HC-KAR

CNR: KAHC010531062013

®

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 56649 OF 2013 (GM-WAKF)

BETWEEN

1. SMT. R. BHAGYAMMA
   W/O LATE K S CHIKKALINGAPPA
   AGED ABOUT 62 YEARS

2. SMT K C SHASHIKALA
   D/O LATE K S CHIKKALINGAPPA
   W/O N RAVI KUMAR
   AGED ABOUT 39 YEARS

   BOTH ARE R/A NO.655, 4TH MAIN
   SRINAGAR, RAMANJANEYA ROAD
   BANGALORE-560050

...PETITIONERS

(BY SRI: D.R. RAVISHANKAR., SR. COUNSEL FOR
SRI. SUNIL KUMAR PATEL., ADVOCATE)

AND

1. KARNATAKA STATE BOARD OF WAKFS
   CONSTITUTED UNDER KARNATAKA WAKF ACT 1995
   OFFICE OF THE DISTRICT WAKF ADVISORY
   COMMITTEE
   BANGALORE(URBAN) DISTRICT
   NO.16, 2ND FLOOR
   HAMEED SHAH COMPLEX
   CUBBONPET, BANGALORE-560002
   REPRESENTED BY ITS WAKF OFFICER
2. KARNATAKA STATE BOARD OF WAKFS
   DARUL AWKAF
   NO.6, CUNNINGHAM ROAD
   BANGALORE-560052

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REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER

3. THE PRESIDENT
   JAMIA MASJID COMMITTEE
   MOHAMMEDSAB PALYA
   MASJID COMPLEX, VIDYARANYAPURA POST
   YELAHANKA HOBLI
   BANGALORE NORTH-560097

4. THE STATE OF KARNATAKA
   MINORITY WELFARE DEPARTMENT
   VIKASA SOUDHA,
   BENGALURU-560001.
   REP BY ITS SECRETARY

5. THE JOINT COMMISSIONER
   YELAHANKA ZONE,
   BBMP, BYATARAYANAPURA,
   BENGALURU-560092.

6. THE COMMISSIONER OF POLICE,
   BENGALURU CITY,
   INFANTRY ROAD,
   BENGALURU-560001.
   (RESPONDENTS 4 TO 6 ARE IMPLEADED
   VIDE COURT ORDER DATED 25.10.2024)

...RESPONDENTS

(BY SMT. ANURADHA S.R., SR. COUNSEL FOR
SRI. P.S. MALIPATIL., ADVOCATE FOR R1 & R2;
SRI. RASHEED KHAN., ADVOCATE FOR R3;
V/O DATED 25.10.2024
SRI. B.S. KARTHIKEYAN., ADVOCATE FOR R5;
SRI. MOHAMMED JAFAR SHAH., AGA FOR R4 & R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE RECORDS FROM THE R2 & R3 IN RESPECT OF EARLIER NOTIFICATION ISSUED IN THE YEAR 1965 & SUBSEQUENT DEVELOPMENTS SO ALSO THE NOTIFICATIONS ISSUED BY THE WAY OF CORRIGENDUM. AND ETC.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 18.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

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CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The petitioners are before this Court seeking for the following reliefs:

> *a. To call for the entire records from the Respondents No. 2 and 3 in respect of earlier Notification issued in the year 1965 and subsequent developments do also the Notification issued by way of corrigendum.*
>
> *b. To issue Writ of Certiorari and Quash the Notification at*
> *Annexure-H1 issued under revised corrigendum bearing No. KBW/MSC/35/2009-10 dated 08.07.2010 in respect of land bearing Sy. No. 56/1A measuring an extent of 1 Acre 12 Guntas and consequently to declare that the Respondents No. 2 and 3 have no manner in respect of Petitioners' land bearing Sy.No. 56/1A an extent of 1 Acre 12 Guntas detailed in the schedule.*
>
> *c. To issue a writ of certiorari and quash the Notification Prayers-'c' & 'd' are dtd:17.10.2019, bearing No. RD 115/BHUDAA 2019 issued by the Govt of Karnataka/4th Respondent vide. Annexure-L notifying the land in question bearing Sy. No. 56/1A of Jarakabandekaval village, Yelahanka Hobli, Yelahanka Taluk (then Bengaluru North Taluk), Bengaluru District measuring to an extent of 1 Acre 12 Guntas and consequently declare that the Respondents have no manner of right whatsoever with respect to the Petitioners' land as detailed in the schedule.*
>
> *d. To issue a direction in the nature of Writ of Mandamus against the Respondents, directing them to remove all the illegal encroachments made (including the burials) in the private land belonging to the Petitioners in Sy.No. 56/1A of*

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Jarakabandekaval village, Yelahanka Hobli, Yelahanka Taluk (then Bengaluru North Taluk), Bengaluru District measuring to an extent of 1 Acre 12 Guntas or in the alternative permit the Petitioners to remove the illegal encroachments made (including the burials) in the private land belonging to the Petitioners in Sy.No. 56/1A of Jarakabandekaval village, Yelahanka Hobli, Yelahanka Taluk (then Bengaluru North Taluk), Bengaluru District measuring to an extent of 1 Acre 12 Guntas with the assistance of Jurisdictional Police.

e. To issue appropriate writ or direction against the Respondents No. 2 and 3 not to trespass or do any activities in the land bearing Sy. No. 56/1A formed with sites so as to protect and safeguard the properties.

f. To grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

g. Cost of the proceedings.

2. Petitioners claim that Sri.K.S.Chikkalingappa and Sri.N.Narasimhaiah were the owners of the land in Sy No.56/1A situated at Jarakabande Kaval, Yelahanka Hobli, Bangalore North Taluk, to an extent of 1 acre 12 guntas and acquired the property under a registered sale deed dated 04.02.1981. Subsequently, they sought for change of land use from agriculture to non-agricultural purposes. The Deputy Commissioner granted such permission in respect of Sy.No.56/1A vide order bearing No. B.DIS.ALN.SR(N) 108/82-83 dated 20.06.1983. The said Chikkalingappa expired on 26.12.2000, leaving

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behind petitioner No. 1, wife, and petitioner No. 2, daughter, to succeed to his estate. It is claimed that in the aforesaid land they had formed a layout consisting of various sites.

3. A gazette notification having been published on 07.06.1965, notifying the land in Sy.No.55/1, 55/2 of Chikkabettahalli as Wakf land. A corrigendum had been issued on 23.02.2010 followed by a gazette Public Notification on 05.08.2010 under caption revised corrigendum bearing No.KBW/MSC/35/2009-10 dated 08.07.2010 including altogether new Sy.No.56 as wakf land. In furtherance of which, it is alleged that the said land was used as a graveyard. It is this corrigendum which is challenged in the present proceedings.

4. By way of order dated 13.12.2013, the parties were directed to maintain status quo with regard to possession and thereafter the matter was adjourned from time to time. Subsequently, an amendment application came to be filed on 25.09.2023, which was directed to be considered along with the main arguments vide order dated 25.09.2023.

5. In the meanwhile, a notification having been issued on 17.10.2019, an amendment application in IA

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No.1/24 had been filed challenging the said notification which came to be allowed on 25.06.2024. Subsequently, certain other government entities were brought on record as party respondents vide order dated 25.10.2024.

6. On 15.07.2026, on a joint submission made by the counsel for the petitioners and counsel for the Wakf Board, on which basis a survey of the lands in Sy.No.55, 56 and 57 of Jarakbhande Kaval Village, Bangalore North Taluk was directed to be conducted to demarcate the boundaries of the primary survey numbers and sub numbers and draw up a detailed survey sketch and mark the location of each of the tombstones in any of the other survey numbers and to calculate the area covered by the tombstones/kabristan/graveyard as also demarcate and calculate the area over which there is no tombstone/kabristan/graveyard along with photographs and videographs of the entire process.

7. In pursuance thereof, a report has been submitted on 06.08.2026. It is in that background that the matter was taken up for hearing.

8. Sri. Sunil Kumar Patel, learned counsel for the petitioners would submit that:

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8.1. As per the sale deed dated 04.02.1981, the land bearing Sy.No.56/1A is situated at Jarakabande Kaval, Yelahanka Hobli, Bangalore North Kaval, measuring 1 acre 12 hectares bounded on the east by Anchipura Village boundary, west by Imam Sabi land, north by Masidi land and south by Malik Sab's land was sold.

8.2. His submission is that there is no power to issue a corrigendum under Section 5(2) of the Wakf Act, 1995, as it is required that before any notification is issued it is to be preceded by a detailed survey and compliance with the procedure under Section 4 of the Wakf Act. He submits that without such a detailed survey under Section 4, a corrigendum could not have been issued. He submits that the aforesaid land belonging to private parties could not be included by way of a corrigendum. His submission is that the land in Survey No.56/1A was all along a private property and was never a wakf land. The land has also been converted in the name of the earlier owner, i.e. the father of the petitioner. Hence, the issuance of corrigendum having civil consequences without

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following the procedure under Sections 4, 5 and 6 of the Wakf Act, the corrigendum could not have been issued without there being a finding as regard the history of any dedication of the property.

8.3. The corrigendum could not have been issued after 45 years of the original notification on 07.06.1965. The corrigendum is a mischievous act and is expropriatory in nature.

8.4. He relies on the decision of the Hon'ble Apex Court in the case of ***State of Andhra Pradesh vs. Andhra Pradesh State Wakf Board and others*** [(2022) 20 SCC 383], more particularly Paragraphs 158 to 174, which are reproduced hereunder for easy reference:

> ***158.*** *The test to determine as to whether an institution discharges quasi-judicial function came up for consideration before this Court in a judgment reported as Indian National Congress. This Court held that if law requires that an authority before arriving at a decision must make an inquiry, such a requirement of law makes the authority a quasi-judicial authority. This Court held as under : (SCC p. 700, paras 25 & 27)*
>
> *"25. Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a lis before a statutory authority, the*

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authority would be quasi-judicial authority if it is required to act judicially.

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27. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an inquiry, such a requirement of law makes the authority a quasi-judicial authority."

159. *In a Constitution Bench judgment reported as Province of Bombay v. Kusaldas S. Advani , this Court deduced principles as to when an authority can be said to exercising quasi-judicial functions. It was held that the absence of two parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially. This Court held as under : (SCC pp. 608-609, paras 80-81)*

"80. What are the principles to be deduced from the two lines of cases I have referred to? The principles, as I apprehend them, are:

*80.1. (i) * * **

80.2. (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.

81. In other words, while the presence of two parties besides the deciding authority will prima facie, and in the absence of any other factor impose upon the authority the duty to act judicially, the absence of two such parties is not decisive in taking the act of the authority out of the category of quasi-judicial act if the authority is nevertheless required by the statute to act judicially."

160. *This Court in a judgment reported as State of H.P. v. Mahendra Pal [State of H.P. v. Mahendra Pal, (1999) 4 SCC 43] held that a quasi-judicial function stands*

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midway between a judicial and an administrative function. The primary test is as to whether the authority alleged to be a quasi-judicial one, has any express statutory duty to act judicially in arriving at the decision in question. If the reply is in the affirmative, the authority would be deemed to be quasi-judicial, and if the reply is in the negative, it would not be. It was held as under : (SCC pp. 56-57, para 9)

"9. It follows, therefore, that an authority is described as quasi-judicial when it has some of the attributes or trappings of judicial functions, but not all. This Court in Province of Bombay v. Kusaldas S. Advani [Province of Bombay v. Kusaldas S. Advani, 1950 SCC 551 : 1950 SCR 621] dealt with the actions of the statutory body and laid down tests for ascertaining whether the action taken by such a body was a quasi-judicial act or an administrative act. The Court approved the celebrated definition of the quasi-judicial body given by Atkin, L.J., as he then was in R. v. Electricity Commissioners [R. v. Electricity Commissioners, (1924) 1 KB 171 : 130 LT 164 (CA)] in which it was held : (KB p. 205)

'… Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.'

The aforesaid definition was accepted as correct in R. v. London County Council and many subsequent cases both in England and in India. Again this Court in Radeshyam Khare v. State of M.P. relying upon its earlier decision held : (SCC OnLine SC paras 11-12)

'11. … It will be noticed that this definition insists on three requisites each of which must be fulfilled in order that the act of the body may be said to be quasi-judicial act, namely, that the body of persons : (1) must have legal authority, (2) to determine questions affecting the rights of parties, and (3) must have the duty to act judicially. Since a writ of certiorari can be issued only to correct the errors of a court or a quasi-judicial body, it would follow that the real and determining test for ascertaining whether an act authorised by a statute is a quasi-judicial act or an administrative act is whether the statute has expressly or impliedly imposed upon the

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statutory body the duty to act judicially as required by the third condition in the definition given by Atkin, L.J.…

12. Relying on Paras 114 and 115 of Halsbury's Laws of England, 3rd Edn., Vol. 11 at pp. 55-58 and citing the case of R. v. Manchester Legal Aid Committee learned counsel for the appellants contends that where a statute requires a decision to be arrived at purely from the point of view of policy or expediency the authority is under no duty to act judicially. He urges that where, on the other hand, the order has to be passed on evidence either under an express provision of the statute or by implication and determination of particular facts on which its jurisdiction to exercise its power depends or if there is a proposal and an opposition the authority is under a duty to act judicially. As stated in Para 115 of Halsbury's Laws of England, Vol. 11 at p. 57 the duty to act judicially may arise in widely differing circumstances which it would be impossible to attempt to define exhaustively. The question whether or not there is a duty to act judicially must be decided in each case in the light of the circumstances of the particular case and the construction of the particular statute with the assistance of the general principles laid down in the judicial decisions. The principles deducible from the various judicial decisions considered by this Court in Kusaldas S. Advani at p. 725 (of SCR) : (at p. 260 of AIR) were thus formulated.…' "

161. *This Court in a judgment reported at Kranti Associates [Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] held as under : (SCC pp. 510-11, para 47)*

"47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

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(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

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(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies."

162. *In respect to the provisions of Section 32 of the 1995 Act, a Division Bench of the Kerala High Court in a judgment reported as Ezhome Sunni Valiya Juma Masjid v. Kerala Waqf Board held that when the Wakf Board is called upon to decide a lis which falls within its jurisdiction and has to be done based on the materials made available before it, after hearing the parties and its decision has far-reaching repercussion on the rights of the parties, it is a quasi-judicial function. It was held as under : (SCC OnLine Ker para 10)*

"10. The aforementioned provisions dealing with the powers and duties of the Waqf Board and other related provisions under the Act would reveal there may be many acts which may be done by the Board. Among them, some are obviously administrative in nature. But, when the Board is called upon to decide a lis which falls within its jurisdiction and has to be done based on the materials made available before it, after hearing the parties and its decision has far-reaching repercussion on the rights of the parties, it has a quasi-judicial function. (See the decision in Puthucode Juma — Ath Committee v. Abdul Rahiman). A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. It is subject to some measure of judicial procedure. As regards quasi-judicial functions, they cannot be delegated unless the authority concerned is enabled to do so expressly or by necessary implication. The general principle is that where any kind of a decision on a lis has to be made, it must be made by the authority empowered by the statute concerned and by no one else. We will deal with the same further, a little later."

163. ***Thus, we find that the power of the Board to investigate and determine the nature and extent of wakf is not purely an administrative function.*** *Such power has to be read along with Section 40 of the Act which enjoins "a Wakf Board to collect information regarding any property which it has reason to believe to be wakf property and to decide the question about the nature of the property after making such inquiry as it may deem fit". The power to determine under Section 32(2)(n) is the source of power but the manner of*

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exercising that power is contemplated under Section 40 of the 1995 Act. An inquiry is required to be conducted if a Board on the basis of information collected finds that the property in question is a wakf property. An order passed thereon is subject to appeal before the Wakf Tribunal, after an inquiry required is conducted in terms of sub-section (1) of Section 40. ***Therefore, there cannot be any unilateral decision without recording any reason that how and why the property is included as a wakf property.*** *The finding of the Wakf Board is final, subject to the right of appeal under sub-section (2). Thus, any decision of the Board is required to be as a reasoned order which could be tested in appeal before the Wakf Tribunal.*

164. *Therefore, the Wakf Board has power to determine the nature of the property as wakf under Section 32(2)(n) but after complying with the procedure prescribed as contained in Section 40. Such procedure categorically prescribes an inquiry to be conducted. The conduct of inquiry presupposes compliance of the principles of natural justice so as to give opportunity of hearing to the affected parties. The proceedings produced by the Wakf Board do not show any inquiry conducted or any notice issued to either of the affected parties. Primarily, two factors had led the Wakf Board to issue the errata notification, that is, order of the Nazim Atiyat and the second survey report. Both may be considered as material available with the Wakf Board but in the absence of an inquiry conducted, it cannot be said to be in accordance with the procedure prescribed under Section 40 of the 1995 Act.*

165. ***Since there is no determination of the fact whether the property in question is a wakf property after conducting an inquiry in terms of Section 40(1) of the 1995 Act, the errata notification cannot be deemed to be issued in terms of Section 32 read with Section 40 of the 1995 Act.*** *Such determination alone could have conferred right on the affected parties to avail the remedy of appeal under Section 40 of the 1995 Act.*

166. *The reliance on the proviso to Section 40(3) of the 1995 Act, contemplating notice to the registered trust or society in case the Board has any reason to believe that any property is wakf and is registered under any of the Acts is absolutely misconceived. These provisions deal with an altogether different situation. A trust or society*

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is already registered but if the Board finds it to be wakf, the statute contemplates notice to the authority. It does not mean that such trust or society is not required to be heard. The hearing to trust or society would also be as per the principles of natural justice.

167. *The argument in support of the Errata Notification dated 13-3-2006 is that it is traceable to the powers conferred on the Wakf Board under Section 5 of the 1995 Act. The exercise of the publication of notification is the power conferred on the Wakf Board. Therefore, the fact that second survey report was not submitted to the State Government was inconsequential as it was only a ministerial action. Once the Board had the power to publish notification after perusing the various documents, the same could not be said to be illegal only for the reason that the report was not submitted to the State Government as contemplated by sub-section (1) of Section 5 of the 1995 Act.*

168. *The argument raised by Mr Ahmadi that the notification is in terms of Section 5 of the 1995 Act is not tenable. It is an admitted case that the second survey report was not submitted to the State Government and such report has not even been forwarded by the Government to the Wakf Board.* ***The Wakf Board may have a right to requisition of any document in terms of power conferred under Section 105 of the 1995 Act, but if a procedure is prescribed for issuance of a notification, it could be issued only in the manner prescribed and not in any other manner.*** *Reference be made to the judgment of this Court reported as Babu Verghese v. Bar Council of Kerala [Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422] wherein this Court held as under : (SCC pp. 432-33, paras 31-32)*

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under : (Nazir Ahmad case , SCC OnLine PC)

'… where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all.'

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32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh [Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, (1954) 1 SCC 296 : 1954 SCR 1098 : AIR 1954 SC 322] and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh [State of U.P. v. Singhara Singh, 1963 SCC OnLine SC 23 : AIR 1964 SC 358 : (1964) 1 Cri LJ 263 (2)] and the rule laid down in Nazir Ahmad case was again upheld. The rule has since been applied to the exercise of jurisdiction by courts and has also been recognised as a salutary principle of administrative law."

169. *A Constitution Bench in a judgment reported as CIT v. Anjum M.H. Ghaswala reiterated that when a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise the same only in the manner prescribed by the statute itself. It was held as under : (SCC p. 644, para 27)*

"27. Then it is to be seen that the Act requires the Board to exercise the power under Section 119 in a particular manner i.e. by way of issuance of orders, instructions and directions. These orders, instructions and directions are meant to be issued to other income tax authorities for proper administration of the Act. The Commission while exercising its quasi-judicial power of arriving at a settlement under Section 245-D cannot have the administrative power of issuing directions to other income tax authorities. It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. If that be so, since the Commission cannot exercise the power of relaxation found in Section 119(2)(a) in the manner provided therein it cannot invoke that power under Section 119(2)(a) to exercise the same in its judicial proceedings by following a procedure contrary to that provided in sub-section (2) of Section 119."

170. *Therefore, we are unable to agree with Mr Ahmadi that since it was only a ministerial part of submission of the second survey report to the State Government, therefore, the Board had the jurisdiction to publish notification under Section 5.*

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171. *The question now to be examined is whether the Board could issue the errata notification after a lapse of 17 years from the date of first notification i.e. 9-2-1989. The exercise leading to the notification started with a letter from Syed Safiullah Hussaini, Mutawalli on 30-1-2005. He is the mutawalli mentioned in the first notification published in the year 1989.* ***Since the notification was issued with him as mutawalli, then his inaction for 17 long years speaks volumes of his bona fide in initiating the process to include the large area of land as wakf.***

172. *We would need to examine as to what is the scope and meaning of the word "errata". "Errata" is a term of French origin which means a thing that should be corrected. It means a mistake in printing or writing. Reference may be made to a judgment reported as Parvati Devi v. State of U.P. It was held as under : (SCC OnLine All paras 20-21, 23-25 & 27)*

"20. The word "Erratum" (French) means a mistake in printing or writing; a note drawing attention to such a mistake. A list of mistakes added at the end of a book.

21. The word "Errata" is a word of French origin and means "a thing that should be corrected". After a book has been printed, it often happens that certain mistakes are found to have been overlooked. In later editions, it is usual to insert, a list of such mistakes and to point out the necessary corrections. These are called "corrigenda".

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23. In Judicial Dictionary by Justice L.P. Singh and Majumdar, 2nd Edn., p. 552, while quoting the following passage in Asom Rajyik Udyog Karmi Sangha v. State of Assam [Asom Rajyik Udyog Karmi Sangha v. State of Assam, 1995 SCC OnLine Gau 140 : (1996) 1 Gau LR 236] , Gau LR at p. 241, the word "corrigendum" has been defined as follows:

'The dictionary meaning of the word "corrigendum" means things to be correct. It means there must be an error and there is a necessity to amend and rectify it. In the garb of corrigendum, a rule cannot be altered and or changed, but that is what appears to have been done in the instant case. In order to alter or modify a rule the same procedure adopted in making of the rule have to be gone through.'

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24. The meaning and application of the word "corrigendum" has been considered by the Courts time and again. In CST v. Dunlop India Ltd. this Court held that corrigendum is issued to correct a mistake in the notification, therefore, would relate back to the date of issuance of the original notification.

25. In Piara Singh v. State of Punjab, the Hon'ble Supreme Court held that there is no bar on issuing the corrigendum or "more corrigenda" for correcting the arithmetical error.

***

27. In view of the above, the legal position can be summarised that a corrigendum can be issued only to correct a typographical error or omission therein. However, it is meant only to correct typographical/arithmetical mistake. It cannot have the effect of law nor it can take away the vested right of a person nor it can have the effect of nullifying the rights of persons conferred by the law."

173. *We find that in the facts of the present case, the errata notification is nothing but a fresh notification altogether. Errata is a correction of a mistake.* ***Hence, only arithmetical and clerical mistakes could be corrected and the scope of the notification could not be enlarged by virtue of an errata notification.*** *As against 5506 sq yd of land notified as wakf property in the year 1989, large area of 1654 acres 32 guntas of land could not be included under the guise of an errata notification as it is not a case of clerical or arithmetical mistake but inclusion of large area which could not be done without conducting a proper inquiry either under Section 32(2)(n) read with Section 40 or on the basis of survey report which was called by the State Government by appointing a Survey Commissioner.*

174. *It may be noticed at this stage that the second survey report as called by the Wakf Board from the Survey Commissioner has many interpolations visible to the naked eye which creates a doubt on the correctness of the report which could form as a reasonable base to confer jurisdiction on the Wakf Board to include such land as a wakf land.*

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8.5. By relying on ***Andhra Pradesh State Wakf Board***, his submission is that where a statutory authority is empowered to determine questions affecting the rights of parties, and the exercise of such power entails an inquiry into the relevant facts and materials, the authority is required to discharge its functions in a quasi-judicial manner, in accordance with the applicable statutory procedure and the principles of natural justice. The decision further emphasises that such determination must be supported by cogent reasons and cannot be made unilaterally, without affording an effective opportunity of hearing to the parties likely to be affected. It is also submitted that where the statute prescribes a particular procedure for the exercise of a power, the authority is bound to act in the manner so prescribed and cannot circumvent the same by resorting to an alternative procedure. Further, a corrigendum or errata can be employed only to rectify a clerical, typographical or arithmetical error and cannot be utilised to effect a substantive alteration or enlargement of the original order or notification, particularly where

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such alteration affects vested rights or prejudicially alters the rights of the persons concerned. On the strength of the aforesaid principles, it is contended that the impugned action, insofar as it has been undertaken without the requisite inquiry, compliance with the prescribed procedure and observance of the principles of natural justice, or has resulted in a substantive alteration under the guise of a mere correction, cannot be sustained in law.

8.6. He relies on the decision of the Hon'ble Apex Court in the case of ***Salem Muslim Burial Ground Protection Committee vs. State of Tamil Nadu & others*** [(2023) 16 SCC 264], more particularly Paragraphs 25 to 28 and 31 to 35, which are reproduced hereunder for easy reference:

> ***25. Under Muslim law, a wakf can be created in several ways but primarily by permanent dedication of any movable and immovable property by a person professing Islam for any purpose recognised by Muslim law as pious, religious or charitable purpose and in the absence of such dedication, it can be presumed to have come into existence by long use.***
>
> ***26.*** *Ordinarily, a wakf is brought into existence by any express dedication of movable or immovable property for religious or charitable purpose as recognised by Muslim Law. Once such a dedication is made, the property sought to be dedicated gets divested from the wakif i.e.*

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the person creating or dedicating it and vests in the Almighty Allah. The wakf so created acquires a permanent nature and cannot be revoked or rescinded subsequently. The property of the wakf is unalienable and cannot be sold or transferred for private purpose.

27. The dedication resulting in the creation of a wakf may at times in the absence of any express dedication may also be reasonably inferred from the facts and circumstances of the case such as long usage of the property as a wakf property provided it has been put to use for religious or public charitable purposes. *In this regard, reference may be had to the Constitution Bench decision of this Court in M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das [M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das, (2020) 1 SCC 1] .*

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.*

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*

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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 29-4-1959 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 T.N. Wakf Board v. Hathija Ammal [T.N. Wakf Board v. Hathija Ammal, (2001) 8 SCC 528 : AIR 2002 SC 402] , it was observed that the Wakf Board should follow the procedure as required under Sections 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 v. Syed Jalal [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] , it was observed as under : (SCC p. 185, para 16)*

"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 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 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*

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> *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 A.P. v. A.P. Wakf Board [State of A.P. v. A.P. Wakf Board, (2022) 20 SCC 383 : 2022 SCC OnLine SC 159] ,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 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.***

8.7. By relying ***Salem Muslim Burial Ground Protection Committee,*** his submission is that a property cannot be treated as wakf property merely on the basis of a notification published in the Official Gazette, in the absence of material establishing its dedication for a purpose recognised by Muslim law or its long-standing use for religious or public charitable purposes, as the case may be. He further submits that, where the claim of wakf is founded upon a statutory survey and notification, compliance with the procedure prescribed under the applicable provisions of

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the Wakf Act, including the requisite survey, inquiry, preparation and scrutiny of the report, and due application of mind by the competent authorities, is a prerequisite to a valid declaration of the property as wakf property. The mere publication of a notification in the Official Gazette does not, by itself, constitute conclusive proof of the wakf character of the property, particularly where compliance with the prescribed statutory procedure is not established. It is, therefore, contended that the nature and character of the property must be determined on the basis of legally admissible material and in accordance with the procedure prescribed by law, and that a notification issued without compliance with the mandatory statutory requirements cannot, by itself, conclusively establish that the property in question is wakf property.

8.8. He relies on the decision of Hon'ble Apex Court in the case of ***Madanuri Sri Rama Chandra Murthy vs. Syed Jalal*** [(2017) 13 SCC 174], more particularly Paragraphs 11, 15 to 17 and 20, which are reproduced hereunder for easy reference:

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11. *A bare reading of the aforequoted provisions (relevant provisions for the purpose of this matter) contained in the 1954 Act and the 1995 Act, makes it manifestly clear that the provisions, which are relevant for this case are almost in pari materia with each other.*

15. *The overall view of the aforementioned provisions contained in the Wakf Act, 1954 and the Wakf Act, 1995 make it evident that even under the 1954 Act, as in the 1995 Act, the Survey Commissioners were appointed for the purpose of making survey of wakfs in State. The Survey Commissioner was duty-bound to conduct the survey of wakfs in the State and after making such enquiry, as he might consider necessary, would submit his report in respect of wakfs existing in the State to the State Government with necessary particulars. Copy of the said report would be forwarded by the State to the Wakf Board which in turn would examine the report by applying its mind and thereafter would publish the notification. Whereas under the 1995 Act, the Wakf Board after examining the report forwards it back to the Government within a period of 6 months for publication in the Official Gazette in the State. Pursuant thereto the State will publish the Gazette notification. The revenue authorities will consequently include the list of waqaf properties while updating the revenue records under sub-section (3) of Section 5 of the 1995 Act.*

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 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 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. Since the list is prepared and published in the Official Gazette by following the aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's Report. Since the Surveyor's Report was*

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required to be considered by the State Government as well as the Wakf Board (as the case may be), prior to finalisation of the list of properties to be published in the Official Gazette, it was not open for the High Court to conclude that the Surveyor's Report will have to be reconsidered. On the contrary, the Surveyor's Report merges with the gazette notification published under Section 5 of the Wakf Act.

17. *As held by the Tribunal as well as the High Court, the property in question does not find place in the gazette notification published under Section 5 of the Wakf Act. In other words, the property in question is not notified in the Official Gazette as wakf property.* ***If anybody including the Wakf Board or the plaintiff was aggrieved by such non-inclusion of the property in the list notified, the aggrieved person should have raised the dispute under Section 6 within a period of one year from the date of publication of the gazette notification in the matter.*** *The plaintiff has practically questioned the non-inclusion of the property in the list and the validity of the list notified in the Official Gazette dated 28-6-1962 after the lapse of about 50 years i.e. in the year 2013 by filing the present suit.*

20. *In the matter on hand, as mentioned supra, the Tribunal and the High Court, on facts have held that the property in question is not included in the list published in the Official Gazette as a wakf property. Such non-inclusion was never questioned by any person including the Wakf Board. The Board has not exercised jurisdiction under Section 27 of the 1954 Act and Section 40 of the 1995 Act, though 50 years have elapsed from the date of the gazette notification. Hence, in our considered opinion, the averments in the plaint do not disclose the cause of action for filing the suit. The suit is manifestly meritless and vexatious. So also the suit is barred by law for the reasons mentioned supra.*

8.9. By relying on ***Syed Jalal***, his submission is that the determination and notification of a property as wakf property must be preceded by a valid survey, a formal inquiry into the nature and character of the property, preparation of the

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survey report and due application of mind by the competent statutory authorities in accordance with the procedure prescribed under the applicable Wakf Act. The survey report and the consequential notification are required to be considered in the context of the statutory process culminating in the publication of the list of auqaf in the Official Gazette. He further submits that the inclusion or non-inclusion of a property in the notified list has legal consequences and that any dispute concerning such inclusion or non-inclusion must be raised before the competent forum within the period prescribed by law. The aforesaid decision also recognises that, where a property does not find place in the list of wakfs published in the Official Gazette and such non-inclusion has not been challenged in accordance with the statutory mechanism, a belated challenge cannot be sustained in disregard of the applicable statutory provisions and limitation. Accordingly, it is contended that the claim that the property in question constitutes wakf property must be examined with reference to the statutory survey, the relevant survey

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report, the Gazette notification and the applicable provisions governing the determination of disputes concerning the inclusion of the property in the list of wakfs.

8.10. He relies on the judgment of Co-ordinate Bench of this Court in the case of ***Nishat Kasar & another vs. State of Karnataka & others*** [(2023) SCC OnLine KAR 999], more particularly Paragraphs 28 to 58 and 60, which are reproduced hereunder for easy reference:

> ***28.*** *An overview of the statutory provisions relating to the publication of the list of Wakfs would be required to answer this question.*
>
> ***29.*** *Chapter-II of the Act provides for survey of wakfs. S. 4 of the Act contemplates that the State is to appoint a Commissioner for making a survey of wakf properties existing in the State and the Commissioner is required, after making such enquiry, (as he may consider necessary) to submit a report in respect of wakf properties which are existing as on the date of commencement of the Act. The report is required to contain the specified particulars.*
>
> ***30.*** *Rule 3 of the Karnataka Wakf Rules, 1964 (for brevity, hereinafter referred to as "the Rules") contemplates that the Commissioner apart from other details is also required to furnish the description of the immovable properties showing the village or town where the properties situate along with municipal or survey number, area, description of the tenure and the estimated value of the properties.*
>
> ***31.*** *The Commissioner is thereafter required to submit a report to the Government and the Government under S. 5 of the Act is required to forward a copy of the same to the Board and the Board is required to examine the*

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report and publish, in the Official Gazette, a list of wakfs existing in the State containing such particulars as may be prescribed.

32. *Rule 4 of the Rules mandates that apart from other particulars, the details of the wakf properties including the area, boundaries and value are required to be 15 mentioned in the list of wakfs to be published under S. 5(2) of the Act.*

33. *Thus, the law contemplates that after a preliminary survey is conducted, the list of wakfs is required to be published in the gazette and this list is required to contain the details of the properties of the Wakf. This is obviously to declare and notify the wakfs that existed in the State and to also notify the properties which the wakfs owned or possessed.*

34. *S. 6 of the Act provides for raising a dispute regarding wakfs, if any question arises as to whether a particular property specified as wakf property in the list of wakfs published under S. 5(2) of the Act, is a wakf property or not or whether the wakf specified as Shia wakf or Sunni wakf. This dispute could be raised by the Board or Mutawali of the wakf or any person interested therein by instituting a suit in the Civil Court. A limitation of one year to institute a suit was also stipulated as per the proviso.*

35. *Thus, the question as to whether a property specified as a wakf property in the list of wakfs, was or was not a wakf property, was to be determined in a suit instituted for that purpose, either by the Board or any other person interested. If no suit was instituted, as provided under S. 6 of the Act, it is obvious that the list of wakfs published under S. 5(2) of the Act became final and as a consequence, the properties mentioned therein would have to be considered as wakf properties absolutely.*

36. *In this case, it is not in dispute that house bearing No. 265 measuring 18' × 20' was mentioned as property of the wakf of Dargah Hazrath Noor Ali Shah Makan, Sunni, Benki Nawab Road, Mysore City. This property, specified as wakf property with all its necessary particulars as provided under the Rules, was not challenged under S. 6 of the Act.*

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37. *Since this publication of the list of wakfs and its properties in the gazette was not disputed by institution of a suit by anyone interested in the wakf and also by the Board, it would not be open to any person, including the Board to contend that the property mentioned in the list of wakfs was either incorrect or did not reflect the actual measurement.*

38. *To put it differently, the measurement of the property specified in the list of wakfs published under S. 5(2) of the Act became final and absolute not only insofar as the Board but also in respect of any other person who was interested in the wakf.*

39. *It is also not in dispute that in this particular case that an order had been passed to take over the management of the wakf and this was challenged by the petitioners in WP No. 37849/1992 and the order directing management to be taken over was also quashed.*

40. *It is also not in dispute that an order dated 29-1-2003 appointing the Three Member Official Committee and the Circular dated 2-5-2003 issued by the Committee directing the tenants to pay rents were the subject matters of WP No. 26509/2003, which was dismissed reserving liberty to the petitioners to approach the Tribunal and the Tribunal rejected the said challenge made by the petitioners, which had resulted in filing of WP No. 3065/2010 by the petitioners.*

41. *It is also not in dispute that this Court set aside the finding of the Tribunal regarding 'A' schedule property being the ancestral property and the 'B' schedule property i.e., the area stated in the list of wakf published in the gazette under S. 5(2) of the Act and reserved liberty to the petitioners to approach the appropriate authority for securing a declaration of title.*

42. *Thus, in essence, the question as to whether the petitioners own the property, other than the property bearing house No. 265 measuring 18' × 20', was left open to be adjudicated in the event the petitioners or the Board initiated appropriate proceedings in that regard.*

43. *It is at this stage that the proceedings have been initiated by the Board for correcting the measurements specified in the Gazette on 1-4-1965.*

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44. *This is clear from the communication dated 25-11-2010, which is produced along with the statement of objections by the Wakf Board, which reads as follows:*

"Adverting to above, I am to state that Hazrath Noor Ali Sha Makan, Benki Nawab Street, Mysore, is a Notified under Sl. No. 24 of Government Gazette bearing No. MWB/19(2)/1965, dated 1-4-1965. In the said Gazette the measurement is mentioned as only 18′ × 20′ whereas the entire area of the Dargah measures towards East-38′, towards West — 70′, towards North — 58′ and towards South-68′ and as per the measurement the schedule of the property is, towards East by Private Property, towards West by Benki Nawab Street, towards North by Noor Ali Shah Makan Street, towards South by Private Property. So, the entries have to be corrected as above. Hence, I am enclosing herewith the Xerox copy of Encumbrance Certificate issued by the Sub-Registrar, Mysore 20 (South), Mysore, is enclosed herein and it is requested kindly to correct the entries as above."

45. *As could be seen from the said communication, it was the Secretary of Dargah Hazrath Noor Ali Shah Makan, who requested the Board that the property measurement shown in the list of wakf published in the gazette under S. 5(2) of the Act was not 18′ × 20′, but was a larger extent and therefore, the same was required to be corrected.*

46. *The Board has also produced a mahazar drawn up by the Revenue Inspector as Annexure-R1. The relevant portion of the said mahazar reads as follows:*

"ಮೈಸೂರು ಸಿಟಿ ಮಂಡಿ ಮೊಹಲ್ಲಾ ನೂರ್ ಅಲಿ ಮಖಾನ್ ದರ್ಗ ವಿಚಾರದಲ್ಲಿ ಇದಕ್ಕೆ ಸೇರಿದ ಆಸ್ತಿ ಪಾಸ್ತಿಗಳನ್ನು ತನಿಖೆ ನಡೆಸಿದಾಗ ನಾವು ಹಾಜರಿದ್ದೆವು. ಸದರಿ ದರ್ಗಾದ ಆಡಳಿತ ವನ್ನು ಜನಾಬ್ ಮಹಮ್ಮದ್ ಅಬ್ದುಲ್ಲಾ ಪರೀಫರು ನಡೆಸಿಕೊಂಡು ಬರುತ್ತಿರುತ್ತಾರೆ. ಈ ದರ್ಗಾಕ್ಕೆ ಪೂರ್ವ ಭಾಗಕ್ಕೆ ಸೇರಿದಂತೆ ನಾಡು ಹೆಂಚಿನ ಮಳಿಗೆ 20 X 18 ಡೋರ್ ನಂ.265 ಉಳ್ಳದ್ದಾಗಿರುತ್ತೆ ಇದರ ಮಾಹೆಯಾನ ಬಾಡಿಗೆ 60/- ರೂ.ಗಳು ಸಾಲಿಯಾದ ಒಟ್ಟು ಉತ್ಪತ್ತಿ 720/- ರೂಪಾಯಿಗಳು ಬೆಲೆ 10,000/- ರೂಪಾಯಿಗಳು ಇದರ ಮುನಿಸಿಪಲ್ ಕಂದಾಯ ವರ್ಷಕ್ಕೆ 52/- ರೂ. ಗಳು ಇರುತ್ತೆ. ಅಂತ್ತು ಈ ದರ್ಗಾದ ಸಾಲಿಯಾನ ವರಮಾನ 720/-ರೂಪಾಯಿಗಳು ಕಂದಾಯ 52/- ರೂ.ಗಳು ಸಾಲಿಯಾನ ರಿಪೇರಿಗೋಸ್ಕರ ಖರ್ಚು 100/- ರೂಪಾಯಿಗಳು

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ಇದರ ಇತರ ವಗೈರೆ ಖರ್ಚು 250/-ರೂಪಾಯಿಗಳು ಅದಲ್ಲದೆ ಊರಿನಲ್ಲಿರುವ ಬಡಜನರಿಗೆ ಅನ್ನ ಹಾಕಿಸುವ ಖರ್ಚು 100/-ಅಂತು ಒಟ್ಟು ಅದಾಯದಲ್ಲಿ 450/-ರೂಪಾಯಿಗಳು ಖರ್ಚಾಗುತ್ತೆ ಮತ್ತು ಉಳಿಕೆ ಮೊಬಲಗು 218/- ರೂ. ಗಳು ಸಾಲಿಯಾನ ಉಳಿಯುತ್ತದೆ.”

47. *As could be seen from this mahazar also, the Revenue Inspector, in the year 1945, stated that to the east of Dargah, there was a country tiled roof shop measuring 18’ × 20’. The mahazar does not indicate a larger extent of property being attached to the Dargah or belonging to the Dargah. It is, therefore, clear that by the communication dated 25-11-2010, an attempt was being made to enlarge the extent of the property bearing No. 265 contrary to the mahazar of the year 1945.*

48. *As stated earlier, the property specified as wakf property in the list of wakf published under S. 5(2) of the Act was amenable to a challenge by institution of a suit, provided the same had been instituted within a period of one year.* ***If the list of wakfs, published in the gazette, had not been challenged and which resulted in a finality being attached to the list of wakfs and its properties, it would not be permissible for the Board to alter the extent of the properties of a wakf, at a later stage.*** *If this is permitted, it would basically permit the Board to nullify the finality attached to the publication of the list of wakfs, and which is not provided under the Act.*

49. *Learned Senior Counsel, however, sought to place reliance on S. 21 of the General Clauses Act and S. 28 of the Act.*

50. *S. 21 of the General Clauses Act confers powers on the authority which issues a notification to modify, vary or rescind the said notification. It is to be stated here that the power available under S. 21 of the General Clauses Act is in respect of a notification which is issued in exercise of a statutory power. This power would not be available in respect of publication of a list of wakfs in the gazette. The power to issue a notification under a statutory provision is completely different from the obligation of the authority to cause the publication of list of wakf in the gazette after completion of a preliminary survey.*

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51. *It is to be stated here that the list of wakfs has to be published after preliminary survey is conducted and a report is submitted to the Government. The Board, in fact, has to thereafter examine the report and publish the list of wakfs in the Gazette.*

52. ***The Board, on publication of the list of wakfs in the gazette has not been conferred with the power to modify the list.*** *The Board did possess the right to raise a dispute as provided under S. 6 of the Act within a period of one year. Once the Board chose not to challenge the list of wakfs published, it would not be permissible for the Board to make any attempt to alter the list of wakfs.*

53. *S. 21 of the General Clauses Act states that if a Central Act confers a power to issue a notification, that power would include the power to be exercisable to add or amend or vary or rescind the notifications, subject to the same terms and conditions for issuance of the notification.*

54. *A plain reading of this section would indicate that S. 21 of the General Clauses Act would come into operation only in respect of a power conferred under an Act to issue a notification. A notification issued under an Act is an exercise of statutory power and cannot be relatable to an obligation cast upon the authority to cause the publication of an order of a list.*

55. *The argument of the learned Senior Counsel in this regard is, therefore, without any merit.*

56. *As far as the argument that the Board has the right to amend the register of wakfs under S. 28 of the Act is concerned, it is to be noticed here that Chapter-IV of the Act provides for registration of wakf and it provides for the manner in which the registration is required to be done. The maintenance of register of wakf would have no bearing on the list of wakfs published in the gazette and the Register is basically to reflect the particulars of the properties as indicated in the list of wakfs published under S. 5(2) of the Act. The Board, which has been conferred with the power to direct Mutawali to apply for registration of wakf or cause the registration of wakf, cannot utilize this power to amend the list of wakfs published in the gazette under S. 5(2) of the Act. The power to amend the register of wakfs is wholly different*

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from the power to amend the list of wakfs published under S. 5 (2) of the Act.

57. *As noticed above, the list of wakfs published under S. 5(2) of the Act can only be disturbed by the decree of a competent Civil Court, provided the suit is instituted within a period of one year.* ***Once the period of one year elapses, the list of wakfs published in the gazette which also indicates the properties of the wakfs becomes unalterable.*** *Therefore, the argument with regard to S. 28 of the Act conferring power on the Board to amend the list of wakfs by issue of a corrigendum to the notification published in the gazette under S. 5(2) of the Act is without any substance.*

58. *It may also be pertinent to state here that the Black's Law Dictionary has defined 'corrigendum' as "an error in a printed work discovered after the work has gone to the press".* ***Thus, a corrigendum is issued only to correct an error in the printed text and this cannot be utilized to effect an amendment which has the effect of adding something totally new.***

60. *It is to be stated here that the question as to whether a property was a wakf property or not in the list of wakf published in the gazette under S. 5(2) of the Act is amenable to the jurisdiction of the Civil Court under S. 6(2) of the Act.* ***However, the legality or the validity of a corrigendum which was issued nearly 46 years after the publication of the list of wakfs in the gazette cannot be considered by the Tribunal. The Tribunal has not been conferred with the power to strike down a notification or a corrigendum. The petitioners are questioning the jurisdiction of the Wakf Board in issuing a corrigendum and therefore, it is this Court which has possessed the jurisdiction to test the validity of corrigendum.***

8.11. By relying on ***Nishat Kasar***, his submission is that the list of wakfs published in the Official Gazette, together with the particulars of the properties specified therein, attains finality

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upon expiry of the period prescribed under Section 6 of the Wakf Act, 1954, in the absence of a challenge in the manner contemplated under the said provision. It is contended that the Wakf Board cannot, after such finality has attached to the notified list, unilaterally alter or enlarge the extent of a property by issuing a corrigendum, as such an exercise would amount to a substantive modification of the notified list rather than the correction of a mere clerical or typographical error. The judgment further clarifies that the power to amend the register of wakfs under Section 28 of the Act is distinct from the power to alter the list of wakfs published under Section 5(2), and that the former cannot be invoked to effect a modification of the latter. It is also submitted that Section 21 of the General Clauses Act, 1897, does not confer an independent power upon the Wakf Board to alter the list of wakfs published pursuant to the statutory survey and the procedure prescribed under the Act. A corrigendum, being intended only to rectify an error in the published text, cannot be employed to incorporate additional property or enlarge

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the area of an already notified property. Accordingly, it is contended that any attempt by the Wakf Board to alter the extent or particulars of a property specified in the Gazette notification, after the notified list has attained finality, without recourse to the procedure prescribed by law, is impermissible and without jurisdiction. The judgment further recognises that the jurisdiction to examine the legality and validity of a corrigendum issued by the Wakf Board, where the challenge concerns the Board's authority to issue it, lies with the High Court and not the Wakf Tribunal.

8.12. He submits that the land in Sy.No.56/1 measured 3 acres 26 guntas belonged to one Malik Sahib. Malik Sahib had two sons, namely Mastan Sahib and Sheik Ahmed. Mastan Sahib, under a sale deed dated 18.03.1943, sold the southern portion of Sy.No.56/1 in favour of Basha Sahib S/o Ameer Sahib and claims that the said land was assigned Sy.No.56/1A, measuring 1 acre 12 guntas.

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8.13. He submits that the land in Sy.No.56/1A, measuring 1 acre 12 guntas along with adjoining lands in Sy.No.55/21 and Sy.No.56/2 was purchased jointly by Narasimhaiah and Chikkalingappa under a registered sale deed dated 04.02.1981. In the sale deed, the property was wrongly shown as Sy.No.55/1A. However, the boundaries are proper inasmuch as they indicate that it is a land in Sy.No.56/1A which had been sold.

8.14. He submits that on an application filed by the petitioners vide order dated 16.06.2016, the clerical error was corrected and the survey number of the land purchased by Sri.N.Narasimhaiah and K.S.Chikkalingappa was corrected to Sy.No.56/1A. Therefore, he submits that there cannot be any dispute as regard to purchase of Sy.No.56/1A post the said correction.

8.15. His submission is that the conversion order was granted in respect to Survey No.56/1A on 20.06.1983 and thereafter layout plan approval was granted on 20.10.1992, both of which are prior to the rectification on 16.06.2016. He

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therefore submits that there cannot be any dispute as regards the purchase, conversion and or the formation of the sites in Sy.No.56/1.

8.16. His submission is that on 20.09.2000, a representation was submitted by N.Narasimhaiah for removal of the wrongly erected stone slabs in pursuance of which the District Wakf Advisory Committee, had observed that it is only land in Survey No.55/1 which is a registered graveyard and the remaining land in Survey No.56/1 and 6 belonged to Narasimhaiah and Defence Officer's Site Owner's Association respectively.

8.17. The District Wakf Advisory Committee also observed that there is an encroachment by the local Muslim Jamaat, that they are burying dead bodies in the encroached land and in that background, notices had been issued to the office bearers of the mosque. This he submits establishes that the land of the petitioner has been encroached by the mosque. In that background, he submits that a corrigendum to the notification could not have been issued including this land as Wakf land when it was not

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Wakf land as per the notification in the year 1965.

8.18. His submission is also that despite an order of status quo having been passed on 13.12.2013, the burial continues, encroaching upon the land of the petitioners. On that ground he submits that the corrigendum is required to be set aside and the land in Survey No.56/1A measuring 1 acre and 12 guntas is required to be directed to be handed over to the petitioners.

9. Smt.Anuradha S.R., learned Senior Counsel appearing for the respondent Nos. 1 and 2 would submit that:

9.1. The *lis* in the present matter cannot be decided by this court in a writ petition. The survey was consented to by all the parties so as to ascertain what is the extent of free land which is available where there are no bodies buried, and tombstones erected.

9.2. On the survey being completed, it has been found that there are bodies buried in the entire land of Survey No.56/1A and irrespective of the corrigendum which has been issued, there

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being bodies buried in the said land over a period of time, the said buried bodies cannot be exhumed and or removed to make available the land to the petitioners.

9.3. The reliefs sought for by the petitioners cannot be granted after 16 years of the corrigendum having been issued on 08.07.2010. The dispute in the present matter is essentially as regards the title to the property which cannot be adjudicated in a writ petition.

9.4. She submits that admittedly the petitioner had purchased the land in Sy.No.55/1A as per the registered sale deed. It was only on an application made by petitioners that the entries were corrected by the Sub Registrar. There is no rectification of the sale deed which has occurred correcting the identity of the land from Sy.No.55/1A to Sy.No.56/1A. In the face of a sale deed mentioning land to be covered under Sy.No.55/1A, in a writ petition, this Court cannot set aside the corrigendum issued in respect of Sy. No.56/1A, as regard which there is no sale deed in the name of Narasimhaiah and K.S.Chikkalingappa.

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9.5. Whether the boundaries depicted in the sale deed dated 04.02.1981 referred to Sy.No.56/1A or Sy.No.55/1A would require trial and unless evidence is led in that regard and a declaration is issued by competent court of law that the subject matter of sale deed dated 04.02.1981 is Sy.No.56/1A and not Sy.No.55/1A, no right can be claimed by the petitioners and in the absence thereof, quashing of the Corrigendum would not arise since the petitioners on the basis of the sale deed dated 04.02.1981 can claim right only over Sy.No.55/1A and not over Sy.No.56/1A.

9.6. Her submission as regards the Conversion order and formation of the layout is also the same inasmuch as neither the conversion order nor the layout plan sanction has been acted upon by the predecessors of the petitioners or the petitioners subsequently inasmuch as the entire land in Sy.No.56/1A has been used for burial of dead bodies as a kabristan. Mere approval of a layout plan sanction without a layout being implemented would not enure to the benefit of the petitioners to be considered in a writ petition is her submission.

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9.7. In that view of the matter, she submits that the appropriate remedy that is available for the petitioners is to file necessary proceeding before the Wakf Tribunal in terms of Section 84 of the Wakf Act, 1995 since there is a bar of jurisdiction of the Civil Court under Section 85 of the Wakf Act.

9.8. She submits that it is only the Tribunal who can determine any dispute, question or other matter relating to a Wakf or Wakf properties. In the present matter, the land in Sy.No.56/1A having been put to use as a kabristan, dead bodies have been buried therein; as per the survey report, there being no free land available in Sy.No.56/1A, a writ petition is not maintainable and the appropriate remedy is before the Wakf Tribunal.

9.9. She relies on the judgment of Hon'ble Apex Court in the case of ***Board of Wakf, West Bengal vs. Anis Fatma Begum & anr.,*** [Civil Appeal No.5297/2004], more particularly Paragraphs 10, 11, 12, 13, 14 and 25, which are reproduced hereunder for easy reference:-

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10. In our opinion, all matters pertaining to wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the civil court or by the High Court straightaway under Article 226 of the Constitution of India.

11. *It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a Special Tribunal for deciding disputes relating to wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to wakfs were being filed in the courts in India and they were occupying a lot of time of all the courts in the country which resulted in increase in pendency of cases in the courts. Hence, a Special Tribunal has been constituted for deciding such matters.*

12. *Section 83(1) of the Wakf Act, 1995 states:*

*"**83. Constitution of tribunals, etc**.—(1) The State Government shall, by notification in the Official Gazette, constitute as many tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals."*

13. *Section 84 of the Act states:*

*"**84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.—Whenever an application is made to a tribunal for the determination of any dispute, question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute."***

14. *Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a wakf or wakf property. The words "any dispute, question or other matters relating to a wakf or wakf property" are, in our opinion, words of very wide connotation.* ***Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a wakf or wakf property can be decided by the Wakf Tribunal.*** *The word "wakf" has been defined in Section*

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3(r) of the Wakf Act, 1995 and hence once the property is found to be a wakf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

25. *For the reasons mentioned above, the impugned judgment of the Calcutta High Court cannot be sustained and it is hereby set aside.* ***We hold that only the Wakf Tribunal has jurisdiction in the matter and the parties can approach the Wakf Tribunal, if so advised.*** *The appeal stands allowed. There shall be no order as to costs.*

9.10. By relying on ***Anis Fatma Begum,*** she submits that disputes, questions or other matters relating to a wakf or wakf property are required to be adjudicated in the first instance by the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995, and that the jurisdiction of the Tribunal extends to all matters falling within the ambit of the said provision. The Hon'ble Apex Court has emphasised that the expression *"any dispute, question or other matter relating to a wakf or wakf property"* is of wide import and encompasses disputes relating to the status of a property as wakf property and other questions arising in relation thereto. Accordingly, she contends that the dispute in question, being one relating to wakf property, ought to be raised before the competent Wakf Tribunal in accordance with the statutory

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scheme, rather than being entertained directly by the Civil Court or the High Court under Article 226 of the Constitution of India, in the first instance.

9.11. She relies on the judgment of Co-ordinate Bench of this Court in the case of ***Mujawareen Nazreen Dargah Committee vs. KSBW & ors.,*** [WP No.5369/2015], more particularly Paragraph 4, which is reproduced hereunder for easy reference:-

> ***4. The learned Counsel appearing for the Wakf Board would however point out that it is not as if the property was not notified in the year 1965.*** *It was indeed shown as 'darga', but without proper boundaries being indicated.* ***It is this which has been supplied by the Corrigendum. There is no attempt to play mischief as sought to be unfairly alleged by the learned counsel for the petitioners.***

9.12. By relying on ***Mujawareen Nazreen Dargah Committee,*** she submits that in that case the property in question had already been notified in the year 1965 as a 'darga' and that the subsequent Corrigendum was issued only to supply the boundaries which had not been properly indicated in the original notification. She contends that the Corrigendum did not introduce a new property into the notified list

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but merely clarified the boundaries of a property that had already been notified, and that such action did not constitute any attempt to improperly alter or enlarge the original notification.

9.13. She relies on the judgment of Hon'ble Apex Court in the case of ***Punjab Wakf Board vs. Raj Rani (Dead) Through LRS*** [Civil Appeal No.295/2005], more particularly Paragraph 14, which is reproduced hereunder for easy reference:-

> ***14.*** *Admittedly, no one challenged the genuineness of the Notification whereby the suit property was declared as Wakf property at any stage of the proceeding.* ***In the absence of such challenge, the Court shall have to draw presumption with regard to the genuineness of the Notification, as provided under Section 81 of the Evidence Act.*** *Moreover, neither the first Appellate Court nor the High Court has considered and noticed the provisions of Section 5 of the Wakf Act, 1995 (Section 5 of the Old Wakf Act, 1954).*

9.14. By relying on ***Raj Rani***, she submits that where the genuineness of the notification declaring a property as Wakf property has not been challenged at any stage of the proceedings, the Court is required to draw a presumption as to the genuineness of such notification under Section 81 of the Evidence Act. She further

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contends that the provisions of Section 5 of the Wakf Act, 1995, which provides for publication of the list of wakfs, are material to the determination of the dispute and cannot be overlooked.

9.15. She relies on the judgment of Hon'ble Apex Court in the case of ***Rashid Wali Beg vs. Farid Pindari & ors*** [Civil Appeal No. 6336/2021], more particularly Paragraphs 31, 32, 53 and 54, which are reproduced hereunder for easy reference:-

> ***31****. A bare reading of Sections 6 and 7 extracted above, shows that the language employed therein appears to have deflected the attention of many a court without exception. The reason why we say so, is this. A careful look at the scheme of the Act would show that the Act is divided into 9 chapters. Chapter II which contains Sections 4 to 8, is primarily concerned with the survey of waqfs 4. Sections 6 and 7 are incidental to the scheme of Chapter II alone, which is why they speak only about two questions namely, (i) whether a particular property specified as a waqf property in the list of waqfs is actually a waqf property or not; and (ii) whether a waqf specified in such list is a Shia waqf or Sunni waqf. While Section 4 contemplates a preliminary survey of all waqfs in the State, Section 5(2) speaks about publication of the list of waqfs (separately for Shia and Sunni) in the official gazette. Since Sections 6 and 7 follow Sections 4 and 5, they refer only to the aforesaid two questions. In other words, the questions relevant for the purposes of Sections 4 and 5 alone, are dealt with in Sections 6 and 7 and hence the discussion regarding the jurisdiction of the Waqf Tribunal should not start and end with Sections 6 and 7.*

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> ***32.*** *Sections 83 and 85, as well as Sections 86, 90 and 93, which use the word "court", are to be found in Chapter VIII of the Act. The heading given to Chapter VIII is "Judicial Proceedings". Therefore, for finding an answer to the question relating to the bar of jurisdiction under Section 85, it is not enough merely to refer to Section 6(5) or Section 7(2). The language of Section 85 is clearly in contrast to the language employed in Section 6(5) and Section 7(2).*
>
> ***53.*** *It is well settled that the court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter (i) relating to a waqf; and (ii) relating to a waqf property.* ***Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1).***
>
> ***54.*** ***In fact, Section 83(5) of the Act makes it clear that the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the CPC, while trying a suit or executing a decree or order. This is why this Court held in Syed Mohideen and Another vs. Ramanathapura Peria Mogallam Jamath and Others5 that the Waqf Tribunal will have power to issue temporary injunctions under Order XXXIX, Rule 1 CPC.***

9.16. By relying on ***Rashid Wali Beg***, she submits that the jurisdiction of the Wakf Tribunal cannot be construed narrowly by confining the scope of Sections 6 and 7 of the Wakf Act, 1995, which deal with specific questions arising in the course of the survey and publication of the list of wakfs. She contends that Section 83(1) confers wide jurisdiction on the Wakf Tribunal to

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determine any dispute, question or other matter relating to a wakf or wakf property, irrespective of whether the property's character as wakf property is disputed or admitted. She further submits that, in view of Section 83(5), the Tribunal is deemed to be a Civil Court and possesses the powers of a Civil Court under the Code of Civil Procedure, including the power to grant temporary injunctions. Accordingly, she contends that disputes relating to wakf or wakf property fall within the jurisdiction of the Wakf Tribunal in accordance with the statutory scheme of the Act.

9.17. On all the above grounds, she submits that the writ petition is required to be dismissed.

10. Heard Sri.D.R. Ravishankar, learned Senior Counsel, for Sri.Sunil Kumar Patel, learned counsel for the petitioners, Smt.Anuradha S.R., learned Senior Counsel for respondents No.1 and 2, Sri.B.S.Karthikeyan, learned counsel for respondent No.5 and Sri.Mohammed Jafar Shah, learned AGA for respondents No.4 and 6. Perused papers.

11. The Points that would arise for consideration in the present matter are:

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(i) **Whether the disputed questions concerning the identity, location, ownership and Wakf character of the subject property, including the extent of land used as a graveyard, can be adjudicated in proceedings under Articles 226 and 227 of the Constitution of India?**

(ii) **Whether, in view of Sections 83 and 85 of the Wakf Act, 1995, the dispute concerning the nature and character of the subject property falls within the jurisdiction of the Wakf Tribunal, requiring the petitioners to avail the statutory remedy?**

(iii) **Whether, in the facts and circumstances of the case, the writ petition is liable to be dismissed, reserving liberty to the petitioners to institute appropriate proceedings before the competent Wakf Tribunal, without expressing any opinion on the merits of the rival claims?**

(iv) **What Order?**

12. This Court answers the above points as follows:

13. **<u>Answer to Point No. (i):</u> Whether the disputed questions concerning the identity, location, ownership and Wakf character of the subject property, including the extent of land used as a graveyard, can be adjudicated in proceedings under Articles 226 and 227 of the Constitution of India?**

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13.1 Sri. Sunil Kumar Patel, learned counsel for the petitioners, submits that the land bearing Sy.No.56/1A, measuring 1 acre 12 guntas, is private property and was never Wakf land. He submits that the sale deed dated 04.02.1981 describes the property by its boundaries, which are correctly stated, but that the survey number was mistakenly mentioned as Sy.No.55/1A.

13.2 In support of the petitioners' claim of title, learned counsel submits that Sy.No.56/1, measuring 3 acres 26 guntas, originally belonged to Malik Sahib, who had two sons, namely, Mastan Sahib and Sheik Ahmed. Under a sale deed dated 18.03.1943, Mastan Sahib sold the southern portion of the land to Basha Sahib, son of Ameer Sahib. The said portion was assigned Sy.No.56/1A and measured 1 acre 12 guntas. Narasimhaiah and Chikkalingappa subsequently purchased the said property, along with adjoining lands, under a registered sale deed dated 04.02.1981.

13.3 Learned counsel further submits that, on an application made by the petitioners, the Sub-Registrar passed an order dated 16.06.2016

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correcting the clerical error in the survey number. He contends that, following the correction, there can be no dispute regarding the purchase of Sy.No.56/1A. He also relies on the conversion order dated 20.06.1983 and the layout approval dated 20.10.1992, both of which, according to him, relate to Sy.No.56/1A. He submits that these documents establish the purchase, conversion and formation of sites in the property.

13.4 Learned counsel submits that, on 20.09.2000, N. Narasimhaiah submitted a representation seeking removal of stone slabs allegedly erected on the property. The District Wakf Advisory Committee thereafter observed that only the land in Sy.No.55/1 was a registered graveyard, while the remaining lands in Sy.No.56/1 and Sy.No.6 belonged to Narasimhaiah and the Defence Officers' Site Owners' Association, respectively. The Committee also observed that the local Muslim Jamaat was burying dead bodies on land alleged to have been encroached upon. Notices were accordingly issued to the office bearers of the mosque.

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13.5 Learned counsel further submits that burials have continued despite the order of status quo dated 13.12.2013 passed in the present writ petition and seeks a direction for handing over the land to the petitioners. On the question of the appropriate forum, he relies on ***Nishat Kasar v. State of Karnataka*** [2023 SCC Online KAR 999], particularly Paragraph 60, to contend that the validity of a corrigendum is amenable to examination by this Court and not by the Wakf Tribunal.

13.6 Smt. Anuradha S.R., learned Senior Counsel appearing for respondents No.1 and 2, submits that the disputed questions raised in the writ petition cannot be adjudicated in these proceedings. She submits that the parties had agreed to a survey only to ascertain the extent of vacant land where no bodies had been buried and no tombstones had been erected. According to her, the survey discloses burials throughout Sy.No.56/1A. She contends that, irrespective of the outcome of the challenge to the corrigendum, the buried bodies cannot be exhumed to make the land available to the petitioners.

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13.7 Learned Senior Counsel submits that the dispute is essentially one of title. The petitioners admittedly purchased Sy.No.55/1A under a registered sale deed. The survey number was subsequently corrected by the Sub-Registrar on an application made by the petitioners. However, the vendors have not executed any rectification deed. According to her, whether the boundaries mentioned in the sale deed correspond to Sy.No.56/1A or Sy.No.55/1A requires a trial. Until a competent court declares that the sale deed relates to Sy.No.56/1A, the petitioners can claim title only to Sy.No.55/1A. She further submits that neither the conversion order nor the layout sanction was acted upon, as the entire land has been used as a kabristan.

13.8 On the question of the appropriate forum, learned Senior Counsel relies on ***Board of Wakf, West Bengal v. Anis Fatma Begum*** [Civil Appeal No.5297/2004], particularly Paragraphs 10 to 14 and 25, to contend that Wakf-related disputes must ordinarily be referred to the Wakf Tribunal and should not be

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entertained by the High Court at the first instance under Article 226.

13.9 The question for consideration is whether this Court can, in proceedings under Articles 226 and 227 of the Constitution of India, adjudicate the disputed questions concerning the identity, location, ownership and Wakf character of the subject property, as well as the extent of the land used as a graveyard.

13.10 Articles 226 and 227 of the Constitution of India confer wide constitutional powers on this Court. Article 226 empowers this Court to issue writs, directions and orders for the enforcement of fundamental rights and "*for any other purpose*", while Article 227 confers superintendence over courts and tribunals within its territorial jurisdiction. The existence of constitutional jurisdiction must, however, be distinguished from the maintainability of a particular writ petition and from the exercise of jurisdiction in a given case.

13.11 In ***State of Andhra Pradesh v. Andhra Pradesh State Wakf Board*** [(2022) 20 SCC 383], the Hon'ble Supreme Court considered

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Rashid Wali Beg v. Farid Pindari [Civil Appeal No.6336/2021] and ***Board of Wakf, West Bengal v. Anis Fatma Begum*** [Civil Appeal No.5297/2004]. The Hon'ble Supreme Court observed that the latter decision arose from a suit and that its observation concerning Article 226 was *"clearly obiter as that was not the question arising for consideration"* (Paragraph 124). The Hon'ble Supreme Court further held that, although the power under Article 226 is wide, courts have evolved self-imposed restraints *"in the interest of administration of justice and for better, more efficient and informed exercise of the said powers"* (Paragraph 128).

13.12 The Hon'ble Supreme Court recognised that, where a dispute involves complex questions of fact requiring oral evidence, the High Court may decline to adjudicate it in writ proceedings. It extracted paragraph 10 of ***Babubhai Muljibhai Patel v. Nandal Khodidas Barot*** [(1974) 2 SCC 706] which reads:

> *"When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High*

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Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition..." (Paragraph 132)

13.13 The recognised exceptions to the rule of alternative remedy include enforcement of fundamental rights, breach of principles of natural justice, proceedings wholly without jurisdiction and a challenge to the validity of a statute (Paragraphs 129 and 130). The Hon'ble Supreme Court extracted paragraph 27.6 of ***Radha Krishan Industries v. State of H.P.*** [(2021) 6 SCC 771] which reads:

"In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.". (Paragraph 133)

13.14 Applying these principles, the Hon'ble Supreme Court held that the High Court had erred in directing the parties to approach the Tribunal in a case involving the interpretation of statutes, Farmans and documents, since:

"It is not a case where any oral evidence would be necessary or is available now." (Paragraph 136).

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13.15 The governing principle is that disputed questions of fact do not, by themselves, extinguish the constitutional jurisdiction of this Court or render every writ petition involving such questions inherently non-maintainable. The nature of the dispute and the material required for its determination must be examined. Where the controversy can be decided on the basis of documents and legal interpretation without oral evidence, this Court may adjudicate it. Where the determination requires oral evidence and a trial, this Court may decline to adjudicate those factual issues in writ proceedings.

13.16 In the present case, the petitioners do not seek enforcement of a fundamental right, challenge the validity of the Act or allege denial of an opportunity of hearing. The question whether the action of the Board was wholly without jurisdiction is itself dependent on the disputed facts

13.17 The disputes in the present case concern the identity and location of the land, the petitioners' title, the Wakf character of the property and the

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extent of the land used as a graveyard. Their determination requires examination of documents and oral evidence. These disputes do not establish that This Court lacks constitutional jurisdiction. They establish that the factual controversy cannot appropriately be tried in the present writ proceedings.

13.18 The first disputed question concerns the identity and location of the land. The sale deed dated 04.02.1981 describes the property as Sy.No.55/1A, while the petitioners claim that the property intended to be conveyed was Sy.No.56/1A. The correction made by the Sub-Registrar on 16.06.2016 was effected on the application of the petitioners and is not supported by a rectification deed executed by the vendors. The correction does not, by itself, establish the identity of the property conveyed under the sale deed.

13.19 The boundaries recited in the deed–Anchipura village boundary on the east, Imam Sabi's land on the west, Masidi land on the north and Malik Sab's land on the south–cannot be correlated with the actual land merely on the basis of the

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submissions of learned counsel. Such correlation requires examination of the survey records, relevant sketches and evidence of persons acquainted with the neighbouring lands.

13.20 The survey ordered on 15.07.2026, on the joint submission of the petitioners and the Wakf Board, covered Sy.Nos.55, 56 and 57 and resulted in a report dated 06.08.2026. The report records two portions in Sy.No.56/1, measuring 2 acres and 1 acre 26 guntas, respectively. The petitioners contend that their land measuring 1 acre 12 guntas falls within the latter portion.

13.21 The sketch indicates the location of the graves on the ground. It does not, by itself, establish the survey number in which each grave is situated. Nor does the date inscribed on a tombstone conclusively establish the age of the grave. Whether the graves bearing dates 04.06.1957 and 07.08.1959 are as old as those dates, and whether they fall within Sy.No.56/1A or Sy.No.57, can be established only through

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evidence, including the examination and cross-examination of the ADLR.

13.22 The survey was undertaken for the limited purpose of identifying and photographing the available vacant land. The parties did not agree that the survey report would conclusively determine title or the Wakf character of the property.

13.23 The question of ownership is also disputed. The petitioners rely on a chain of title involving Malik Sahib, his sons, the sale dated 18.03.1943 in favour of Basha Sahib, and the sale deed dated 04.02.1981. Whether Mastan Sahib was entitled to sell the southern portion, whether the sale deed of 1943 related to the land now described as Sy.No.56/1A, and whether the vendors under the sale deed of 1981 had title to the property conveyed are matters requiring adjudication.

13.24 The conversion order dated 20.06.1983 and the layout approval dated 20.10.1992 do not resolve the dispute. Whether they relate to Sy.No.56/1A or Sy.No.55/1A depends on the

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identity of the property. Whether the layout was actually formed is also disputed.

13.25 The petitioners, in substance, seek a declaration from this Court that the property is Sy.No.56/1A and that it belongs to them as private property. The sale deed, however, describes the property as Sy.No.55/1A. The correction was made subsequently by the Sub-Registrar, and the survey report was prepared for a limited purpose.

13.26 The submissions of learned counsel, however firmly advanced, cannot substitute for proof of disputed facts. This Court cannot accept the version of one party merely because it is asserted with confidence. The only admitted fact is the description appearing on the face of the sale deed.

13.27 This Court answers Point No. (i) by holding that this Court has constitutional jurisdiction under Articles 226 and 227 of the Constitution of India to examine the questions raised. The writ petition cannot, therefore, be held non-maintainable on the ground that this Court lacks jurisdiction over the subject matter.

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13.28 However, the disputed questions concerning the identity, location, ownership, Wakf character and extent of the graveyard require oral evidence and a trial. This Court declines to adjudicate those factual questions in the present writ proceedings.

14. **<u>Answer to Point No. (ii):</u> Whether, in view of Sections 83 and 85 of the Wakf Act, 1995, the dispute concerning the nature and character of the subject property falls within the jurisdiction of the Wakf Tribunal, requiring the petitioners to avail the statutory remedy?**

14.1 Sri. Sunil Kumar Patel, learned counsel for the petitioners, relies on ***Nishat Kasar v. State of Karnataka*** [2023 SCC Online KAR 999] (Paragraph 60) and submits that the Tribunal cannot strike down a notification or corrigendum and that its validity must be examined by this Court. He contends that the corrigendum was issued without following Sections 4, 5 and 6. He also relies on ***Salem Muslim Burial Ground Protection Committee v. State of Tamil Nadu*** [(2023) 16 SCC 264] (Paragraphs 31 to 35) to contend that a notification is not conclusive proof of Wakf character.

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14.2 Smt. Anuradha S.R., learned Senior Counsel for respondents No.1 and 2, submits that the petitioners must approach the Wakf Tribunal under Section 84, as Section 85 bars proceedings before other forums. She relies on ***Board of Wakf, West Bengal v. Anis Fatma Begum*** [Civil Appeal No.5297/2004] (Paragraphs 10 to 14 and 25) and ***Rashid Wali Beg v. Farid Pindari*** [Civil Appeal No.6336/2021] (Paragraphs 31, 32, 53 and 54) to contend that the Tribunal has wide jurisdiction over disputes relating to Wakf property, whether its Wakf character is admitted or disputed, and can grant interim relief. She submits that Sy.No.56/1A is used as a kabristan and the survey shows no free land.

14.3 The question is whether the dispute falls within the Tribunal's jurisdiction and, if so, whether the petitioners should avail that remedy.

14.4 Sections 4 and 5 provide for survey of auqaf, submission of a report and publication of the list by the State Government after examination by the Board. Sections 6 and 7 provide the remedy before the Tribunal where a person

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disputes whether property specified in the list is Wakf property. Section 6(4) makes the list final unless modified by the Tribunal, and Section 6(5) bars proceedings before ordinary courts concerning such questions. Section 7 provides a corresponding application to the Tribunal, subject to the prescribed time limits.

14.5 Section 40, before its omission by Act 14 of 2025, empowered the Board to determine whether property was Wakf property, subject to the Tribunal's power to revoke or modify its decision.

14.6 Section 83(1) empowers the Tribunal to determine *"any dispute, question or other matter relating to a waqf or waqf property"*. Section 83(2) permits an aggrieved person to apply to it. Under Sections 83(5) and 83(7), the Tribunal has the powers of a civil court and its decision has the force of a decree. Section 84 requires expeditious disposal. Section 85 provides:

> *"No suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter*

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which is required by or under this Act to be determined by a Tribunal."

14.7 In ***Rashid Wali Beg*** (Paragraph 31), the Hon'ble Supreme Court held that Sections 6 and 7 concern disputes about entries in the list, while Section 83 covers the wider range of disputes relating to Wakf or Wakf property. Section 85 has an "*all pervasive*" bar (Paragraph 33). The Tribunal's jurisdiction does not depend on whether Wakf character is admitted or disputed (Paragraph 53), and it can grant temporary injunctions (Paragraph 54). In ***Anis Fatma Begum*** (Paragraphs 14 and 25), the Hon'ble Supreme Court similarly held that disputes relating to Wakf property fall within the Tribunal's jurisdiction.

14.8 The petitioners seek declarations that the Wakf Board and Jamia Masjid Committee have no right over Sy.No.56/1A, removal of burials and consequential restraint. The respondents assert that the land is a Wakf burial ground. The dispute therefore concerns whether the property specified in the list is Wakf property, within Sections 6 and 7, and in any event relates to Wakf property within Section 83. In

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Rashid Wali Beg (Paragraph 56), claims for permanent and mandatory injunction concerning Wakf property were also held to fall within the Tribunal's jurisdiction. The dispute and the reliefs dependent upon it are accordingly within the Tribunal's jurisdiction.

14.9 The petitioners are persons aggrieved within Sections 6(1), 7(1) and 83(2), as they claim ownership of land allegedly included in the list and used as a burial ground. The Tribunal can determine their claim, modify the list under Section 6(4), receive evidence, summon witnesses, conduct local inspection and grant interim relief. It is an adequate and appropriate forum for the dispute.

14.10 ***Salem Muslim Burial Ground Protection Committee*** (Paragraphs 31 and 32) and ***Madanuri Sri Rama Chandra Murthy vs. Syed Jalal*** [(2017) 13 SCC 174] (Paragraphs 15 to 17) describe the statutory scheme and confirm that an aggrieved person disputing an entry must approach the forum under Section 6. The latter decision emphasises the prescribed limitation period (Paragraph 17).

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14.11 In ***Nishat Kasar*** (Paragraph 60), the Co-ordinate Bench held that the Tribunal has no power to strike down a notification or corrigendum. That decision is followed. It does not, however, remove the Tribunal's jurisdiction to determine whether the property is Wakf property. This Court has already considered its own power to examine the corrigendum under Point (i). If the Tribunal finds that the property is not Wakf property, the list can be modified under Section 6(4).

14.12 The decisions are reconciled by ***Andhra Pradesh State Wakf Board.*** The Hon'ble Supreme Court held that the observation in ***Anis Fatma Begum*** concerning Article 226 was obiter (Paragraph 124), and that ***Rashid Wali Beg*** did not deal with the writ court's jurisdiction (Paragraph 123). The later decision governs the constitutional jurisdiction of this Court, while ***Rashid Wali Beg*** and ***Anis Fatma Begum*** govern the scope of Sections 83 and 85. ***Nishat Kasar*** recognises both this Court's power to examine the corrigendum and the Tribunal's jurisdiction over the Wakf character of property.

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14.13 The existence of an effective statutory remedy ordinarily weighs against exercise of writ jurisdiction.

14.14 This Court answers Point No. (ii) by holding that the dispute concerning the nature and character of the subject property, and the reliefs dependent upon it, falls within the jurisdiction of the Wakf Tribunal under Sections 6, 7, 83 and 85 of the Act. Section 85 does not take away this Court's jurisdiction under Articles 226 and 227. However, in view of the effective statutory remedy and the disputed factual questions, the petitioners should avail that remedy. This Court declines to exercise its writ jurisdiction on those disputed facts.

15. **<u>Answer to Point No. (iii):</u> Whether, in the facts and circumstances of the case, the writ petition is liable to be dismissed, reserving liberty to the petitioners to institute appropriate proceedings before the competent Wakf Tribunal, without expressing any opinion on the merits of the rival claims?**

15.1 Sri. Sunil Kumar Patel, learned counsel for the petitioners, submits that the Wakf Board had no power to issue the corrigendum under Section 5(2) without a survey under Section 4 and

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compliance with Sections 5 and 6. He contends that private land cannot be included in a Wakf list through a corrigendum without inquiry into its history and dedication, and that the corrigendum issued 45 years after the notification dated 07.06.1965 is expropriatory.

15.2 Relying on ***Andhra Pradesh State Wakf Board*** (Paragraphs 158 to 174), he submits that a decision affecting rights must follow the prescribed procedure, reasons and natural justice, and that an errata can correct clerical or arithmetical errors but cannot enlarge a notification.

15.3 He relies on ***Salem Muslim Burial Ground Protection Committee*** (Paragraphs 25 to 28 and 31 to 35), ***Syed Jalal*** (Paragraphs 11, 15 to 17 and 20) and ***Nishat Kasar*** (Paragraphs 28 to 58) to contend that survey and inquiry are necessary, a notification is not conclusive proof of Wakf character, and the Board cannot enlarge a published list through a corrigendum.

15.4 On facts, he relies on the deed dated 04.02.1981, conversion order dated 20.06.1983, layout approval dated 20.10.1992,

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correction of the survey number on 16.06.2016 and the District Wakf Advisory Committee's observations in 2000. He seeks setting aside of the corrigendum and delivery of the land.

15.5 Smt. Anuradha S.R., learned Senior Counsel for respondents No.1 and 2, submits that the survey shows burials over the whole of Sy.No.56/1A, that the buried bodies cannot be exhumed, that the petitioners' deed relates to Sy.No.55/1A, and that the conversion and layout approvals were not acted upon. She further submits that the dispute concerns title and that the reliefs cannot be granted after the passage of time.

15.6 Relying on ***Mujawareen Nazreen Dargah Committee v. KSBW*** [WP No.5369/2015], she submits that a corrigendum may supply boundaries to a property already notified without introducing new land. Relying on ***Punjab Wakf Board v. Raj Rani (Dead) through LRs*** [Civil Appeal No.295/2005] (Paragraph 14), she submits that the notification is presumed genuine under Section 81 of the Evidence Act.

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15.7 Answers to points (i) and (ii) hold that disputed facts should not be tried in writ proceedings and that the Tribunal is the appropriate forum for the dispute concerning Wakf character. The petitioners nevertheless contend that the validity of the corrigendum presents a pure question of law which this Court should decide independently.

15.8 In ***Andhra Pradesh State Wakf Board***, the Hon'ble Supreme Court held that the Board's determination of Wakf character is "*not purely an administrative function*" and must follow the inquiry prescribed by Section 40 (Paragraph 163). It held that a notification cannot be issued unilaterally without reasons, and that a prescribed procedure must be followed (Paragraphs 163, 165 and 168). It further held that "*only arithmetical and clerical mistakes could be corrected and the scope of the notification could not be enlarged by virtue of an errata notification*" (Paragraph 173).

15.9 The same principles emerge from ***Salem Muslim Burial Ground Protection Committee*** (Paragraphs 32 and 35), which

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holds that survey is a precondition and a notification is not conclusive proof of Wakf character; ***Syed Jalal*** (Paragraph 16), which describes the Section 4 inquiry as a formal inquiry; and ***Nishat Kasar*** (Paragraphs 48, 52, 57 and 58), which holds that the Board cannot modify a published list after the prescribed period or use a corrigendum to add new property.

15.10 The difficulty lies in applying those principles to the present property. The petitioners contend that the corrigendum introduced Sy.No.56, which was not included in the 1965 list.

15.11 The original list is described as covering Sy.Nos.55/1 and 55/2 of Chikkabettahalli, whereas the petitioners' land is described as situated in Jarakabande Kaval village. The documents and their relationship to the land require examination.

15.12 The identity of the petitioners' land is also disputed. Their deed refers to Sy.No.55/1A; the survey-number correction was made in 2016 during the pendency of the present writ petition on their application. The petitioners themselves

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rely on the District Wakf Advisory Committee's observation in 2000 that Sy.No.55/1 was the registered graveyard. This Court cannot determine whether the corrigendum covers the petitioners' land without first determining which land they hold.

15.13 Even if the corrigendum were quashed, the dispute would not end. The respondents contend that the whole of Sy.No.56/1A has been used as a kabristan, with tombstones dating to 1957 and 1959. Section 3(r)(i) recognises Wakf by user, and ***Salem Muslim Burial Ground Protection Committee*** (Paragraph 25) states that Wakf character may be presumed from long use. Quashing the notification would not determine that claim.

15.14 Annexure-L, dated 17.10.2019, is a separate notification issued under Section 5(2), as amended in 2013. It is not a corrigendum. Its validity depends on the survey and inquiry undertaken, notice to affected persons and the identity of the property included. The survey records have not been placed before this Court. Under Sections 6(1) and 7(1), the Tribunal is

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the forum for challenging the list. Setting aside the corrigendum while leaving Annexure-L intact would not grant the petitioners the complete relief sought in prayers (b) and (c).

15.15 Prayers (d) and (e), seeking removal of burials and restraint against respondents No.2 and 3, likewise depend on proof of ownership, possession and the identity of the land. They cannot follow merely from quashing the corrigendum. An order for removal of graves before determination of rights would be irreversible if made wrongly.

15.16 The respondents' objection based on delay does not independently warrant dismissal. The petition was filed in 2013, within about three years of the corrigendum, and has remained pending. The record does not show that the petitioners caused the delay. However, the passage of time and continuing burials are relevant to the relief that can safely be granted without a trial.

15.17 The petitioners emphasise that the corrigendum was issued 45 years after the 1965 notification. The Hon'ble Supreme Court considered delay in

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Andhra Pradesh State Wakf Board (Paragraph 171), and ***Nishat Kasar*** (Paragraph 60) also refers to a corrigendum issued nearly 46 years after the list. The delay bears on the validity of the corrigendum, but does not establish the identity or ownership of the land.

15.18 The conversion order dated 20.06.1983 and layout approval dated 20.10.1992 stand on the same footing as the deed. Whether they relate to Sy.No.56/1A or Sy.No.55/1A depends on the identity of the land. The respondents dispute that a layout was formed.

15.19 The writ petition could be kept pending, but it has remained pending since 2013 and the disputed facts cannot be resolved here. Nor can the legal issue be decided by assuming that the petitioners' land is Sy.No.56/1A, when that very identity is disputed. No part of prayers (b) to (e) can be granted without determining those facts.

15.20 The Tribunal can examine the survey records, title documents and evidence concerning the burials, and determine whether the property is Wakf property and whether the list requires

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modification. The petitioners' legal challenges to the corrigendum and Annexure-L remain available before that forum.

15.21 The dismissal will not decide the merits of either side's claim. The petitioners' challenge to the corrigendum and Annexure-L, and their claim that the land is not Wakf property, remain open. The respondents' claim that the land is a Wakf burial ground by long user and that the deed relates to Sy.No.55/1A also remains open. This Court has not determined what land was conveyed under the deed.

15.22 This Court answers Point No. (iii) by holding that the writ petition is liable to be dismissed, reserving liberty to the petitioners to institute appropriate proceedings before the competent Wakf Tribunal. The dismissal is without expressing any opinion on the merits of the rival claims.

16. **Answer to Point No. (iv): What Order?**

16.1 The order has to follow from the answers to Points (i) to (iii). In view of the above, this Court passes the following:

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ORDER

(i) The writ petition is **dismissed**. It is made clear that the dismissal is not a decision on the merits of any of the rival claims.

(ii) Liberty is reserved to the petitioners to approach the competent Wakf Tribunal by instituting appropriate proceedings and seeking the same or similar reliefs before the Wakf Tribunal. The Petitioners would be entitled to the benefit of section 14 of the Limitation Act, for the time spent in prosecuting the present writ petition.

(iii) This Court has not expressed any opinion on the merits of the matter. All these questions are for the Tribunal, on the evidence led before it.

(iv) The survey report dated 06.08.2026 shall remain on the record of this petition, and either side may obtain certified copies of it and rely on it before the Wakf Tribunal, which shall be considered subject to the applicable principles of Law of Evidence.

This Court has been assisted by Mr. Sourav, Law Clerk, in the formulation of this Judgement.

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(SURAJ GOVINDARAJ)
JUDGE

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