inam condition tantamount to a pious obligation, to make the property a ‘wakf’ is the substantial point for determination in these Appeal and Revisions.**

16.To classify a property as a ‘wakf’, it should satisfy the definition under the statute which says, ‘wakf’ means permanent dedication by any person of any movable or removal for the purpose, recognised by the Muslim law as pious, religious or charitable. If one go by the definition, maintaining a tomb cannot be on the face of it a pious or religious service, unless there are evidence to show that the tomb of Hussain Mustan not only revered, but also been a place of worship by persons, who belong to Muslim Community.



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17.The examination of evidence given by the parties herein indicates that at Manapparai Town, there was only one Mosque by name Jumma Big Mosque. Muslims in that locality used to worship in that mosque. When they decided to renovate the said Mosque, only then they started worshipping at the tomb of Hussain Masthan. This fact is spoken by DW-3 Muhammad Ismail, the purchaser of 1.88 acres of the land in dispute from NoorKhan under exhibit D-5, pending litigation. From the pleadings of the Tamilnadu Wakf board, it appears that annual sandal urs festival used to be conducted at the tomb of Hussain Masthan. However there is no evidence placed in this regard. So, it is clear as crystal that at the time of passing the order impugned hereunder, no worship was conducted at Hussain Masthan tomb. It is also obvious that there was no Hussain Masthan Pallivasal at Manapparai at any point of time.

18.The Wakf Board claims that Jumma Big Mosque is otherwise known as Hussain Masthan Pallivasal. However, it is proved through



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evidence that the Jumma Big Mosque is located elsewhere and not in the place where the Hussain Mustan tomb located. Hence, it is obvious the tomb was never a pallivasal (Pallivasal is tamil means a place of worship. In Arabic called Mosque). Therefore, the contention of the Secretary to the Tamilnadu Wakf in the OP that the Jumma Big Mosque also used to be called as Hussain Mastan Pallivasal is contrary to the facts. In the opinion of this court, this plea without proof, is made to take advantage of the wrong entry made in the Inam Fair Register earlier. However, the said wrong entry later rectified. The statements of the witnesses before the Enquiry Officer is sufficiently clear that at Manapparai, there is only one Mosque, which is called as Jumma Big Mosque. The jamatdhars had renovated it recently. In the town there is a 'Kabarsthan' which is a common burial ground for Muslims of Manapparai. Hussain Mustan tomb is located in isolation. There is no religious activity till recently at the tomb of Hussain Musthan. A mosque or Pallivasal means a place where there is a regular congregation of Muslims for worship. A stand alone grave of a person, where no worship



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conducted, is not a place of religious connotation.

19.The evidence placed indicates that at Manapparai Town, Jumma Big Mosque alone is duly registered under Wakf Act. There is a Kabarsthan, a common burial ground. Hence, a futile attempt made by the Wakf to name the tomb of Hussain Masthan as the Hazarath Hussain Masthan Pallivasal and dharga with an intention to bring the land in dispute within the meaning of Wakf. At the risk of repetition, Pallivasal is the tamil equivalent to the Arabic word Mosque. It is a place of worship for muslims. Samathi in tamil or tomb in English is not a place of worship. In a Mosque there may be a samathi/tomb, but not all samathi or tomb of a Muslim man become a Mosque. Like wise, Dharga is a place where sufi sect saints are buried. Offlate, even burial place of saints of other Islamic sects also called as Dhurga. In the instant case, there is no evidence to show that Hussain Musthan was a saint and been worshiped in the year 1815 when inam granted. It is an admitted fact that there is a separate burial ground for



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muslims (Kabarsthan) at Manapparai and a Mosque known as Jumma Big Mosque. No records to show a Pallivasal or Mosque or Dharga in the name of Hazarath Hussain Musthan Mosque/Dharga except records, which show the existence of a Hussain Musthan tomb. While so, a tomb of Hussain Masthan in isolation san worship, does not carry the trapping of place of worship.

20.The above finding is well fortified by the fact that the person, who claims the property as wakf property are not able to say to which wakf the property belongs to. Initially, it was claimed to be the property of Hussain Musthan Pallivasal. This found to be false from the enquiry conducted by the Assistant Settlement Officer through the evidence of revenue officials and private individuals. Later, they claimed it belongs to Hussain Masthan Mosque and Dharga. For which, there is no record even with the Wakf Board, except certain resolutions after the commencement of the litigation. No doubt the Title Deed No.1385 says, the land is a



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Devadayam given till the existence of the Hussain Masthan tomb and mentions Alikhan the Manger of the Tomb is maintaining it well. There is no other condition imposed in the grant to have a trapping of pious duty of charitable nature or service. The further scrutiny of Ex.A1-Register also reveals that the land had been continuously under cultivation, and in fact earlier, the classification of the land has been converted into Punja from nanja, based on the source of the irrigation. The said conversion was on the request made by one of the predecessor of NoorKhan.

21.If one look at the provisions of Inam Abolition Act,(Act 30/1963) we find it was enacted for two objects. First to abolish the minor Inams and second, to vest the land with Government or to the persons in occupation as Kudvaram. Through Sections 3 and 8 of the Act, the above objects are exposed.



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22.For the purpose of this case, Section 8 of the Act is relevant, so extracted below for easy reference:-

*“8.Grant of tyotwari pattas:-(1)Subject to the provisions of sub-Section (2), every person who is lawfully entitled to the Kudiwaram in an inam land immediately before the appointed day whether such person is an inmadar or not shall, with effect on and from the appointed day, be entitled to ryotwari patta in respect of that land.*

*(2)Notwithstanding anything contained in sub-section(1) in the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), (and in the Tamil Nadu Transferred Territory) Incorporated and Unincorporated Devaswoms Act, 1959(Tamil Nadu Act 30 of 1959), the following provisions shall apply in the case of lands in an iruvaram minor inam granted for the support or maintenance of a religious institution or for the performance of a charity or service connected therewith or of any other religious charity-*

*(i)where the land has been transferred by way of sale and the transferee or his heir, assignee, legal representative or person deriving rights through him had been in exclusive*



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*possession of such land*

*(a)for a continuous period of sixty years immediately before the 1<sup>st</sup> day of April 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of that land;*

*(b)for a continuous period of twelve years immediately before the 1<sup>st</sup> day of April 1960, such person shall, with effect on and from the appointed day, be entitled to a ryotwari patta if he pays as consideration to the Government in such manner and in such number of instalments as may be prescribed an amount equal to twenty times the difference between the fair rent in respect of such land determined in accordance with the provisions contained in the Schedule and the land revenue due on such land;*

*(ii)in the case of any other land, the institution or the individual rendering service shall, with effect on and from the appointed day, be entitled to a ryotwari patta in respect of that land.”*



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23.The Assistant Settlement Officer in his enquiry has found that the land is in continuous occupation or under cultivation of Alikhan descendants. Based on the said evidence, he has granted patta to Noorkhan, the descendant of Alikhan, the original grantee of Inam.

24.In the case in hand, without any pale of doubt, it is proved that Noorkhan and his predecessors were cultivating the inam land. Though rival claim made regarding possession, there is no material placed before the Enquiry Officer or before Tribunal to prove that possession and enjoyment of the property was with rival claimants and not with Noorkhan. Their claim is on the assumption that the land in dispute is a wakf property dedicated for a pious service. Hence a wakf is always a wakf and its character cannot be taken away even by long possession with others. Earlier when patta granted to Hussain Mastan Pallivasal, it was based on a *suo motu* enquiry and on uncorrected entry made in the title deed and fair register. Patta granted without taking note of the fact that there is no Pallivasal in the name of



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Hussain Musthan at Manapparai Municipality. Even during the pendency of STA, nothing placed to show that the tomb of Hussain Musthan is a Mosque a place of worship. Therefore, the claim that the Hussain Masthan tomb is a Pallivasal' is imaginary.

25.In view of this fact, serving notice to a non-existing institution does not rise. One Mr. Hussain claiming himself as a person interested in the Hussain Musthan Pallivasal and Secretary of Jumma Mosque has filed the C.M.A.No.1 of 1989 before the Tribunal. He had surfaced only after grant of Patta in favour of Noorkhan. He had not produced document to show Hussain Musthan mosque in existence at Manapparai and how he is interested in the affairs of the said Pallivasal. It appears, by renaming Jumma Big Mosque, some members of the community had fictitiously created an institution by name Hussain Mastan Pallivasal and made one Mohammed Hussain to represent the Pallivasal. He was actually the Secretary of Jumma Big Mosque. However, he, as a person interested in



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Hussain Mastan Pallivasal, had laid the appeal. Hence, the order of the tribunal to grant patta for a non existing Pallivasal is liable to be set aside.

26.It is pertinent to note that the representatives of Hussain Mastan Pallivaal had stated that there is yet another entity in the Manapparai Town by name Hazarath Hussain Masthan Darga Wakf. We find that the Tamilnadu Wakf Board in their Wakf O.P.No.6 of 2000 had contended that they appointed Daulat Hussain Khan as Muthavalli of Hazharath Hussain Mastan Dargah.wakf. The inconsistent pleading of Tamilnadu Wakf Board in O.P.No. 6 of 2000 makes clear that no Mosque at the Hussain Musthan tomb in existence.

27.The evidence and pleadings on behalf of Wakf Board, which is custodian of records relates to Wakf reveals that in Manapparai Town a Kabarathan, which is the public burial ground for muslims, Jumma big Mosque for the worship of Muslims and an isolated tomb of Hussain



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Mastan are situated. Admittedly, the disputed property was not declared or notified as a property of either Hussain Mastan Darga or Hazharath Hussain Musthan Dharga wakf or Hussain Musthan Pallivasal or Jumma Big Mosque. In the said facts and circumstances, unless the property already been notified as the property of a particular Wakf as per the provisions of the Act, none of the above wakfs can claim it, as its property. In ***Tamilnadu Wakf Board –vs- Hajitha Amma (died) by LR.s (2002(1) Law Weekly384)***, the Hon’ble Supreme Court has held as below:-

*“..... 5.Under [Section 5\(2\)](#) of the Act after a property is notified to be wakf property, a determination is made by a Civil Court whenever any dispute arises after the notification is published by the Wakf Board as to whether a particular property specified as wakf property in a list published is a wakf property or not. [Section 6](#) further provides that the Civil Court shall not entertain any such suit after the expiry of one year after the date of publication of the list by the Board. Such a suit cannot be at the instance of the Wakf Board. Again, the Board may itself collect information regarding any property as provided under*



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*Section 27 of the Act and decide whether a particular property is wakf property or not and that decision is final unless it is revoked or modified by a Civil Court.*

*6.In the event, any property has been omitted by inadvertence or otherwise, then it is for Wakf Board to take action as provided under Section 27 of the Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any question arises whether a particular property is a wakf property or not it may, after making such enquiry as it may deem fit decide the question and such decision of the Wakf Board shall be final unless revoked or modified by a Civil Court.”*

28.Relying upon the judgement of the Hon'ble Supreme Court in ***Syed Ali and others –vs- AP Wakf Board, Hyderabad ( 1998 (2) SCC 642),*** the Learned Counsel appearing for the Wakf submitted that once the property becomes a wakf property, it will not lose its character. The above observation is a proposition in general. On fact, in this case the property never had the character of a wakf. There is no permanent dedication for any



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pious, religious or charitable purpose. Inam property given for maintaining the tomb is not of any charitable or religious in nature. After abolition of Inam, the competent authority, namely the Assistant Settlement Officer had conducted enquiry and granted patta to Noorkhan under Section 8(1) of the Act, which is the appropriate provision of law. The subsequent events, even if it is by consent of persons concern needless to be taken into consideration. At the time of considering the request to grant Patta, the settlement officer had considered facts which are relevant. The enquiry report of the Assistant Settlement Officer, dated 30.11.1988 indicates that Noorkhan cultivating the land and in enjoyment of it. He is in possession by virtue of his descend. As far as the claim of the wakf Board, following the Judgement of the Supreme Court in Hajitha ammal case cited supra, the tribunal had dismissed O.P.No.6 of 2000 on the ground that the land not yet notified as wakf land. The dictum of Syed Ali case cited supra, says, once a wakf, it is always a wakf. This principle can be applied only if it proved that the property satisfies the definition of Wakf. Primarily, there must be a



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permanent dedication of a property for any of the purpose mentioned in the definition.

29.The Learned Counsels for the Wakf, harp heavily on the fact that the land given as inam is a Devadayam which *per se* connotes dedication for religious purpose and contend that there is no further probe required to decide the character of the property. At this juncture, it is profitable and appropriate to refer ***Vadlamannaty Bala Thirpura Sundaramma @ Sndaramma –vs- The Secretary of State for India in Council***, represented by the Collector of Kistna and others, a century old judgement of this Court reported in ***Law Weekly, 1928 at page 101***, which has explained the meaning of the word “ devadayam”as below:-

*“.....(1) As the British Government were dealing favourably with inams connected with the Hindu and the Muhammadan religions, whether grants to temples and mosques, or grants to officials and servants on conditions of rendering certain services in such temples and mosques, both were*



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*described as "devadayam" and the use of the word is not conclusive in favour of the temple or mosque itself, where the question is whether it is a grant to the temple or to a temple servant, though it may be some evidence along with other circumstances; but it is of very great weight where the claim of private property is set up.*

*(2) Where the grant is made to a person in the capacity of mutavalli, manager, superintendent, dharmakartha, or even servant of the mosque or temple, and where it does not appear that there is some other trustee, it may be regarded as a grant to the temple or mosque itself.*

*(3) Where it appears that a substantial part of the income goes to the benefit of the institution, as for the erection of a building or for its upkeep and repairs, or such other things, the grant may be considered as a grant to the institution itself, even though some surplus may be used by the trustees for their own maintenance.*

*(4) Where none of the above indicia, appears, that is, where the grant does not show that it was granted to a temple or mosque, nor describes the grantee in the capacity of trustees, manager etc., and where it does not appear that any portion of*



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*that income that may be considered as substantial has gone to the benefit of the temple or mosque, then in such a case it must be treated as a grant to the grantee named (persona designata) and, if services are mentioned, it is a grant for service.”*

30.The documents connected with the inam does not indicate that inam was granted to a Mosque. Though it describes the original grantee as Alikhan, the Manager of Hussain Masthan Tomb. It does not mention anything about income or expend full or portion of it for any religious purpose or to any Mosque. Therefore, the inam must be treated as to the person named ( persona designate) even though the inam granted is style as Devadayam. In the absence of reference to a Mosque and in the absence of service attached to the inam for the benefit of a mosque in existence. The said grant cannot be construed as a grant for maintaining a mosque, which never in existence. Hence, the reasoning given by the tribunal to reverse the order of the settlement officer held to be contrary the facts and law.

31.As a result, the common order dated 23.01.2006, in respect of



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C.M.A.No.1 of 1989, Wakf O.P.No.06 of 2000 and Wakf O.P.No.07 of 2000 stands set aside. In fine, the order of the Assistant Settlement Officer dated 30.11.1988 is restored. S.T.A.No.3 of 2006 Allowed. C.R.P(MD)Nos.380 and 381 of 2006 are Allowed. No order as to costs.

**[G.J., J.] & [R.P., J.]**

**20.03.2025**

NCC : Yes / No

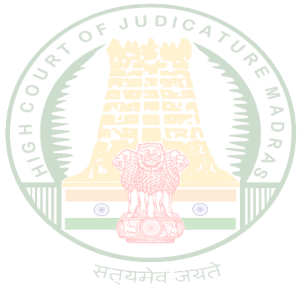
Index : Yes / No

Ns

To

- 1.The Subordinate Judge,  
Tiruchirapalli.
- 2.The Minor Inam Abolition Tribunal  
Tiruchirapalli  
(Principal Sub-Court at Tiruchirapalli)
- 3.The Assistant Settlement Officer,  
Tanjore.

**DR.G.JAYACHANDRAN, J.**



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**AND**  
**R.POORNIMA, J.**

*Ns*

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