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W.P.Nos.16776 & 21288 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	26.02.2026
<i>Pronounced on</i>	07.04.2026

CORAM:

THE HONOURABLE Mr.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.16776 & 21288 of 2021
and W.M.P.Nos.17739, 17742, 17743, 22529 of 2021 & 36671, 35871, 35875,
36668 of 2024 & 41329 of 2025

W.P.No.16776 of 2021

1. S.M.A.K.Aazam Fakhri
 2. S.M.Sabahuddin Fakhri
 3. S.M.Nazeefuddin Fakhri
 (1 to 3 Sons of late Haji S.M.Nizamuddin Fakhri)
 1 to 3 residing at
 New No.28, Old No.36, Arudale Street,
 Mylapore,
 Chennai 600 004.
 4. S.M.Abdul Khader Fakhri
 5. S.M.Naswer Fakhri
 Rep. by POA Mrs.Shameem Fakhri
 (4 & 5 Sons of
 Late Mr.S.M.Naseeruddin Fakhri)
 H/60, G2, Tamarai Flats,
th
 58 Street, Thiruvalluvar Nagar,
 Thiruvannamiyur,
 Chennai 600 041.
- ...
- Petitioners



W.P.Nos.16776 & 21288 of 2021

/vs/

1. Government of Tamil Nadu,
Represented by its Principal Secretary
Department of Backward Classes,
Most Backward Classes and Minorities Welfare Department,
St. George Fort, Secretariat,
Chennai.
2. The Tamil Nadu Wakf Board,
Rep. By its Chief Executive Officer,
1, Jaffar Syrang Street,
Vallalseethakathi Nagar,
Chennai – 600 001.
3. P.Anjana Priya
W/o. Late S.Prabakaran
37/A, Captain City, London, UK.,
Now come down to Chennai and staying
At No.3, Stephen Lane, Avvai Nagar,
Vyasarpadi, Chennai – 39.
4. P.Gomathieswaran,
S/o. Late S.Prabakaran
37/A, Captain City, London, UK.,
Now come down to Chennai and staying
At No.3, Stephen Lane, Avvai Nagar,
Vyasarpadi, Chennai – 39.
5. S.Ravi
S/o. P.Subramani
No.3, Stephen Lane,
Avvai Nagar, Vyasarpadi,
Chennai – 600 039.
6. S.Gomathi
D/o. P.Subramani
No.3, Balakrishna Mudali Street,
Vysarpadi,



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Chennai – 600 039.

... Respondents

(R3 and R4 are impleaded as per order dated 30.09.2024 in W.M.P.No.10675 of 2024 in W.P.No.16776 of 2021.

R5 and R6 are impleaded as per order dated 30.09.2024 in W.M.P.No.8596 of 2024 in W.P.No.16776 of 2021)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records of the first respondent in G.O. (Ms)No.27, dated 19.04.2021 and quash the same.

For Petitioners ... Mr.Zaffarullah Khan
Senior Counsel
Assisted by Mr.T.Magendiran

For Respondents ... Mr.P.S.Raman
Advocate General
Assisted by Mr.P.Ganesan
Additional Government Pleader (for R1)

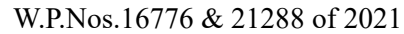
Mr.Avinash Wadwani
for Waqf Board (for R2)

Mr.P.V.Balasubramanian
Senior Counsel
Assisted by Mr.J.Pranav Reddy
(for R3 to R8)

W.P.No.21288 of 2021
Janabha Fathima Kauser
W/o. Late S.Kamaluddin Fakhri
2A Second Floor, 'Om Apartments'
32, Kothari Road, Nungambakkam,
Chennai – 600 034.

... Petitioner

/vs/



-
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Chennai – 600 039.

8. S.Gomathi

D/o. P.Subramani

No.3, Balakrishna Mudali Street,
Vysarpadi, Chennai – 600 039.

9. P.Dharamchand,

S/o. J.D.Pannalal,

No.76, Old No.238, Ramakrishna Mutt Road,
Mylapore, Chennai – 600 004.

10. P.Shanthilal,

S/o. J.D.Pannalal,

No.76, Old No.238, Ramakrishna Mutt Road,
Mylapore, Chennai – 600 004.

...

Respondents

(R5 and R6 are impleaded as per order dated 30.09.2024 in W.M.P.No.10678 of 2024 in W.P.No.21288 of 2021.

R7 and R8 are impleaded as per order dated 30.09.2024 in W.M.P.No.8947 of 2024 in W.P.No.21288 of 2021

R9 and R10 are impleaded as per order dated 26.02.2026 in W.M.P.No.41329 of 2025 in W.P.No.21288 of 2021)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records of the first respondent in G.O.(Ms) No.27, dated 19.04.2021 and quash the same and direct the respondents to forbear from interfering with the possession and enjoyment of the property of the petitioner's family of an extent of about 60 grounds in S.No.2024 in Arundale Street, Mylapore, Chennai – 4.

For Petitioner ... Mrs.Hema Sampath



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Senior Counsel
Assisted by Mr.S.Murugan

For Respondents ... Mr.P.S.Raman
Advocate General
Assisted by Mr.P.Ganesan
Additional Government Pleader
(for R1)

Mr.Avinash Wadwani
for Waqf Board (for R2)

Mr.V.Ragavachari
Senior Counsel
Assisted by Ms.A.Ajimath Begum
(for R3)

Mr.P.V.Balasubramanian
Senior Counsel
Assisted by Mr.J.Pranav Reddy
(for R4 to R8)

Mr.N.A.Nazzir Husain
for Dr.M.Devendran (for R9 & R10)

COMMON ORDER

A. The Prayer:

1. W.P.No.16776 of 2021 is filed for a Writ of Certiorari challenging the Government Order in G.O.(Ms)No.27, dated 19.04.2021, and to quash it.

1.1. W.P. No.21288 of 2021 is also filed with the same prayer, including a consequential Mandamus to prevent interference with the possession and enjoyment of the property belonging to the petitioner's family, covering about



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60 grounds in Survey No.2024 in Arundale Street, Mylapore, Chennai – 4.

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B. The Property:

2. The property in question measures an area of 95 grounds and 1748 sq. ft., in Survey No. 2024, located at Arundale Street, Mylapore, Chennai – 600004. This property, claimed to be a Wakf property, is mostly vacant land. It includes a mosque & houz, a private burial ground all spanning about 5 grounds. There is also a house and a commercial structure belonging to the wakif's family. The property is situated in the heart of Chennai City, in Mylapore, within a densely populated mixed-use zone of residential and commercial areas. The Google image of the property is attached as Annexure – I of this order. Additionally, the drone images provided by the petitioners, showing the entrance to the Arundale Street Mosque, other structures on the property, and an overview of the entire property, are attached as Annexure - II to this order. The divisions in the property during the litigation is contained in the rough sketch in Annexure - III.

C. The Parties:

3. W.P.No.16776 of 2021 has been filed by S.M.A.K.Aazam Fakhri, S.M.Sabahuddin Fakhri, S.M.Nazeeruddin Fakhri, S.M.Abdul Khader Fakhri,



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and S.M.Naser Fakhri (hereinafter referred to as "the Fakhri Family – I"), asserting that they are the direct descendants of Janab Shah Abdul Quadir. In the said writ petition, the Government of Tamil Nadu, represented by the Principal Secretary to the Department of Backward Classes, Most Backward Classes, and Minority Welfare, the authority that issued the impugned Government Order, is arrayed as the first respondent. The Tamil Nadu Wakf Board is the second respondent. P.Anjana Priya, P.Gomathieswaran, S.Ravi, and S.Gomathi (hereinafter called as "the rival title claimants") have impleaded themselves in the writ petition as the respondents 3 to 6, claiming that the property belongs to them and does not belong to Wakf nor to the Fakhri Family.

3.1. W.P.No.21288 of 2021 is filed by Janabha Fathima Kauser, W/o.Late S.Kamaluddin Fakhri (hereinafter referred to as "the Fakhri Family – II"), who also claims that her husband is a descendant of Janab Shah Abdul Quadir. The Principal Secretary to the Government, Department of Backward Classes, Most Backward Classes and Minority Welfare, is named as the first respondent. The Chief Executive Officer, Tamil Nadu Waqf Board, is named as the second respondent. S.Mohamed Ibrahim, who filed the petition in W.P.No.3823 of 2020 claiming to be a member of Hamidally Street, Arundale Street Masjid and Madrassa Development Committee, is named as the third respondent, and the said Committee as the fourth respondent (hereinafter they are collectively



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referred to as "the Masjid Committee"). In that writ petition, the rival title claimants mentioned above also impleaded themselves as the respondents 5 to 8. Subsequently, P.Dharamchand and P.Shanthilal (hereinafter referred to as "the subsequent purchasers"), claiming to be the subsequent buyers of a portion of the property from the Fakhri Family – II, impleaded themselves as the respondents 9 and 10.

D. The Facts:

4. On 20.05.1959, by a notification published in the Government of Tamil Nadu Gazette No.20A, exercising its power under The Wakf Act, 1954, the then Madras State Wakf Board published the list of Wakfs existing in the District of Madras in Page No.6 of SUNNI WAKFS, which included the property in question. The Wakf is named as “Mosque and Burial ground, Arundale Street, Mylapore.” Its purpose is described as “Pious, religious, and charitable purposes. Mosque for prayer by all Muslims.” The Proforma states the nature of the Wakf as “A Wakf by user and *Mushrutal Khidmat*.” It specifically mentions that there are no designated beneficiaries. Syed Mohamed Abdul Khader Fakiri is listed as Muthawalli, with the office inherited from father to son, a practice to be maintained. The total extent is 3 cawnies and 23.1748 cents, approximately 130 grounds, listed in Column 10(a) of the Proforma. The building occupies 5 grounds, while the garden and land span 120 grounds. Under “How the Wakf is



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administered,” it is noted that the Muthawalli personally manages the garden, land, and mosque based on their use.

4.1. Aggrieved by the above notification, the Muthawalli mentioned therein, namely S.M.A.K.Fakhri Sahib, filed an Original Suit in O.S.No.1838 of 1960 before the II Assistant Judge, City Civil Court, Madras, seeking a declaration that the suit property is not a Wakf property. The Wakf Board was named as the defendant in the suit.

4.2. The case of the plaintiff was that their ancestors acquired the property through personal self-acquisition. They had constructed a building known as “Fakhrul Manzil” on a portion of the suit land and have been using it for family and private worship. About half a ground adjacent to their residence is also used to bury family members. The family has invested large sums of money to improve the suit property. The Muslim community had no access to the building.

4.3. The Wakf Board contested the suit by claiming that the property, consisting of 3 cawnies, 23 grounds, and 1948 sq. ft., is recorded in the Revenue accounts as “Moulvi S.M.Fakhhiri Saheb Trust.” There is a mosque and a burial ground used for religious purposes. Income from the remaining land is used to benefit the mosque. The suit property was granted to the plaintiff's ancestor by



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the Nawab of Carnatic for the construction and maintenance of the mosque and burial ground, as well as for propagating and preaching Islam. There are Pesh Imam, Mowrin, sweepers, etc., for the mosque. The name “Fakhrul Manzil” was given only to the residential portion where the plaintiff resides.

4.4. On the said pleadings, twelve issues were framed by the trial Court, including “Whether the suit schedule property is a Wakf coming under the Muslim Wakfs Act, 1954; Whether the Fakrul Manzil is a private worshipping place or a public Mosque where all Muslims have the right to enter and offer prayers; Whether the burial ground is a family burial ground; Whether the Wakf Board has jurisdiction over the suit mentioned property; Whether proper procedure was followed while issuing the notification,” etc. After detailed consideration of the evidence on record, the trial Court decreed the suit, declaring that the suit property, excluding the prayer hall and the right of way to the prayer hall from the road, is not a Wakf property, and that the notification dated 20.05.1959 is illegal and void with respect to the suit property, excluding the prayer hall and the right of way to the prayer hall from the main road. The suit concerning the prayer hall was dismissed, and it was declared to be a Wakf property.



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4.5. Aggrieved by this, the Wakf Board filed an Appeal Suit in A.S.No.21 of 1964 before the Principal Judge of the City Civil Court, Madras. By that time, since the original plaintiff, S.M.A.Fakhri Sahib, had died, eight legal heirs—both male and female members of the family—were added as respondents 2 to 9 in the appeal. A Cross-Objection was also filed on behalf of S.M.A.Fakhri Sahib, who was aggrieved by the portion of the decree declaring the prayer hall and the way as Wakf property.

4.6. The Appellate Court allowed the appeal and the Cross-Objections, thereby modifying the decree. The Appellate Court first noted that it is common ground between both parties that the suit land was granted to the plaintiff's ancestor by the Nawab of Carnatic. Neither side produced the Inam Settlement Register and each argued that the burden of proof lies with the other. After considering the argument that the burden of proof is only on the party whose case would fail absent the evidence, the Appellate Court decided not to assign exclusive blame for the non-production of the document to one party. Instead, it proceeded to decide the issues based on the evidence available.

4.7. It then examined the evidence presented by both sides. The plaintiff produced a Persian document claimed to have been found in a box at their house. The document recited that Shah Abdul Quadir was a pious and noble Muslim who moved from Aurangabad to Madras. The Nawab of Carnatic and



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his servants, who were unable to find a suitable house at the Government expense for his residence, are said to have acquired this building along with the land and gave it to the said Shah Abdul Quadir. The Persian document did not have any signature, and it was also not mentioned in the earlier correspondences by the family members, and was suddenly produced during the trial. Therefore, in the absence of any signature or prior reference in any of the correspondences, the said document was rejected. Thereafter, the Appellate Court considered Ex.B2, which was the Exemption Register from the assessment of the property for tax. In Ex.B2, it was mentioned that the entire property is exempted as it is used for the benefit of the mosque and burial ground found therein. The Appellate Court held that, although this cannot be conclusive proof of the dedication as such, it lends credence to the fact that the property has, in fact, been dedicated.

4.8. The Appellate Court further considered that there was no partition among the family members, even though four generations, including female heirs, had come and gone. However, the entire property was kept intact. Moreover, the Appellate Court examined the presence of four minarets and a symbolical mehral. It also took into account the houz (water tank) used for ablutions before prayers and two separate latrines and urinals for those using the



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prayer hall. The plaintiff's witness admitted that about 40 to 50 persons pray daily in the hall. Festive occasions such as Ramzan and Bakrid were also celebrated there. Subsequently, the Appellate Court evaluated the claim that it was a private place of worship and concluded that, typically, a private hall in Muslim homes is just one room, but these structures proved otherwise. It rejected the family members' argument that only with their permission could the public have entry. Regarding the burial ground, the Court found that only family members were buried there, and it was not a public burial ground.

4.9. The Appellate Court found that the entire suit property had been dedicated not only for the maintenance of the Mosque but also for the upkeep of the descendants of Shah Abdul Quadir, the plaintiff's first ancestor. It concluded that the prayer hall was dedicated to the public. Even though there was no formal deed of dedication, it was determined that the dedication was by user, and Shah Abdul Quadir had, in fact, dedicated the property. The Court also noted the family members' maintenance of the property and improvements. Therefore, the Court concluded that the dedication was a collective act by the original founder, Shah Abdul Quadir, for the upkeep of the Mosque and of his male descendants. The plaintiff and their ancestors, who were only in charge of the property as Muthawallis. Accordingly, it issued the decree dated 21.01.1966.



It is seen that the judgment and decree have become final and accepted by all concerned. The operative portion reads as follows:

"The suit residential property, lands and the houz thereon had been dedicated concurrently for the maintenance of the male descendants of Shah Abdul Quadir and for the maintenance of the prayer hall and burial ground found in the suit premises and therefore Wakf-Alal-Aulad to the extent to which it is dedicated for the maintenance of the mosque in the suit property. The notification to the extent which it is inconsistent with the above finding, is void."

4.10. In 1968, the Assessment Proceedings in respect of the property were initiated under the Estate Duty Act, 1953. The Assistant Controller, while deciding the case, rejected the claim of the Fakhri Family members that they are only Muthawalli and held that, when the Appellate Court found that the property had been jointly dedicated both for the maintenance of the Mosque and for family members, and when the income is received by the male descendants after being used for the Mosque, the exemption can be granted based on the utilization for the public purpose, considering the value and the family's expenditure on charity. Thus, the Assistant Controller, by order dated 30.07.1968, determined that they were using the income for charitable purposes, with about one-third used for personal maintenance and two-thirds for charity, and assessed the relevant portion of the value for duty. Later, the matter was referred by the Income Tax Appellate Tribunal under Section 64(1) of the Estate Duty Act, 1953, to the Division Bench of this Court in Tax Case No.24 of 1976.



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4.11. The question whether on the facts and circumstances of the case, the Tribunal was right in holding that the deceased was obliged to maintain all his male descendants from and out of the income of the property that remained after defraying the expenses for the maintenance of the Mosque and consequently it could not be said that the interest of the deceased extended to the whole income of the property, was referred. The Hon'ble Division Bench of this Court considered the decree passed in the appeal and considered the duties of Muthawalli. Ultimately, it also found that there is no specific share of the income which was mentioned for the family or for the pious purpose, either in the judgment rendered by the City Civil Court or in any other dedication whatsoever. Under the said circumstances, by the judgment dated 10.10.1979, it went on to hold that between the members of the family, the total number of the male heirs has to be taken into account and divided per capita and thus answered the question in favour of the assesses that they will be entitled to claim exemption to the extent of dedication for charity and that the proportion will be a matter for being ascertained at the enquiry by the Assistant Controller.

4.12. While so, on 22.04.1991, the Tamil Nadu Wakf Board passed a resolution in Item No.5/90 titled "ARUNDALE STREET Mosque & BURIAL GROUND: MADRAS". It considered objections raised by the Masjid



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Committee. It considered the notification, the suit filed, and the appellate decree. The Board took into account the findings of the Appellate Court, which declared the property as a Wakf-Alal-Aulad and held that the dedication was a concurrent dedication for the maintenance of the Mosque and the family members during the British era. The Wakf Board also noted that exemption from tax had been obtained by declaring it a public Wakf. It was the duty of the Wakf Board to have pursued the matter further in the Second Appeal to have the property declared a public Wakf since the Appellate Court itself found it was a concurrent dedication. When Fakhri family members proceeded to obtain patta in their individual names, this action disqualified them from holding the Wakf property in trust, either as Muthawallis or in any other capacity, and ordered the wakf to be brought under direct management.

4.13. The Wakf Board also noted that the notification establishes the Arabic expression “*Mashuruthul Khidmat*,” which means that any specified beneficiary of a Wakf should receive benefits solely based on their corresponding Khidmat or service, such as maintenance, sustenance, and upkeep of the Wakf properties. It further resolved that beneficiaries are strictly prohibited from claiming any personal rights over the Wakf properties. It directed the Secretary of the Tamil Nadu Wakf Board to appoint a Special



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Officer to serve as the Executive Officer of the Wakf in question.

4.14. The Fakhri Family – I and Fakhri Family – II challenged the said order by filing separate Writ Petitions in W.P.Nos.6846 & 15144 of 1991 before this Court. On examining the case and the parties, this Court first noted that the Appellate Court's judgment and decree had become final. This Court considered the Wakf Act, 1954 as it was then, and the definition of “*Wakf-Alal-Aulad*” under Section 3(1)(iii) of the Wakf Act, 1954. It also considered that a notification was issued under Section 5(2) of the Wakf Act, following a Survey under Section 4 of the Act, which was challenged before the City Civil Court and resulted in the appellate judgment. Therefore, it held that the appellate Court's findings had become final and that the issues could not be reopened or re-argued. Subsequently, it addressed the next point: the extent to which the property is designated as *Wakf-Alal-Aulad* for purposes recognised by Muslim Law as pious, religious, or charitable, and the extent to which the property is dedicated to the benefit of the descendants of the Wakf.

4.15. This Court rejected the contention on behalf of the Wakf Board and other contesting respondents that the entire property should be under the control of the Wakf Board. This Court took note of the fact that the Assistant Controller of the Estate Duty has apportioned it as 1/3rd and 2/3rd. It further noted that in the pleadings of the Wakf Board or in the judgment of the Appellate Court, the



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apportionment is not mentioned. Even though 30 years had passed by, after the judgment of the Appellate Court, no steps were taken to apportion the property to the extent to which it was dedicated for religious and charitable purposes. Finally, it considered that no notice was issued before passing the impugned order. By the judgment dated 15.12.1995, the Writ Petitions were allowed the operative portion reads as under :

"12. For the reasons stated above, the writ petitions are allowed and the impugned order is quashed and set aside and it is order as follows:-

1) The Wakf Board shall determine and apportion the extent of property which is dedicated for the purpose of upkeep and management of the Mosque efficiently and to what extent the property is dedicated to the benefit of male descendants of the Wakif, after giving adequate opportunity to the petitioners and concerned parties.

2) The Wakf Board shall have jurisdiction over that portion of the property to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious, or charitable, within the definition of 'aakf alal aulad' given under Section 3(1) (iii) of Wakf Act, 1954, as it stood before amending Act 69 of 1984.

These writ petitions are ordered accordingly. No order as to costs."

4.16. Aggrieved by the above order, the Masjid Committee filed a Writ Appeal in W.A.No.154 of 1997. By judgment dated 10.07.1997, the Writ Appeal was dismissed *in limine* by holding that no grounds had been made out to interfere with the order of the learned Judge. Pursuant to that, the Wakf Board



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passed a resolution on 19.04.1998, as Item No.78/97. It decided to strictly comply with the directions of the High Court and duly apportion and determine the extent of the property dedicated by the first ancestor of the Fakhri Family for the purpose of maintaining the Mosque and for the benefit of the male descendants. The Wakf Board proceeded as if the issue had been decided by the Division Bench of this Court in the Estate Duty Proceedings and considered that the Assistant Controller had held that $\frac{2}{3}$ should be set apart for the benefits of the male descendants and $\frac{1}{3}$ for the maintenance of the Mosque and burial ground, and accordingly applied the $\frac{1}{3}$ and $\frac{2}{3}$ ratio.

4.17. The Wakf Board decided that the Mosque and burial ground notified in Government Gazette No.26, covering 95 grounds and 1748 sq. ft., as part of T.S.No.2024, are declared as *Wakf-Alal-Aulad* as defined under Section 3(1)(iii) of Act 29 of 1954. The Board resolved to apportion one-third of the total properties or 30 grounds, whichever is higher, to be completely detached and demarcated, declaring this portion as a public wakf by virtue of that resolution and the judgment of the High Court in W.P.No.15441 of 1991, and it was expressly agreed to be so by the Fakhri Family. A new proforma was ordered to be prepared. The property was ordered to be physically demarcated, with boundary stones to be erected. The remaining two-thirds was ordered to be



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released and handed over for the enjoyment of the Fakhri Family after demarcation. The new public wakf was ordered to come under the direct management of the Wakf Board. The demarcation, which was also mutually approved by the parties and shown as Exhibit I in the resolution, was completed. The Secretary/Chief Executive Officer was directed to take charge after demarcation and to initiate proceedings to constitute a public committee to manage the wakf as per customs and practices.

4.18. On 31.03.2003, the family members and the Superintendent of Wakf has entered into a document of “Handing Over and Taking Over” as per the demarcations contained therein. The boundaries of the property of the public Wakf was once again mentioned in the said document. The same was also transcribed in Rs.20/- stamp paper and was entered into as an agreement of Handing over and Taking over again on 25.04.2003. A revised Proforma was also published on 28.04.2003. As per the revised Proforma, the public Wakf had constituted the Mosque and the burial ground of 5 grounds or thereabouts and the vacant land of 30 grounds.

4.19. Further on 22-1-2003, at the request of the Fakhri family members,



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once again the Wakf Board took up the issue vide item No.77/98. This time, it even observed that the High Court had directed that 30 grounds be earmarked for public purposes and the remaining land be declared as private property. While reiterating the other clauses in the earlier resolution, it held that the burial ground was the Fakhri family's private burial ground and they shall protect the same by putting up a compound wall. It further stated that the Muthawalliship with reference to the administration of the Mosque shall be hereditary, and preference will be given to the wakif's family at the time of constitution of the committee.

4.20. On 31.03.2003, an agreement of handing over was entered into between the Superintendent of Wakfs and the members of the Fakhri Family on a plain paper. Once again, on 25.04.2003, an Agreement of Handing Over and Taking Over was signed on a twenty-rupee stamp paper. In this agreement, the entire property was divided into four schedules. Schedule - A consisted of 30 grounds retained by the Wakf Board. Schedule - B included 60 grounds with four items: Item - 1 was 42 grounds of vacant land; Item - 2 was 13 grounds of vacant land; Item - 3 was 4.5 grounds of the Fakhri Family's residential house;



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and Item - 4 was 1200 sq. ft. of land with a shed thereon. Schedule - C covered the mosque, which spanned 5 grounds. Schedule - D was the private burial ground, covering 1,748 sq. ft.

4.21. On 28.04.2003, a revised proforma was prepared, mentioning both the Mosque and 30 grounds together as Public Wakf. However, on 27.08.2003, a Gazette notification was published stating that the Wakf Board had taken over the direct management of the 30 grounds of property for a period of one year, and the Superintendent of Wakf was appointed as the Executive Officer to oversee the wakf's affairs. It also states that, following the taking possession of the Mosque and its properties, $\frac{2}{3}$ rd of the area, i.e., 60 grounds, was handed over to the Fakhri Family for their enjoyment.

4.22. It is stated that, regarding the property allocated to the family, a patta was issued on 04.09.2003 in the name of the Fakhri family members, making the subdivisions as Survey Nos.2024/1, 2024/3, 2024/4, 2024/6, and 2024/7 of Mylapore Village. In respect of the subdivisions 2024/2, 5 and 8, patta was mutated in the joint names of wakf board and the Fakhri family members. On 25.09.2003, the Wakf Board resolved to develop the public wakf



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portion in S.No.2024/2, 5, and 8 through a joint venture by establishing a working women's hostel for Muslim women. On 11.11.2003, a general notice was issued by the Chief Executive Officer, inviting offers to develop the property and the proposal to construct was also published in the Gazette on 10.12.2003.

4.23. While so, the Masjid Committee and two others raised an objection and requested the Wakf Board to reopen the case for proper adjudication in terms of the order passed by the High Court. It was rejected by the Wakf Board vide Resolution in Item No.129 of 2003 dated 05.02.2004. Challenging the same, the Masjid Committee and others filed O.A.No.3 of 2004 before the Wakf Tribunal on 15.03.2004.

4.24. By a judgment dated 20.12.2007, the Tribunal found that the resolution of the Wakf Board suffers from non-application of mind inasmuch as it rejected the case of the Masjid Committee and others on the sole reason that the entire exercise was in implementation of the Court Order and did not answer the grounds raised by them by adducing proper reasons. It should re-do the exercises after affording proper opportunity to the parties. Accordingly, after setting aside the resolution, it remanded the matter back to the Wakf Board for



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passing fresh orders.

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4.25. At this stage, two Writ Petitions in W.P.Nos.17624 and 17625 of 2008 were filed by the Fakhri Family – I. W.P.No.17624 of 2008 was filed for Writ of Mandamus forbearing the Wakf Board from considering the Wakf Application dated 03.03.2003 and W.P.No.17625 of 2008 was filed challenging the order of the Tribunal in O.A.No.3 of 2004 dated 20.12.2007. The case of the writ petitioners is that everything becomes final once the demarcation is done, and thereafter, there can be no question of remanding the matter or taking it up again. By judgment dated 22.10.2008, the Writ Court found that the said order was passed without hearing the Masjid Committee and others. Therefore, the Tribunal's order was upheld, and the matter was remanded for fresh consideration. It further directed that the Wakf Board complete the proceedings in terms of the order passed in W.P.No.6846 of 1991.

4.26. As a matter of fact, aggrieved by the very same order passed in O.A.No.3 of 2004, a Civil Revision Petition in C.R.P.No.4186 of 2008 was filed by the Fakhri Family – II and being aggrieved by the order passed in the Writ Petitions, the Fakhri Family – I had filed a Writ Appeal Nos.1 and 2 of 2009 and Fakhri Family -II had filed W.A.Nos. 5 & 6 of 2013. All the matters were



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taken up together by the Hon'ble Division Bench of this Court and a common order was passed on 20.12.2013. The Hon'ble Division Bench considered the fact that the Wakf Board before passing the order dated 19.04.1998, had issued notice to the Secretary of the Masjid Committee on 28.01.1998 and the Secretary did not appear for the enquiry. The Hon'ble Division bench considered that no prejudice was pointed by the said persons on account of the order dated 19.04.1998. It held that the rights of the parties having been determined by the order of the Court in W.P.No.6846 of 1991 and confirmed in W.A.No.154 of 1997, once again, the issue of demarcation cannot be re-agitated. The Hon'ble Division Bench also noted that the third-party interests are created in 2/3rd of the property allotted to the male descendants of the Wakif.

4.27. Aggrieved by this, the Wakf Board also approached the Hon'ble Supreme Court of India. By an order dated 08.07.2015, while condoning the delay in filing the Special Leave to Appeal (C) No.10837 of 2015, the Hon'ble Supreme Court held that it did not find any legal or valid grounds for interference, and the Special Leave Petition was dismissed. Separate Special Leave Petitions filed by the Masjid Committee and others in Special Leave to Appeal (Civil) Nos.35138–35142 of 2014 were also dismissed by another order dated 23.11.2017.



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4.28. Thereafter, it is stated that the Fakhri Family – I had also filed W.P.No.11964 of 2018 for a direction to the Wakf Board to remove the vehicles that have been parked unlawfully in the 2/3rd portion allotted to them and for compensation. Furthermore, with reference to the management of the Mosque, W.P.No.22577 of 2017 was also filed. Counter affidavits were filed by the Tamil Nadu Wakf Board affirming the demarcation. By an order dated 23.09.2024, the Writ Petition in W.P.No.11964 of 2008 filed by the Fakhri Family – I was disposed of with liberty to approach the competent Civil Court. The Court, after quoting the prayer, did not make any findings regarding the removal of the parking; however, it granted liberty without making any observation on the merits, stating that the petitioners could approach the Civil Court for damages alone.

4.29. Under these circumstances, S.Mohammed Ibrahim submitted a representation to the Chief Executive Officer of the Tamil Nadu Wakf Board on 05.12.2019, requesting the Chief Executive Officer to conduct an enquiry as per Section 26 of the Wakf Act, 1995, regarding the issue. Furthermore, he approached this Court through W.P.No. 3823 of 2020. It was stated before this Court that, according to the order in W.P.No.6846 of 1991, the Wakf Board must



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determine and apportion the extent of the property, and in this regard, the petitioner has submitted a representation to take necessary action. During the hearing, the learned counsel for the petitioner requested the Court to direct the disposal of the representation. It was also conveyed on behalf of the Wakf Board that the Chief Executive Officer had already begun the enquiry and that, following its completion, orders would be issued. In this view, without expressing any opinion on the merits of the case, this Court, by order dated 18.02.2020, directed the Chief Executive Officer to consider the representation dated 05.12.2019 and pass appropriate orders on or before 31.06.2020.

4.30. Pursuant to the enquiry, the Chief Executive Officer found that the Board's resolution vide Item No.78/97 dated 19.04.1998, which released two-thirds of the properties for the benefit of private persons, was without jurisdiction and an abuse of power conferred on the Wakf Board. These resolutions clearly violate Section 26(a) & (b) of the Wakf Act, 1995. The order was issued exercising power under Wakf Act, 1954. When the orders were issued, the Wakf Act, 1995, was already in force. Similarly, by a Resolution dated 22.01.2003, the Board amended its previous resolution. Once orders are issued, the Wakf Board becomes *functus officio* and lacks the authority to review its own orders. The Chief Executive Officer noted that although Gazette



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Notifications had been issued, they had not yet been implemented, and the matters were pending before the Civil courts. Therefore, the resolutions needed reconsideration. Upon referral for reconsideration, since the Board was no longer active and the Special Officer in charge agreed that the resolutions had not been implemented and the property remains undivided in the field, he was unable to confirm whether the resolutions were contrary to the Wakf Act, 1995. Consequently, he concluded that the matter should be referred by the Chief Executive Officer to the State Government for a final decision.

4.31. Thereupon, the matter was referred to the Government by the Chief Executive Officer under Section 26 of the Wakf Act, 1995. The Government found that the net result of the civil proceedings is that the individuals must maintain the Mosque from the income of the suit property and are entitled to use the remaining income for their own and their family's maintenance. The decisions under the Estate Duty Act and the Hon'ble Division Bench in the reference were taken into account.

4.32. Thereafter the Government considered the directions of this Court in W.P.No.6846 of 1991 and the judgment of the Civil Court has become final. The direction given to the Wakf Board to apportion the extent of the property which is dedicated for the purpose of upkeep and management of Mosque



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efficiently and to what extent the property has to be dedicated to the male descendants has to be decided by the Wakf Board. It was found that upon remand by the High Court without hearing any person other than the writ petitioners, the Wakf Board decided that the Wakf is a Wakf-Alal-Aulad composite in nature and directed the amendment of Proforma. The Government took notice of the subsequent proceedings including the further amendment of the Proforma and the Original Application that was filed by the third parties and further orders that were passed thereon.

4.33. The Government noted that the entire property is ultimately Wakf by the user, and the Wakf has been recognised as a "Mashrutul Khidmat". It concluded that the entire property is a Wakf-Alal-Aulad. The earlier resolution of the Board was based on a wrongful assumption that the Civil Court had granted the decree as if the remaining portions of the properties were private properties of the Fakhri Family. This error goes to the root of the matter. The Wakf Board is not authorised to make such a determination. The second order amounts to a further review without any statutory powers. Since the earlier resolution, which is reiterated, has not yet been implemented, the Government ordered the cancellation of the two resolutions dated 19.04.1998 and 22.01.2003. As noted above, challenging this, the present Writ Petitions are



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E. The Arguments for Fakhri Family -I:

5. Mr.Zaffarullah Khan, learned counsel representing the petitioner / Fakhri Family – I, submits that the impugned Government Order is patently illegal because the apportionment between the public Wakf of Mosque burial grounds and 30 grounds – Wakf-Alal-Aulad composite Wakf, and the 60 grounds being the Wakf-Alal-Aulad (simplified), which is solely for the benefit of Abdul Quadir's male descendants, is based on the Decree of the Civil Court and the decision of this Court in W.P.No.15441 of 1991, confirmed in the Writ Appeal, with further litigation confirmed by the Division Bench in W.A.No.1 of 2019 etc., and upheld by the Hon'ble Supreme Court of India. Therefore, there was no question of invoking Section 26 of the Wakf Act. Additionally, the procedural requirements under Section 26 were not followed by the Chief Executive Officer, as there was no proper referral or decision by the Board. Moreover, even if a referral to the Board had been made, it could not occur after the implementation of the decisions. Once the impugned order is set aside, the next step is to demarcate the Mosque area where the public prays and the Fakhri Family's graveyard. The area outside these boundaries should generate income from 30 grounds for maintaining the Masjid and burial ground, with any excess income reverting to the family. The third unit, Wakf-Alal-Aulad (simplified),



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exclusively benefits the male descendants of Syed Abdul Quadir Fakhri.

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5.1. It is submitted by the learned counsel that tenders can be invited from reputed builders for a joint venture covering this extent of 90 grounds. The development of the built-up area can be divided into two blocks of 30 and 60 grounds, and leases can be granted to investors or builders for these portions to recover their investments with reasonable profits. The learned counsel would produce records of commercial projects, projecting a combined monthly income of Rs.1.80 Crore from the entire development. He further submits that if such an exercise is undertaken, it would result in a win-win situation.

F. The Arguments for Fakhri Family -II:

6. Mrs.Hema Sampath, the learned Senior Counsel appearing for the Fakhri Family – II, by outlining the facts mentioned above, submits that the first round of litigation resulted in a judgment and decree from the Civil Court. According to this, the suit property is a Wakf-Alal-Aulad to the extent it is dedicated for the maintenance of the Mosque. The second round of litigation in W.P.No.19441 of 1991 concerned the apportionment of the property for various purposes, and a direction was issued to allocate the property accordingly, which was also upheld by the judgment in W.A.No.154 of 1997. The decision to divide the property between the Wakf and the family members became final during this



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second round. Orders passed in both rounds were implemented through a resolution on 19.04.1998, further modified on 21.01.2023, followed by the signing of the memorandum on 31.03.2003, an agreement on 25.04.2003, and the publication of the Proforma on 28.04.2003. Subsequently, an order was issued on 25.09.2003 confirming the implementation, and an advertisement was published on 11.11.2003 inviting proposals for joint development. The third round of litigation was initiated again through an application in O.A.No.3 of 2004, ultimately resulting in a common order passed in the Writ Petitions.

6.1. Finally, the matters were decided by the Hon'ble Division Bench in Writ Appeal in W.A.Nos.1 and 2 of 2009 etc., and the further Special Leave Petitions before the Hon'ble Supreme Court were also dismissed. Thus, the question of whether the Wakf property could be divided reached finality, and the Masjid Committee and other persons interested were all adequately represented. The property was also measured, survey stones were embedded, and a Board was put up by the Wakf Board. After these four rounds of litigation, the matters reached finality, and the fifth round was initiated by the said S.Mohammed Ibrahim by submitting a representation and filing W.P.No.3823 of 2020.

6.2. The counsel for the Wakf Board did not represent before this Court as the decision has already been implemented, and the power under Article 226 of



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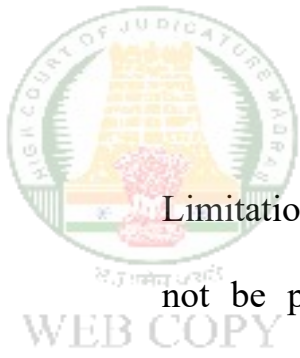
the Constitution of India cannot be invoked. Only under the circumstances was an innocuous order to consider the representation passed. Taking advantage of the same, the impugned Government Order is issued, cancelling the earlier resolutions passed in implementation of the Court Orders.

6.3. The learned Senior Counsel submits that the issues have reached finality up to the Hon'ble Supreme Court of India, and any further attempt to raise the same issue before the Tribunal in O.A.No.3 of 2004 is itself barred by the principles of *res judicata*. The claim is also barred by limitation because when the Civil Court decided the issue on 21.01.1966, 60 years ago. In **U.P.Sunni Central Board of Wakf and another vs. Smt. Hasan Jehan Begum and another**¹, the Division Bench of the Hon'ble Allahabad High Court held that in Wakf-Alal-Aulad, the entire property does not come within the control of the Board but only those properties dedicated for religious, pious, and charitable purposes.

6.4. When the Wakf Board has decided to divide the property into 30 and 60 grounds, there is no question of nullifying the same after 25 years. The judgment in **T.Kaliamurthi and another vs. Five Gori Thaikkal Wakf and others**² is relied upon to contend that, in view of Sections 27 and 31 of the

¹AIR 1977 All 18 DB

²(2008) 9 SCC 306



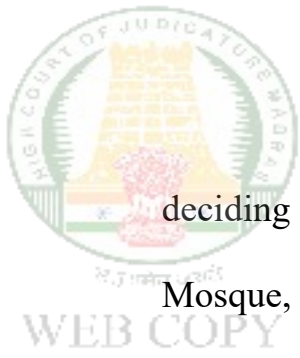
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Limitation Act and Section 107 of the Act, the power of the government could not be pressed into service retrospectively to revive the dead cause. The judgment in **Viceroy Hotels Limited and others vs. Telangana State Wakf Board and others**³ is also relied upon. The principles in the maxim “*bon judicis est lites dirimere, ne lis ex lite oritur, et interest reipublicae ut sint fines litium*,” which cast a duty on the court to bring finality to litigation, were relied upon. It is contended that the order dividing the property was implemented by the Wakf Board through several positive acts. Pursuant to this, third-party rights were also created, and they cannot be set aside by the Government belatedly. It is also contended that the impugned Government Order is without jurisdiction.

6.5 The learned Senior Counsel argued that the Masjid Committee and others were never genuinely interested but merely intermeddling, aiming to protect encroachers and others who were siphoning off even the Wakf's income from the 30 grounds allotted to it. It must be noted that there is no written Wakf Deed related to this Wakf. When a Wakf is established by user, it does not carry any other religious or pious duty; it is solely a place of worship. The judgment in W.P.No.19441 of 1991 considered the earlier decision of the Court in **Coimbatore Akthar Jamath vs. The Tamil Nadu Wakf Board**⁴, while

³2024 SCC OnLine TS 689

⁴100 LW 949



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deciding on the appropriate steps to demarcate the area occupied by the Mosque, Madrassa, and Dargha, declared it a Wakf and issued a notification. Therefore, this Court made a conscious decision to demarcate the properties.

6.6 The judgment in **Syed Mohd. Salie Labbai (died) by L.rs. vs Mohd. Hanifa (dead) by L.rs.**⁵ and **Jawaharbeg Umraobeg Mussalman and Another vs. Abdul Aziz Bhondumiya Mussalman and Another**⁶ was relied upon to contend that it is the Mosque and its adjuncts, which are incidental to offering prayers, that would alone form part of the public wakf. The Wakf Board is utilizing the 30 grounds allotted to it by allowing third parties to park cars and has been collecting Rs.5,000/- per month from the owners of the cars, thereby generating income. Even from these collections, the Jamathdars indulged in misappropriation, as evidenced by the District Superintendent of Wakfs' report

dated 03.02.2020. Regarding the $\frac{2}{3}$ rd property earmarked for family members, the Wakf Board has no say. When the Wakf Board previously invited tenders for joint ventures to establish a working women's hostel on the property, it did not include any plans for funding, and no third-party interest could be introduced within the 30 grounds. The entire action of the respondents under Section 26 of

⁵(1976) 4 SCC 780

⁶AIR 1956 Nagpur 257 DB



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the Wakf Act is without jurisdiction.

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G. The Arguments for the State of Tamil Nadu:

7. Mr.P.S.Raman, the learned Advocate General appearing for the Government, submitted that the direction given by this Court in W.P.No.19441 of 1991 should be interpreted according to the findings in the Civil Court's judgment. When the Civil Court decree states that the entire property was dedicated by the ancestors of the family members and this is a concurrent dedication, the direction would, at most, only imply demarcation rather than a permanent partition of the property. In any case, when the Wakf Board previously decided, it did not consider that it lacks jurisdiction to release such properties where the Wakf Board has supervisory rights. Since the entire property is construed as “Mashuruthul Khidmat,” whereby after covering expenses for the Mosque's upkeep and its purposes, the family members can be maintained, there was no valid reason to alter the original nature of the Wakf. No implementation on the ground has occurred. The Chief Executive Officer rightly exercised his power under Section 26 of the Wakf Act by referring the resolution to the Wakf Board for reconsideration.

7.1 The learned Advocate General would submit that although no positive findings were made, the Special Officer acting on behalf of the Wakf Board has



reiterated the resolutions; therefore, the matter was referred to the Government under Section 26 of the Wakf Act. Upon referral, it is evident that the Civil Court did not specify that 2/3 should go to the family and 1/3 for family purposes. There was no positive direction from the High Court to allocate the property in such a manner; this decision was taken by the Wakf Board. This arrangement is not in the best interests of the Wakf. The fact that everything remains idle and no progress has been made indicates that the resolutions were not in Wakf's interest and fall within the scope of 26A to C, allowing the Chief Executive Officer to refer the matter to the Government. The Government has reviewed the issues in detail and, noting that the decisions on the ground were not implemented and that the Chief Executive Officer followed the provisions, decided to cancel the earlier resolutions. The Government Order is legally valid.

H. The Arguments for the Wakf Board:

8. Mr.Avinash Wadwani, the learned Counsel appearing for the Wakf Board, submitted that the findings in the First Appeal chiefly govern the rights of the parties. According to these findings, it is clear that the entire Wakf is a composite Wakf for both purposes. He strongly relied on the judgment of this Court in **Chairman, Tamil Nadu Waqf Board and Another vs.**



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M.S.Muhammad Yahya (died) and others⁷, where the Court considered the definition and law relating to Wakf-Alal-Aulad. It was held that giving property to one's own family also qualifies as charity under the law, and both Wakf-Alal-Aulad (simplicitor) and Wakf-Alal-Aulad (composite) align with the Shariat. The counsel also argued that the findings in the assessment proceedings reinforce the composite nature of Wakf. In such circumstances, any attempt to demarcate the property contradicts the very purpose of dedication. The entire exercise conducted earlier by the Wakf Board was wholly without jurisdiction. Recognising this, the matter was referred to the Government by the Chief Executive Officer, which then passed the impugned orders as per law. The Wakf Board will undertake appropriate actions to utilise the entire property through various projects, thereby protecting Wakf's interests. Income from the property will be maximized to ensure both purposes are adequately served.

I. The Arguments for the Masjid Committee:

9. Mr.V.Ragavachari, the learned Senior Counsel appearing for the third respondent in W.P.No.21288 of 2021, would point out the findings of the Civil Court decree. The decree clearly states that the entire property is dedicated by the founder, Shah Abdul Quadir. Once dedicated, the property vests in God according to Islamic principles, and no one is entitled to interfere with, alienate,

⁷2023 SCC OnLine Mad 6019



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or partition it. The only permissible act thereafter is to carry out the pious purposes specified in the dedication. When family members have violated this by changing the patta in their names or alienating part of the property, their rights, including those related to Wakf management, must be determined accordingly. The learned Senior Counsel also argues that the Estate Duty Assessment Orders relate to the assessment of estate duty under the provisions of the Estate Duty Act, and do not have the effect of divesting Wakf property. The findings of the Assistant Controller and the Hon'ble Division Bench of this Court should be understood only in the context of determining the duty payable and the extent of exemption permissible under the Act, and should not override the fundamental Islamic doctrine that property vested in God remains so.

9.1. Mr.V.Raghavachari, the learned Senior Counsel, will rely on the judgment of the Hon'ble Supreme Court of India in **Sayyed Ali and Others vs. A.P.Wakf Board, Hyderabad, and Others**⁸, specifically referencing Paragraph No.13, to argue that once a Wakf is created, it remains so indefinitely and continues to be governed by the provisions of the Wakf Act. The learned Senior Counsel will also cite the judgment of this Court in **Tamil Nadu Wakf Board vs. Sannasi Munayathiriyar**⁹ to contend that when there is no distinction

⁸(1998) 2 SCC 642

⁹94 LW 511



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between public charitable purpose and private purpose, the entire property should be regarded as a dedication in favour of the Almighty.

9.2. The learned Senior Counsel would rely on the judgment of the Hon'ble Supreme Court of India in **Chhedi Lal Misra (dead) through Lrs. vs. Civil Judge, Lucknow, and others**¹⁰ to argue that once a Wakf is established, the Wakif is divested of his title to the properties, which then vest in the Almighty after the creation of the Wakf. The learned Senior Counsel would also cite the judgment of the Hon'ble Supreme Court of India in **Thakur Mohd. Ismail vs. Thakur Sabir Ali and others**¹¹ to contend that the bifurcation of the property as private property renders the dedication illegal.

9.3. The learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in **H.V.Nirmala vs. Karnataka State Financial Corporation and others**¹², specifically Paragraph No.13, to contend that if an authority passes an order without inherent jurisdiction, the order is a nullity.

J. The Arguments for Subsequent Purchasers:

10. Mr.N.A.Nazzir Husain, the learned counsel appearing on behalf of the

¹⁰(2007) 4 SCC 632

¹¹1962 SCC OnLine SC 265

¹²(2008) 7 SCC 639



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subsequent purchasers, once again referring this Court to the records, submits that the II Assistant City Civil Court, Madras, in O.S.No.1538 of 1960, declared that the entire suit property is private property of the Fakhri Family, and only the portion where the Mosque is located is a public Wakf. When the Wakf Board filed an appeal and the Fakhri Family also filed a Cross Appeal, the Appellate Court found that S.M.A.K.Fakhri Sahib was in possession and enjoyment of the suit property. Thereafter, it allowed the appeal and cross-objection and modified the decree to state that the property is a Wakf-Alal-Aulad, only to the extent it is dedicated for the maintenance of the Mosque and burial ground, and declared that the notification is void to the extent it is inconsistent with this declaration. Thus, the Civil Court affirmed the private ownership of the suit property, and only to the extent that the income is to be used for the Mosque was declared as a Wakf-Alal-Aulad.

10.1. The learned counsel further submits that this Court in W.P.No. 19441 of 1991 had decided that the Wakf Board only has limited jurisdiction concerning Wakf-Alal-Aulad. Based on this finding, the Court ordered the Wakf Board to determine and apportion the property dedicated for the upkeep and management of the Mosque efficiently. The demarcation was carried out on the ground, and the Wakf Board has already directed the assumption of direct



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management for the new public Wakf. Additionally, on 22.01.2003, the Wakf Board clarified that the burial ground shall be used solely for the burial of deceased members of the Fakhri Family. The Chief Executive Officer also issued an order implementing the resolution, dated 25.03.2003. Subsequently, the Agreement of Handing Over and Taking Over was executed. Considering all the above, regarding an extent of 60 grounds, S.M.Nizamuddin Fakhri, S.M.Sabahuddin Fakhri, S.M.Abdul Khader Fakhri, and S.M.Nazeefuddin Fakhri became entitled to a one-third undivided share in the property spanning 60 grounds in R.S.No.2024/1, 3, 4, 7, & 8. Similarly, S.M.Kamaluddin Fakhri was entitled to a one-third share. S.M. Naseeruddin Fakhri, S.M. Abdul Khadar Fakhri, and S.M.Abdul Naseer Fakhri were entitled to another one-third of the property. Additionally, 13 grounds within the aforementioned 60 grounds of the private property were sold through three sale deeds to Sivanandham, Selvarani, and Ezhumalai.

10.2. The learned counsel further submits that Kamaluddin Fakhri, the husband of the writ petitioner in W.P.No.21288 of 2021, sold his one-third undivided share in the remaining 47 grounds out of 60 grounds to subsequent purchasers through a registered sale deed bearing Document No.802 of 2006. The issue cannot be re-agitated, especially when the demarcation has been notified in the official Gazette and third-party interests, such as those of the



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respondents, have been created. The earlier Division Bench in W.A.No.112 of 2009, among others, had explicitly considered the fact that family members dealt with the property and third-party rights were created, dismissing the challenge. This was also confirmed by the Hon'ble Supreme Court of India, and the Special Leave Petitions were dismissed. Therefore, the learned counsel argues that once a consequential order dated 25.03.2003 was passed by the Chief Executive Officer based on the resolutions from 1998 to 2003, there is no ground to invoke Section 26 of the Wakf Act thereafter. The decree of the Civil Court has become final, declaring the property as Wakf-Alal-Aulad only to the extent it is dedicated for the maintenance of the Mosque, while the remaining extent remains private property.

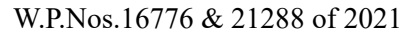
10.3. The learned counsel would further submit that in any event, when the matter of apportionment and dealing with the property has become final pursuant to the dismissal of the Special Leave Petitions in the earlier round, there is no authority on the part of the Government to have overruled the same. The power under Section 26 of the Wakf Act is not a power of review, and therefore, the impugned Government Order is invalid. When the Government Order undoes all the transactions that happened in between and nullifies the valuable proprietary rights of the respondents 9 and 10, the same is passed without even giving the petitioner an opportunity. The findings in the



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Government Order that the Wakf Board had no power to demarcate and apportion the property is one of the specific grounds raised in the earlier round before the Hon'ble Supreme Court and thus deemed to be negated, cannot be a ground to set aside the resolutions. Similarly, the finding in the Government Order that only apportionment of income and not the property could be made is also considered in the earlier round and dealt with. When the Masjid Committee was not permitted by the Hon'ble Division Bench of this Court to re-agitate the entire issue on the ground that it had attained finality, the same was done indirectly once again. The finding in Tax Case No.24 of 1976 is only in favour of the respondents 9 and 10, inasmuch as, only pursuant to that finding, the property was directed to be demarcated and identified.

10.4. The learned counsel would submit that the contention that “Once a Wakf, always a Wakf” cannot be invoked in this case, since the Civil Court has only decided the aspect related to maintenance of the Mosque as Wakf-Alal-Aulad. The decision of this Court in **M.S.Muhammad Yahya** (cited supra) concerns a different set of facts and does not apply here. In this case, the entire property is claimed to be Wakf solely on the basis of the notification, but to the extent it contradicts the Civil Court's findings, the notification was declared void. Therefore, the learned counsel argues that the alienation is lawful and the



K. The Arguments for Rival Title Claimants:

L. The Questions:

(i) Whether in the present writ proceedings, the title of the rival title claimants must be recognised as binding on the other parties herein and relevant



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to the *lis* relating to the validity of the Government Order pending, and whether it should be decided that only the rival title claimants hold the title and that no Wakf exists?

(ii) What is the nature of the entire property, the effect of demarcation, and should the $\frac{2}{3}$ rd portion be considered private property of the Fakhri family members?

(iii) Whether the impugned action of the Chief Executive Officer, Wakf Board, and the Government of Tamil Nadu under Section 26 of the Wakf Act, 1995, is sustainable in law?

(iv) To what reliefs are the parties entitled?

M. Question No.1:

13. The contention of the rival title claimants is that the property which is the subject matter in the present case in R.S.Nos.2024 and 2025 were part of the larger extent comprised in Old Survey Nos.2279, 2275, 2276, 2277, 2252, and 2253, measuring 1935.5 kuzhis in Mundagakanniamman Street (Arundale Street), Mylapore. The same was purchased by Ponnambalapillai @ Varama under a registered sale deed dated 13.12.1915, registered as Document No.26 of 1916 at the Office of the Sub-Registrar, Saidapet. Thereafter, by a registered settlement deed dated 29.07.1955, registered as Document No.1368 of 1955, at



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the Office of the Sub-Registrar, Saidapet, the said Ponnambalapillai settled the property in favour of his elder son, P.Subramani, who thereafter enjoyed it as the absolute owner. Portions of about 5 grounds were encroached, including a mosque and burial ground, leaving about 90 grounds and 75 sq. ft. of vacant land. While so, a Civil Suit in C.S.No.185 of 2008 was filed by S.Prabhakaran and his wife Anjana Priya, S.Gomathi, and S.Ravi against P.Subramani, for partition and separate possession of the lands measuring 90 grounds and 75 sq. ft. A compromise decree was entered into on 11.03.2010, allotting 22.5 grounds each to the four clans of P.Subramani, Ravi, Gomathi, and the legal heirs of S.Prabhakaran.

13.1. Thereafter, P.Navaneedharaj brother of the said P.Subramani filed a Civil Suit in C.S.No.694 of 2010 seeking to set aside the compromise decree in C.S.No.185 of 2008 against the rival title claimants. In that suit, the Revenue Authorities, namely, the Assistant Commissioner of Urban Land Tax, the District Collector, the District Revenue Officer, the Tahsildar, and the Tamil Nadu Wakf Board, were also made parties. The suit was dismissed on 09.10.2017. However, upon filing O.S.A.No.181 of 2018, the Hon'ble Division Bench of this Court allowed the appeal by a judgment dated 08.10.2021 and remanded the case for a *de novo* trial. After the remand, the suit claim was



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dismissed, and the counterclaim filed by the rival title claimants was decreed, declaring them as having title and lawful ownership of their co-shares in the 90 grounds and 75 sq. ft. area. This declaration was made in the presence of the Wakf Board.

13.2. The rival title claimants also filed W.P.No.33899 of 2022 to direct the revenue authorities to grant patta to them. By order dated 16.09.2022, the revenue authorities were directed to consider the representation in light of the Civil Court decree. Due to the pendency of the present writ petition, the District Collector passed an order on 15.04.2023, deferring the grant of patta. The proceedings before the Revenue Authorities dated 25.06.2008, 28.06.2012, 05.11.2012, and 04.08.2006, as well as the entries in the permanent land register and encumbrance certificates, consistently reflect the title and possession of the lawful owners and their predecessors, along with the cancellation of earlier entries in favour of the writ petitioners.

13.3. The rival title claimants argue that when the Wakf Board purportedly issued a notification on 20.05.1959, recognising the entire extent as Wakf, no notice was given to the true owners. They contend it was issued without a proper enquiry into the title as required by the Wakf Act. In fact, even during the dispute with the Fakhri Family, the Civil Court noted that no proper



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enquiry was conducted when the notification was issued. The only title document was a Persian deed, which the Appellate Court rejected. The assertion that the property is Wakf lacks any supporting title document. The rival title claimants alone possess title deeds. Furthermore, the Fakhri family also filed O.A.No.1445 of 2013 to implead themselves in C.S.No.694 of 2012, which was dismissed for non-prosecution; therefore, the judgment in C.S.No.694 of 2012 remains binding on them.

13.4. It is the contention of Mr.P.V.Balasubramaniam, the learned Senior Counsel, that when the tracing of title from the registered sale deed of 1915 in favour of Ponnambalapillai, till the decree, are entirely in favour of the rival title claimants, and the Tamil Nadu Wakf Board, being a party in the suit as well as in O.S.A.No.181 of 2018, did not, despite an opportunity, establish that the entire land is a Wakf, the decree dated 06.01.2022 is binding inter parties. Therefore, the Wakf Board, contesting otherwise in the present matter, is barred by the principles of *res judicata*.

13.5. The learned Senior Counsel would rely on the judgment in **Tamil Nadu Wakf Board vs. Hathija Ammal**¹³ for the proposition that the Wakf Board should follow the procedure required under Sections 4, 5, 6, and 27 of the

¹³AIR 2002 SC 402



Wakf Act before notifying the Wakfs under Section 5 of the Act. Neither the parties nor the Government is bound by defective Wakf notifications. Once the Fakhri Family attempted to implead themselves in the suit unsuccessfully, without specifically mentioning this, these Writ Petitions are filed, and as such, the suppression of such vital facts amounts to fraud on the Court. When the rival title claimants are the true owners of the property, the contentions between the parties are nothing but shadow boxing. Therefore, this Court, while denying the reliefs prayed for by the writ petitioners, should also affirm the cancellation of the Wakf Board's proceedings and consequently direct the Tahsildar to act promptly upon the decree in C.S.No.694 of 2012 and mutate the revenue records in favour of the rival claimants.

13.6. In reply thereto, it is argued on behalf of the writ petitioners that, based on the provisions contained in the Wakf Act, 1995, and the judgment of the Hon'ble Supreme Court in **Rashid Wali Beg vs. Farid Indari & others**¹⁴, as well as the more recent judgment in **Habib Aladdin vs. Mohammed Ahmed**¹⁵, the suit filed before the Civil Court was not maintainable. The decision of the High Court in C.S.No.694 of 2012 would be considered *non-est* in law. Alternatively, it is pleaded that since the petitioners are the actual

¹⁴(2022) 4 SCC 414

¹⁵INSC 2026 90



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owners, and the suit's prayer is essentially between the rival title claimants and their family members seeking a collusive decree, such a decree cannot be used to divest the title.

13.7. It is also further argued that in the earlier round, the same rival title claimants filed M.P.No.1 of 2010 in W.A.No.1 of 2009 etc. This issue has already been decided among the parties, where, after considering the arguments of the Wakf Board as well as the Fakhri Family, the Hon'ble Division Bench held that the rights of the rival claimants cannot be determined in the dispute between the other parties, and they must seek their remedy before the appropriate forum in accordance with the law.

13.8. A review of the case records in C.S.No.694 of 2012 reveals that P.Navaneedharaj, brother of P.Subramani, filed a suit against the legal heirs of P.Subramani. P.Navaneedharaj claims that the property belonged to his mother, Govindammal, and after her death, it devolved equally on Subramani and himself. However, in 2007, Subramani deceived him into going to the Sub-Registrar's Office and made him sign a settlement deed in his favour. Consequently, although the plaintiff owns a one-and-a-half share of the property, Subramani and his legal heirs filed a suit amongst themselves, obtaining a collusive compromise decree. As a result, the suit was filed to



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declare the decree dated 11.03.2010 in C.S.No.185 of 2008 as null and void and not binding on the plaintiff, and to obtain a preliminary decree for partition and separate possession. It also requested the appointment of an Advocate Commissioner to divide the suit property into metes and bounds, along with a permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession. Defendants 1 to 5 filed a counterclaim seeking dismissal of the plaintiff's claim and, consequently, praying for a declaration that they are the owners of the suit property, which measures 90 grounds and 75 sq. ft. Meanwhile, after taking to consideration that the earlier suit in C.S.No.185 of 2008 may be a collusive one and there is government interest in the land, *suo motu* by an order in A.No.4724/2012, the State Authorities, including the Assistant Commissioner, ULT, Collector, Chennai, District Revenue Officer, Chennai – I, and the Tahsildar, Mylapore, were impleaded as defendants 6 to 9 in the suit. Subsequently, by another order in A.No.2814 of 2013, the Tamil Nadu Wakf Board, represented by its Chief Executive Officer, was *suo motu* impleaded as the 10th defendant in the suit on 06.10.2016.

13.9. After the *suo motu* impleadment, the learned Government Advocate and the learned counsel for the Wakf Board made submissions that the entire



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property is a Wakf property dedicated to pious purposes. There was also an earlier suit in C.S.No.551 of 2013 between the same parties, except for the fourth defendant, and completely suppressing the same, the present suit was filed. After considering the submissions, this Court, speaking through Hon'ble Justice C.V.Karthikeyan, held that the suit is an act of fraud, collusion, and abuse of process of law. The suit is a vexatious litigation to deprive the Muslim community of their right to worship and use of the burial ground. By a judgment in Appln.No.4968 of 2013, in C.S.No.551 of 2013, the Court held that the Wakf Tribunal alone has jurisdiction to decide the issue. It is further held that the parties are attempting to engage in land grabbing with the aid of the Court, and hence, it constitutes a complete abuse of process, leading to the rejection of the plaint.

13.10. The Defendants 1 to 5 in the said suit, the rival title claimants, had filed O.S.A.No.181 of 2018. The Hon'ble Division Bench held that the Trial Court should not have decided without framing the issues and considering the documents. The Hon'ble Division Bench noted that the *suo motu* impleaded parties had not even filed a written statement, and, as a result, set aside the above order and remanded the matter for fresh consideration.

13.11. It is observed that both the Wakf Board and the other official



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defendants were set *ex parte*. It appears that during the pendency of the suit, a member of the Fakhri family, namely, S.M.Nazifudeen Fakhri, filed O.A.No.1445 of 2013 to get himself impleaded as a defendant in the suit. This was opposed by the other parties, and ultimately, by an order dated 13.06.2013, the impleading application was dismissed for non-prosecution. When the Wakf Board later filed an application in A.No.5336 of 2024 seeking condonation of a delay of 438 days to set aside the *ex parte* order dated 06.01.2023, it was dismissed by an order dated 17.04.2025. Afterwards, the original plaintiff did not appear and prosecute the suit claim.

13.12. By a judgment dated 06.01.2022, the Court considered that the plaintiff did not even enter the witness box, and the suit prayer was dismissed. This Court, speaking through Hon'ble Justice N.Seshasayee, then proceeded to consider the counterclaim based on the sale deed of 1915, the settlement deed of 1955, and the compromise decree of 2010, and found the counterclaim to be valid and decreed the same. It is to be pointed out that the earlier decree between the inter parties in C.S.No.551 of 2013 was not placed before the Court at the time of the final hearing. No oral submissions were made on behalf of the Wakf Board. It is clear that the declaration is made, the *inter-se lis* is only between the defendants 1 to 5 and the plaintiff alone, and the counterclaim is



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made and decided only against the plaintiff. Clearly, no *lis* or claim was made against the Wakf or Wakf Board in the said suit. A plain reading of the provisions of the Code of Civil Procedure, it can be seen that the counterclaim can be made only against the plaintiff and it will be proceeded as if it is a cross suit even if the plaintiff abandons his claim, which happened in this case. Neither the plaintiff made any claim with reference to the wakf nor can there be a counterclaim between the co-defendants. Useful reference in this regard can be made to paragraph 24 of the judgment of the Hon'ble Supreme Court of India in **Satyender and others vs. Saroj and others**¹⁶.

13.13. The declaration is, at best, only binding the plaintiff in the said suit, P.Navaneedharaj, and cannot bind the Wakf Board. In any case, the Wakf Board is merely the supervising authority with certain powers under the Act and is not the owner of the property. Without the Wakf represented by its Muthawallis, no declaration can be claimed against the Wakf. Therefore, the alleged decree by the rival claimants cannot bind the other parties in the present litigation in any manner. In fact, the *inter se* rights of the rival title claimants, *vis-a-vis* the other parties to the present litigation, have been decided in M.P.No.1 of 2010 in W.A.No.1 of 2009, where it was held that the petitioner cannot even be made a party, and they must pursue their remedy before the

¹⁶(2022) 17 SCC 154



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competent civil forum. Consequently, once again, in the next round of writ petitions, the petitioner cannot approach this Court under Article 226 of the Constitution of India to establish its rights.

13.14. The validity or invalidity of the impugned order, as well as the other questions to be decided in the writ petition, will not be in any way affected by the claim of the rival title claimants or the decree passed in counter claim in C.S.No.694 of 2012. It is for the rival title claimants to pursue the remedies available under law as the questions involved as to how far the claim based on the earlier title deeds by them is valid *vis-a-vis* the proclamation of the property as a wakf property, if the property still belongs to them then at what point of time, they can claim title or possession, whether the suits filed by them are vitiated by fraud and collusion are the larger questions that can be decided only by the appropriate civil forum. It must also be noted that even the Assistant Controller while deterring the Estate Duty, payable under the under the Estate Duty Act, 1963, records of conducting an infield inspection and finds that vegetables were cultivated in the land in question by the Fakhri Family and the income was defrayed for the maintenance of mosque and for their personal maintenance in the ratio of $\frac{1}{3}$ rd and $\frac{2}{3}$ rd. Therefore, I answer the question that the rival title claimants' claim that they have a decree in the counter claim in



C.S.No.694 of 2012 will not have any bearing on the decision to be made with reference to the *inter-se* claim between the other parties, and the rival title claimants' right to approach the appropriate Civil Court or Wakf Tribunal is kept open.

Questions Nos.2 to 4:

14. The factual background and the various findings on the issues in the earlier proceedings were narrated in detail supra. With reference to whether the property is dedicated and if so what purposes and thus the nature of wakf are all decided by the judgment in A.S.No.21 of 1964. The operative portion of the judgment is quoted in para 4.9 supra. The various findings are summarised in paragraphs 4.5 to 4.9 supra. As a matter of fact, the Appellate Court itself summed up its findings in para 30 which is reproduced hereunder:

"30. To sum up: The evidence clearly establishes that the suit property had been dedicated concurrently by the original founder, Shah Abdul Qadir, for the maintenance of the mosque and for the maintenance of the male descendants of his family. The respondents and his ancestors had been in charge of the property only as Muthawali. The net result is that the respondent has to maintain the mosque from out of the income of the suit property and is entitled to use the balance of the income for the maintenance of himself and the members of his family. The suit property will be Wakf-Alal-Aulad to the extent to which it is dedicated for the maintenance of the mosque in the suit property."

Thus, the entire property has been dedicated. It is a composite dedication for



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two purposes: (a) for the maintenance of the mosque; (b) for the maintenance of male descendants of the family.

14.1. 'Wakf-Alal-Aulad' is the concept that arises from the unique position in Islamic Law that providing for ones family amounts to double charity as providing to the members and maintaining the kinship both are also considered as charitable purposes. The following are the relevant Quranic and Hadith texts :

Core Quranic texts:-



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Dr. Mustafa Khattab, The Clear Quran	Salih International
1. The Cow / Al-Baqarah (2:177) لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ شَرْقًا وَغَرْبًا وَتَعْبُدُوا لِلدِّينِ مِنْ عَدْنٍ يَأْتِي بِالنَّفَقَةِ وَالْمَنَافِعِ وَالْمَكْرَبِ وَالْكَثِيرِ وَعَالِي صَاحٍ عَلَى خِيَةِ ذَوِي الْقُرْبَى وَالْيَتَامَى وَالْمَسْكِينِ وَإِنَّ الْكَفِيلَ وَالْمَسْكِينِ وَفِي تَرْفَعِ ذَاتِ الْمَعْلُومَةِ وَغَالِي الْفُكْرَةِ وَالْفُكْرَةِ بِعَدِيمٍ إِذَا غُلِبُوا وَالْمَسْكِينِ فِي الْبِلَادِ وَالضَّرَامِ وَجِنِ الْبَلَى¹ أُولَئِكَ الَّذِينَ صَدَقُوا² وَأُولَئِكَ هُمُ الْمُتَّقُونَ Righteousness is not in turning your faces towards the east or the west. Rather, the righteous are those who believe in Allah, the Last Day, the angels, the Books, and the prophets; who give charity out of their cherished wealth to relatives, orphans, the poor, 'needy' travellers, beggars, and for freeing captives; who establish prayer, pay alms-tax, and keep the pledges they make; and who are patient in times of suffering, adversity, and in 'the heat of' battle. It is they who are true in faith¹, and it is they who are mindful 'of Allah' 2. The Night Journey / Al-Isra (17:26) وَأَتَى ذَا الْقُرْبَىٰ حَقَّهُ وَالْيَتَامَىٰ حَقَّهُ وَالْمَسْكِينِ حَقَّهُ وَلَا تَبْذُرُوا نَفْسًا حَقَّهُ وَالْيَتَامَىٰ حَقَّهُ وَالْمَسْكِينِ حَقَّهُ وَلَا تَبْذُرُوا نَفْسًا Give to close relatives their due, as well as the poor and the traveler, and do not spend wastefully. 3. The Romans / Ar-Rum (30:38) لَقَدْ لَبِثْنَا الْأَرْضَ وَقَدْ آمَنَّا بِالْحَقِّ وَلَئِنْ كُنَّا إِلَّا وَجْهَ الْقَوْمِ الْأَوَّلِيِّ³ لَقَدْ لَبِثْنَا الْأَرْضَ وَقَدْ آمَنَّا بِالْحَقِّ وَلَئِنْ كُنَّا إِلَّا وَجْهَ لَقَدْ لَبِثْنَا الْأَرْضَ وَقَدْ آمَنَّا بِالْحَقِّ وَلَئِنْ كُنَّا إِلَّا وَجْهَ So give the relative his right, as well as the poor and the traveler. That is best for those who desire the countenance of Allah, and it is they who will be the successful.	1) ...وَأَتَى الْفَقْرَ عَلَى خِيَةِ ذَوِي الْقُرْبَى وَالْيَتَامَى وَالْمَسْكِينِ "and gives wealth, in spite of love for it, to relatives, orphans, and the needy..." (Salih International) 2) ...وَأَتَى ذَا الْقُرْبَى حَقَّهُ "And give the relative his right..." (Salih International) 3) ...لَقَدْ لَبِثْنَا الْأَرْضَ وَقَدْ آمَنَّا بِالْحَقِّ وَلَئِنْ كُنَّا إِلَّا وَجْهَ "So give the relative his right, as well as the poor and the traveler..." (Salih International)

17

¹ Dr. Mustafa Khattab is a Canadian-Egyptian Muslim scholar, imam, and author best known for translating 'The Clear Quran', a widely acclaimed modern English translation of the Quran.

² The Quran, English translation by Salih International (Dakka: Al-Qur'an Publishing House)



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Hadith Texts

- **Abū Talhah's Bayru 'hāgarden endowed to kin** *Sahih al-Bukhari* **أَبُو تَالْحَةَ فِي الْقُرْبَى** *I shall*
give it in charity to my relatives. " (Bukhari, on 3:92 "You will not attain birr...")
- **Charity to relatives counts double (charity + kinship)** *Jāmi' al-Tirmidhī; Musnad Ahmad; Sunan Ibn Mājah* **الْمَصَدَقَةُ عَلَى الْمَكِينِ مَنَقَّةٌ، وَهِيَ عَلَى ذِي الرَّحِمِ الثَّلَاثُ** *Charity to a poor person*
is [just] charity; to a kinsman it is two [things]: charity and maintaining kinship. " (Tirmidhi; Ahmad; Ibn Mājah)
- **Begin with those you support** — *Sahih al-Bukhari; Sahih Muslim* **بِذَا بِمَنْ تَعُولُ** *Begin with those*
whom you support. " (Bukhari; Muslim)

14.2 . Section 3 (l) of the Wakf Act, 1954, defined the Wakf as inclusive of Wakf-Alal-Aulad also and the same is reproduced hereunder for ready reference :

"(l) "wakf" means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—

- (i) a wakf by user;
 - (ii) mashrut-ul-khidmat; and
 - (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable; and "wakif" means any person making such dedication;"
- (Emphasis supplied)

14.3. Section 3(r) of the Wakf Act, 1995 also includes Wakf-Alal-Aulad with the same clause except to add that when the line of succession fails, the money shall be spent on education, development, welfare and such other purposes as recognised by Muslim Law. The question as to what constitutes a dedication as 'Wakf-Alal-Aulad' and its nature has been considered in detail in **M.S.Muhammad Yahya** (cited supra). Useful reference can be made to

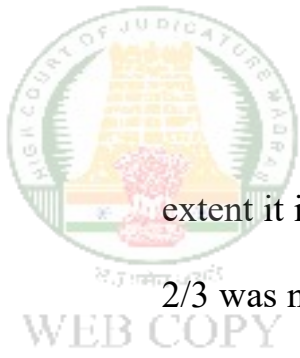


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paragraphs 17 to 34 of the said judgment. It should be noted that this Court, speaking through Hon'ble Mr.Justice V.Lakshmi Narayanan, considered the issue by taking into account the commentaries on Muhammadan Law by Hon'ble Mr.Justice Ameer Ali and taking into account the judgments on the point, more specifically, the law laid down by this Court in **Tamil Nadu Wakf Board vs. M.Ibrahim Musuee**¹⁷. It was held that there can be two kinds of Wakf-Alal-Aulad - (a) Wakf-Alal-Aulad Simpliciter and (b) Wakf-Alal-Aulad Composite. Simpliciter is the case in which the entire income of the property is dedicated by the wakif for the benefit of himself, his family, and descendants and on the failure of the line of succession to the poor or other purposes. If only a portion of the income is given for the benefit of the wakif and his family and the remaining portion is reserved for other pious, religious, or charitable purposes, then it is Wakf-Alal-Aulad Composite. After considering the other judgments on the point, this Court ultimately held that giving property to one's own family is itself an important aspect of Islam with respect to the law of charity. Ultimately, it was concluded that both Wakf-Alal-Aulad Simpliciter as well as Wakf-Alal-Aulad Composite answer the Shariat.

14.4. A doubt is attempted to be raised by pressing the last sentence in paragraph 30 of the judgment in A.S.No.21 of 1964 as well as the operative portion (both extracted supra) by relying on the phrase “Wakf-Alal-Aulad to the

¹⁷AIR 1979 Mad 231



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extent it is dedicated for the maintenance of the mosque”. The division of 1/3 or 2/3 was not even an issue in the Suit. No demarcation was even contemplated at that time. It should be read in the context where the trial court held that only the mosque and the pathway alone are wakf by user and the rest is private property. While allowing the appeal so as to include the entire property as dedicated, the Appellate Court held that to the extent it is decided for the maintenance of the mosque, the entire property is Wakf-Alal-Aulad. It never held that maintenance of the male descendants is not a pious or charitable purpose, and to that extent, the property is not a Wakf-Alal-Aulad, and the plea of the Fakhri Family -II and the subsequent purchaser is to infer that such a declaration cannot be countenanced. On the other hand, the finding is that it is a composite dedication and thus, reading the judgment as a whole, I hold that the Judgment in A.S.No.21 of 1964 declares the entire property as Wakf-Alal-Aulad.

14.5. The second limb to be considered is to whether that status got ruptured and the properties were ordered to be divided and partitioned on account of the judgment of this Court in W.P.No.6846 of 1991. Admittedly, the judgment has become final and will be binding inter parties. The case was filed by the Wakf Board's action in assuming direct management. This Court first considered that the judgment in A.S.No.21 of 1964 and the findings have become final. The Court then considered the views that were prevalent with



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reference to Wakf-Alal-Aulad. It chose to follow the view expressed that Wakf-Alal-Aulad is in the nature of a private Wakf and if it only release to pious or charitable purposes recognised by Islam, it is included in the definition of Wakf under the Wakf Act, 1954. More specifically, it considered that the Central Government proposed an amended to have the clause in Section 3(1)(iii) “a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable” substituted simply as ‘wakf-alal-aulad’ but however the amendment was not brought to force. Therefore, the learned Judge considered the view that only insofar as the pious and charitable purposes alone is dealt with by the Act and thus the Wakf Boards jurisdiction would be only to that extent covered by the Act. The learned Judge found that the view taken in **V.M.Mohin vs. Wakf Board, Madras**¹⁸ as affirmed in **Ebrahim Musuee** (Cited supra) appears to be the correct view. The learned Judge further noted that even though 30 years have passed, no further steps have been taken in that direction to apportion the property. Then it took note of the 1/3 and 2/3 consideration given in the Estate Duty Judgements and it observed thus in paragraph 10:

"Further from the above rulings of this court, it is clear that in such cases the matter has to be remitted. I feel that, upon peculiar facts and circumstances of the case, the Wakf Board itself shall determine the extent to which the property has been dedicated for any purpose recognized by Muslim law as pious, religious, or charitable,

¹⁸AIR 1968 Mad 243



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viz., for the maintenance of the mosque and for the purpose of maintenance of the male descendants of the original Wakif."

(Emphasis

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14.6. In paragraph 11 of the judgment, it was further found that the order of the Wakf Board that was under challenge was passed without complying with the principles of natural justice, and the matter was remitted to the Wakf Board with the directions contained in paragraph 12 of the said judgment. More specifically, the Court considered that for a period of 30 years, no development had taken place and nothing had been generated for the upkeep of the mosque or for the maintenance of family members, and it was deemed pragmatic to apportion the land going forward. The directions are extracted supra in Paragraph 4.15 supra. This judgment was delivered on 15.12.1995.

14.7. 16th day from the judgment, the Wakf Act, 1995 came into force with effect from 01.01.1996. The legislature seems to have taken into account the original clause relating to Wakf-Alal-Aulad and the proposed amendment to keep it simple as wakf-alal-aulad and finally, the definition of ‘wakf’ under Section 3 (r) stands as follows:

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

(i) a wakf by user but such wakf shall not cease to be a wakf



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by reason only of the user having ceased irrespective of the period of such cesser;

(ii) a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;

(iii) “grants”, including mashrat-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iv) A waqf-alal-aulad is to the extent that the property is dedicated for any purpose recognised by Muslim law as pious, religious, or charitable. When the line of succession fails, the income of the waqf shall be spent on education, development, welfare, and other purposes recognised by Muslim law. “Waqif” means any person making such dedication." (Emphasis supplied)

14.8. Thus, from the insertion of the clause relating to the line of succession, it is clear that the legislature was conscious of the concept and that if the line of succession fails, the income of the wakf should be used for education, development, welfare, and other purposes recognised by Muslim Law. This indicates that the legislature considered maintaining one's family a pious duty under Islam, and its intention to include this within the scope of the act is evident from the provisions detailing how the income should be spent if the line of succession fails.

14.9. In this regard, it is evident that by the time the Masjid Committee filed an intra-court appeal, the amendment had already taken effect. When the appeal was not entertained, the Wakf Board neither clarified the issue with the Court nor considered the provisions of the new act. However, it proceeded to implement the judgment in W.P.No.6846 of 1991. Thus, a reading of the



judgment in W.P.No.6846 of 1991 shows that the findings effectively partially altered or affected the nature of the property's dedication, as it held that Wakf-Alal-Aulad, only for mosque maintenance purposes, falls within the definition of 'wakf' under the Wakf Act, 1954, and that the Wakf Board's jurisdiction is limited to this. Therefore, it directed that the demarcation of the property be excluded from the Wakf Board's purview.

14.10. When the Wakf Board proceeded to implement the judgment, the resolutions were also passed with the consensual views of the Fakhri Family. It is considered that the $\frac{1}{3}$ rd and $\frac{2}{3}$ rd were positively directed by the Court, but that is not the case. Secondly, even as per the Court's directions, it had to demarcate the portions of the Wakf-Alal-Aulad within its jurisdiction. However, it went on to permanently divide the property, thereby creating a 'public wakf' and releasing the rest for the enjoyment of Fakhri Family. Thus, the resolutions were not strictly in accordance with the judgment.

14.11. The original resolution was passed on 19.04.1998, as detailed in Paragraphs 4.16 and 4.17 above. Apart from the mosque, pathway, and burial ground area, 30 grounds of the remaining vacant land were designated as a public wakf, and 60 grounds were ordered to be released for the enjoyment of



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the family. The resolution included instructions to the Chief Executive Officer regarding its implementation. On 22.01.2003, a resolution was passed again, stating that the burial ground was to be used only for burying family members. The Fakri Family members agreed, and an agreement for handing over and taking over was signed on 31.03.2003. This agreement was again signed on a stamped document on 25.04.2003. Plan Annexure -III was prepared. Boundary stones were laid on the ground. Additionally, the Chief Executive Officer published the decision in the gazette on 08.05.2003, notifying the implementation of the resolutions, taking possession of the mosque and its properties, and releasing the properties for their enjoyment. There was also a mutation of the revenue records, subdividing the extents according to the plan, and the patta for the released portions was transferred into the names of the Fakhri Family members.

14.12. Precisely, by labelling these actions as illegal, the impugned government order, issued after 17 years, on 19.04.2021, undid them. Before analysing the scope of power and technical objections, the essential principles of violating the core tenets of Islamic Law and fairness must be examined.

14.13. The submission of the learned Senior Counsel for the Masjid Committee is that ‘once a wakf is always a wakf. It vests in the Almighty, and



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no one can divest it'. There can be no contest to this proposition, and the judgments are also cited supra. But in the instant case, if it has to be accepted, the Mosque, houz, precincts, and pathway had to revert as Wakf-Alal-Aulad. Whereas, the decision of the wakf board is that the same be made a 'public wakf'. That is a step higher than the initial dedication; Afterwards, by entering into an agreement of handing over and taking over, the Fakhri Family members have also accepted and acted upon it. Therefore, the said principle need not be applied to the instant case as far as the public wakf is concerned. The dedication continues, and it is of a higher order. Though the Fakhri Family can also claim to be part of the management, they can no longer exercise any other special right. It becomes the absolute entitlement of the Muslim community. No income henceforth from the said property can be claimed by them, and all the income generated shall only be used for the purposes of the mosque. In the current scenario, where the property is in the heart of the city, the mosque is comfortably placed on 5 grounds or thereabouts. The 30 grounds earmarked can be developed, and the income will be adequate and appropriate for the maintenance of the mosque. More specifically, the Wakf Board had decided to develop the property as a Working Women's Hostel with a focus on Muslim women. The same leads to the ideal situation for the devout Muslim population. Now, with reference to the remaining two-thirds, I do not see any public interest



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or the interest of the devotee Muslims in tagging the same along.

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14.14. The interest of the masjid committee in the $\frac{2}{3}$ rd meant for the family defies logic and common sense. Furthermore, 30 grounds belonging to the public wakf can be developed by crowdfunding, state funding and wakf board funding, etc. By tagging the baggage meant for the family's welfare, all this cannot be done. Thus, the plea of the masjid committee and other private individuals in this regard cannot be entertained. The wakf board's supervision and powers can concentrate on the maintenance and development of the mosque rather than the maintenance of the male descendants of the family. The re-tagging will only serve the interest of joint developers, encroachers, etc., and will be against the public/religious purpose. With reference to the nature of property demarcated and apportioned for the maintenance of the family members, the reasons are given separately hereinafter.

14.15 The question is also to be considered as to whether the exercise results in any unfair advantage to the Fakhri Family members. It must be recognised that there is no written dedication in this case. Admittedly, when the pious individual came from Aurangabad and settled in Chennai, this property



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was granted by the Nawab. At that time, the mosque was established, and prayers were conducted. The rest of the land was cultivated, and the income was used to cover both personal expenses and mosque needs. Therefore, the dedication is by the user. Because, in the 1960s, the excise duty component was higher considering the income from vegetable cultivation, Ex.B2, the Assessment Order, ultimately became the decisive evidence for determining that the property is a wakf by user and not otherwise. Similarly, the calculation of 1/3 and 2/3 became standard when determining the extent to which income is allocated to both purposes. Thus, everything started and concluded with the declarations, decisions, and findings in those revenue exercises. The same is fair. Because the property value has now increased, it cannot be claimed as an unfair advantage. I do not find any reason why the demarcation or apportionment should be obliterated and the entire property unified again.

14.16. More importantly, the Masjid Committee and others once again attempted the above-mentioned exercise by approaching the Wakf Tribunal in O.A.No.3 of 2004, the Tribunal remitted the matter back to the Wakf Board. When the order was challenged in W.P.Nos.17624 of 2008, etc., the learned Judge dismissed it on the ground that the opportunity had not been given to the Masjid Committee. The Civil Revision Petition and intra-court appeals were all



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heard by the Hon'ble Division Bench, which, by the judgment dated 20.12.2013, held as follows :

"17. ... The rights of the parties having been determined by the order of this court in WP No. 15144 of 1991, confirmed in WA No. 154 of 1997, the third respondent cannot be permitted to re-agitate the issue, particularly when the demarcation has been notified in the official gazette on 27/08/2003 and third party interests are created in the two-thirds property allotted to the male descendants of the Wakif."

14.17. The Order of the Hon'ble Division Bench was upheld by the Hon'ble Supreme Court of India through an Order dated 08.07.2015 in the Special Leave Petition filed by the Wakf Board, including a prayer to condone the delay in Special Leave to Appeal (C) No.10837 of 2015. The Hon'ble Supreme Court stated, "We do not find any legal and valid ground for interference. The Special Leave Petition is dismissed." Subsequently, the Masjid Committee filed separate S.L.P.(Civil)Nos.35138-35142 of 2014, which were dismissed by order dated 23.11.2017. Therefore, once everything has reached finality, matters cannot be reopened over time by pointing out errors. When the resolutions were challenged and had obtained finality through inter-party litigation, ultimately, the Order of the Government would amount to undoing the judgments of this Court and the Hon'ble Supreme Court of India, as between the parties, and as such, cannot be permitted.

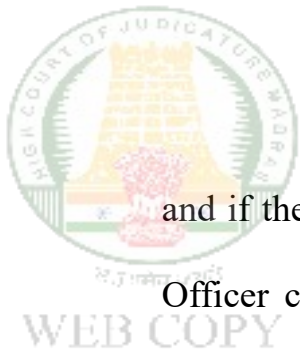
14.18. The judgment of the Civil Court in A.S.No.21 of 1964 inter-



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parties had attained finality, and the decision is that the entire property is dedicated for the composite purpose. The judgment in W.P.No.6846 of 1994 inter-parties had attained finality and the decision is by taking into account the then prevalent legal position as to private wakf and public wakf and the nature of wakf alal aulad being considered as a wakf combining within the definition of the Wakf Act, 1954 and control and supervision of the Wakf Board, ordered apportionment and demarcation by splitting the property for both the purposes separately. The judgment of the Division Bench in C.R.P.No.4186 of 2008 and W.A.No.1 of 2009 etc., inter-parties had attained finality and the decision is that the matter of apportionment and demarcation cannot be reagitated by Masjid Committee and others. Thus, the reasons to contra contained in the impugned government order amount to overriding the judgement inter-parties. Raising the same grounds by the Masjid Committee or Wakf Board in the instant case cannot be permitted on the principles of *Res Judicata*. *Res judicata* is based on public policy and the finality of the decisions on the issues. Repeatedly, the matters cannot be reargued *ad infinitum*.

14.19. Finally, the entire exercise is carried out pursuant to the reference made by the Chief Executive Officer under Section 26 of the Wakf Act, 1995. According to this, if any resolution is passed and has not yet been implemented,



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and if the grounds mentioned in Section 26(a) to (d) exist, the Chief Executive Officer can request the Wakf Board to reconsider. If the Board reaffirms the resolution, it can be referred to the Government, and the State Government's decision will be final. In this case, it must be noted that, based on the resolutions, the Agreement of Handing Over and Taking Over was entered into, boundary stones were laid, demarcation was completed, and the Chief Executive Officer published a gazette notification. Therefore, the resolution was fully carried out. There is no question now of referring the matter for reconsideration.

14.20 It is also important to note that the Wakf Board took a commendable decision on 25.09.2003 to develop the 30 grounds of the public wakf by establishing a working women's hostel, which was also announced through a public advertisement on 11.11.2003. The counter affidavit filed by the Wakf Board on 18.02.2020 in W.P.No.22577 of 2019 covers most of these points and, in Paragraph 10, admits that the Wakf Board applied for and obtained a patta on 09.09.2003 for the demarcated portion of the public wakf. Therefore, it is too late to argue that the resolutions were not implemented and that the situation remains fluid. Consequently, the very foundation for exercising power is lacking, and the impugned Government Orders cannot be



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sustained.

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14.21 Regarding the 2/3 of the property apportioned for the enjoyment of Fakhri Family, it must be seen that a careful reading of the judgment in the Appeal Suit No.21 of 1964 or the order in W.P.No. 6846 of 1994, the Courts have only considered the composite nature of the wakf alal aulad and considered the legal position obtaining as on that date before the coming into force of the Wakf Act, 1995, held that the extent as decided to the mosque purposes shall be wakf alal aulad within the definition of then Section 3(iii) of the Act of 1954 so as to bring it within the supervision of the Wakf Board. Nowhere do the judgments declare that the other purpose, that is, maintaining the male descendants, cannot form the basis for creating a wakf alal aulad. The judgments consciously refrained from declaring the 2/3rd as private property. The resolution of the Wakf Board use the phrase ‘the land is released for the enjoyment’ of Fakhri Family. The Hon'ble Division Bench, in C.R.P.No.4186 of 2008 and W.A.No.1of 2009, did took note of the alienation. But the issue whether the same was valid, whether the 2/3 would be a wakf alal aulad or private property was not expressly decided.

14.22. Pertinently, by the Wakf (Amendment) Act, 2025, a new provision



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in Section 3A is inserted, and the same is reproduced hereunder :

"3A. (1) No person shall create a waqf unless he is the lawful owner of the property and competent to transfer or dedicate such property.

(2) The creation of a waqf-alal-aulad shall not result in denial of inheritance rights of heirs, including women heirs, of the waqf or any other rights of persons with lawful claims."

(Emphasis supplied)

While the constitutional validity is pending before the Hon'ble Supreme Court of India in W.P.(Civil)No.276 of 2025, it can be observed that, although some provisions are stayed by the interim order dated 15.09.2025, the above provision is not stayed. It is submitted across the bar that there are female heirs also. Arguments may be made regarding the applicability of the said provision. It must be noted that, except for the definition as a Wakf under the Wakf Act, 1995 and the dedication, the non-alienability would otherwise be affected by the rule against perpetuity. In this case, the dedication is solely for the maintenance of male members, directly denying the inheritance rights of women heirs. Even the Quranic texts and Hadiths, which emphasise maintaining loved ones as pious, do not authorise discrimination against female members. Before this Court, it is the contention of the Fakhri Family -I that the property continues to be a wakf alal aulad. It is the contention of the Fakhri Family -II and the subsequent purchasers that the property is private property. The female heirs are not parties in these writ petitions, which only challenge the impugned



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Government Order. In view of the Wakf Act, 1995, even after demarcation and allotment, the Wakf Board can still claim its supervision.

14.23. The matter requires detailed consideration, and it will be between the Family Members and the Wakf Board; no third party can have any legitimate interest in it. The property will revert to other pious purposes, such as education, only if there are no heirs of the Fakhri Family, which is not the case. Therefore, it is a pure question to be decided between the members of the Fakhri Family, including female heirs, and the Wakf Board. It involves a detailed consideration of facts and law after recording evidence, and it will be open for the members of the Fakhri Family to approach the Wakf Tribunal in this regard for determining the nature of the property by filing an appropriate petition as per Chapter VIII of the Wakf Act, 1995. It is for the Tribunal to consider and decide accordingly.

14.24. The public wakf property is in the centre of the city and continues to be an eyesore to encroachers and busybodies due to the prolonged litigation pending. Because of this, this Court had to examine all the details and render its findings regarding all the questions argued. Further prolongation of the issue will cause irreparable loss. Additionally, considering the welfare of the public wakf, further directions need to be issued. The Wakf Board's decision to



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establish a working women's hostel will greatly benefit the Muslim population throughout Tamil Nadu. In many cases, parents are finding it difficult to secure suitable, safe, and hygienic accommodation for girl students pursuing college and higher education, as well as for those who are now employed. Chennai, being the capital city, also attracts a large number of women employees.

14.25. Therefore, if a safe, hygienic, and state-of-the-art women's hostel is built and Muslim women are accommodated at affordable charges, it can be a win-win situation. Adequate income can also be generated. At the same time, the dual purpose of education and empowerment of Muslim women is fulfilled. Their personal needs, such as having a prayer hall, can also be addressed. If a multi-storied structure is erected on the 30 grounds within permissible limits, even at a moderate charge, it will generate good income for the mosque to meet its needs and purposes. Therefore, the decision of the Wakf Board dated 25.09.2003 is upheld with regard to establishing the hostel.

14.26. However, the only difficulty lies in the decision to proceed through a joint venture. The same is not mandatory. Operations and maintenance can be managed using charges collected from inmates. If there is insufficient occupancy among Muslim women, certain floors can be generally opened to girl students and working women, and, as and when demand from Muslim women



increases, a decision can be made periodically. The main challenge is the high cost of construction. To address this, the Wakf Board can engage an appropriate architect or engineer and prepare a plan/costs estimate. By adding a 30% contingency for price increases, a budget can be arrived at. The Wakf Board (i) if it has funds at its disposal that can be defrayed for this purpose, can cover the costs, and allocate them accordingly; (ii) seek grants from the Government under Minority Welfare Schemes; (iii) if neither option is feasible, a separate bank account can be opened, and an advertisement for donations/crowd funding can be issued. Every Jamath, individual Muslim, and Philanthropist throughout the State if contribute generously, it can meet the construction costs. The budget can be secured through a combination of all three sources also.

The Result:

15. In the result, the Writ Petitions are partly allowed on the following terms :

(I) The impugned Government Order in G.O.(Ms)No.27, Backward Classes, Most Backward Classes and Minorities Welfare (S2) Department, dated 19.04.2021 passed by the first respondent shall stand quashed;

(II) The demarcations and subdivisions of the property as per Annexure -III shall stand, and the constitution of a public wakf is upheld.



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(III) The petitioners or their family members shall be considered any other devotee regarding the public wakf, though preference shall be given to being part of the managing committee.

(IV) The Wakf Board shall be in the direct management of the public wakf until the development of the 30 grounds vacant land is complete. To assist with this, it may appoint an ad hoc committee composed of mosque devotees, members of the Fakhri Family and other field experts.

(V) The Wakf Board shall take the steps mentioned above to prepare a plan and estimate for developing the 30 grounds of land into a Women's Hostel, along with any other facilities considered appropriate. It shall raise funds in the manner described above and complete the process of securing the budget amount within 6 months from the date of receipt of the web copy of the Order. Within 60 days of securing the amount, it can select a contractor through a tender process, and after due plan approval, construction shall be started within one year from the date of this Order and completed within two years from the date of this order.

(VI) The rights of the respondents 5 to 8 to approach the Civil Court/Tribunal if they choose to, are kept open.

(VII) It will be open for the Writ Petitioners or any other member of the Fakhri Family, including female heirs, to approach the Wakf Tribunal regarding



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the nature of the 2/3 apportioned property, and the Tribunal shall decide the matter accordingly. Depending on the decision, further decisions for the future can be made.

(VIII) For filing incorrect copies of the crucial judgment in A.S.No.21 of 1964 with different wordings of the important operative portion paragraph 32 not reflecting the exact original of the judgment, costs are imposed as follows:-

(a) Rs.10,000/- on the petitioners in W.P.No.16776 of 2021; and (b) Rs.10,000/- on the petitioner in W.P.No.21288 of 2021. As the learned Principal City Civil Judge, Chennai, and the staff of the City Civil Court, Chennai, exerted effort to furnish a correct and exact version, the cost shall be paid to the City Civil Court-District Mediation Centre, Chennai.

(IX) All Miscellaneous Petitions stand closed.

07.04.2026

Neutral Citation Case : Yes
bkn / smn2



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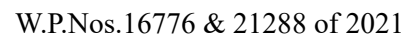
Annexure – 1

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Annexure – 2





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To:

1. The Principal Secretary,
Government of Tamil Nadu,
Department of Backward Classes,
Most Backward Classes and Minorities Welfare Department,
St. George Fort, Secretariat,
Chennai.
2. The Chief Executive Officer,
Tamil Nadu Wakf Board,
1, Jaffar Syrang Street,
Vallalseethakathi Nagar,
Chennai – 600 001.



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D.BHARATHA CHAKRAVARTHY, J.

bkn/smn2

Pre-delivery common order in
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07.04.2026