

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No. 18690 OF 2018

And

WRIT PETITION No.38740 OF 2022

WRIT PETITION No. 18690 OF 2018:

Between:

Nimma Mahender Reddy & others

... **Petitioners**

And

The State of Telangana & others

... **Respondents**

WRIT PETITION No.38740 OF 2022:

Between:

Sri Jillela Damoder Reddy

... **Petitioner**

And

The State of Telangana & others

... **Respondents**

JUDGMENT PRONOUNCED ON : 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? : Yes**
- 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes**
- 3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**% 03.06.2024****WRIT PETITION No. 18690 OF 2018:****Between:**

Nimma Mahender Reddy & others

... **Petitioners****And**

The State of Telangana & others

... **Respondents****WRIT PETITION No.38740 OF 2022:****Between:**

Sri Jillela Damoder Reddy

... **Petitioner****And**

The State of Telangana & others

... **Respondents****< Gist:****> Head Note:**

! Counsel for the Petitioners

In W.P.No.18690 of 2016 }

In W.P.No.38740 of 2022 } Mr Dida Vijaya Kumar

^ Counsel for Respondents :

In W.P.No.18690 of 2016 : GP for Social Welfare for R1

GP for Revenue for R2

Mr.Abu Akram for R3

Mr.Mohd Naseer Uddin for R9

In W.P.No.38740 of 2022 : GP for Revenue for R1, R4 to R6

Mr.Abu Akram for R2 and R3

? Cases Referred:

HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.18690 OF 2016
and
WRIT PETITION NO. 38740 OF 2023

COMMON ORDER:

WRIT PETITION No.18690 OF 2016

Heard Sri Dida Vijay Kumar, the learned counsel appearing on behalf of the Petitioners and learned Senior Designate Counsel Sri B. Mayur Reddy representing the Counsel on record, Mr. Abu Akram appearing on behalf of the 3rd Respondent Telangana State Wakf Board, Haj House, Nampally, Hyderabad.

2. The Petitioners filed the present W.P.No.18690/2018 seeking prayer as under:

"To issue Writ of Mandamus by declaring the action of the Respondents in notifying the private patta lands of the petitioners in Sy. No. 2, 12, 17, 18, 19, 26, 27, 28, 29, 30, 54, 68, 69, 71, 72, 75, 95, 158, 179, 180, 181, 182, 183, 184, 187, 291, 292, 295, 338, 339, 364 and 365 situated at Kongara Khurd Village, Maheshwaram Mandal, Rangareddy District, being owned possessed and enjoyed from the times immemorial and covered by registered sale deeds and Occupancy Right Certificates as the lands of Darga Hajrath Syed Shah Raju Mohammed Hussain Kattal by issuing an Addendum to Wakf Properties in No

S4/RR/2006 published in the Andhra Pradesh Gazette No. 6, dt 8.2.2007 based on the proceedings of the Assistant Survey Commissioner of Wakf Ranga Reddy District dated 18.07.2004 as illegal unjust arbitrary in violation of the principles of natural justice and violative of Articles 14, 19, 21 and 300A of the Constitution of India apart from contrary to the various provisions of A.P. (Telangana Area) Abolition of Inams Act, 1955 and the Rules made there under and the Telangana Rights in Land and Pattadar Pass Books Act, 1971 and Rules made there under and consequently set aside the Addendum and the proceedings of the Assistant Survey Commissioner of Wakf Ranga Reddy District dated 18.07.2004 while directing the Respondents not to interfere with the peaceful possession and enjoyment of the petitioners over the lands in question”.

3. The case of the Petitioners in W.P.No.18690 of 2018, in brief, as per the averments made by the petitioners in the affidavit filed by the petitioners in support of the present writ petition, is as under:

i) The Petitioners are absolute owners and possessors of extents of lands situated in Sy. Nos. 2, 12, 17, 18, 19, 26, 27, 28, 29, 30, 54, 68, 69, 71, 72, 75, 95, 158, 179, 180, 181, 182, 183, 184, 187, 291, 292, 295, 338, 339, 364 and 365 situated

at Kongara Khurd Village, Maheshwaram Mandal, Rangareddy District, through Registered Sale Deed Documents.

ii) Few of the Petitioners had become owners through their ancestors, few of the Petitioners had purchased the subject lands as per their respective sale deeds from their vendors and few of the Petitioners had purchased the subject lands as per their respective sale deeds from original pattadars (as explained at paras 1 to 8 in the affidavit filed by the Petitioners in support of the present writ petition) and the Petitioners had been in continuous possession of the subject lands since the date of their purchase and when the Petitioners approached the Sub-Registrar Office on 15.01.2018 to obtain the market value certificate, it was informed to the Petitioners that the subject lands are shown as Wakf lands and prohibited the registration in view of Addendum to Wakf properties in No. S4/RR/2006 published in the Andhra Pradesh Gazettee No.6 dated 08.02.2007. Aggrieved by the same, Petitioners filed the present writ petition.

WRIT PETITION NO. 38740 OF 2023

4. Heard Sri D.Vijya Kumar, the learned counsel appearing on behalf of the Petitioner and learned Senior Designate Counsel Sri B. Mayur Reddy representing the Counsel on record Mr. Abu Akram appearing on behalf of

the 2nd Respondent Telangana State Wakf Board, Haj House, Nampally, Hyderabad.

5. The Petitioner filed the present W.P.No. 38740 of 2022 seeking prayer as under :

“declaring the action of the Respondents No. 2 and 3 in notifying the Petitioner private patta lands bearing Survey No. 375, admeasuring Acres 01.08 Guntas situated at Kongara Khurda Village, Maheshwaram Mandal, Kongara Raviryala Gram Panchyat, Rangareddy District, as the lands of Darga Hajrath Syed Shah Raju Mohammed Hussain Kattal basing on the report dated 18.07.2004 and thereby issuing an Addendum to Wakf Properties in No. S4/RR/2006 published in the Andhra Pradesh Gazette No. 6 dated 08.02.2007 as illegal unjust arbitrary in violation of the principles of natural justice and violative of Articles 14, 19, 21 and 300A of the Constitution of India apart contrary to the various provisions of Wakf Act as well as the Rule 5 of AP Wakf Rules, 2000 and consequently set aside the Addendum to Wakf Properties in No. S4/RR/2006 published in the Andhra Pradesh Gazette No. 6 dated 08.02.2007 so also the proceedings/report dated 18.07.2004 of the Respondent No. 3 and also direct the Respondents not to interfere with the peaceful possession and enjoyment of the Petitioner over the lands in question”.

6. The case of the Petitioner in W.P.No.38740 of 2022, in brief, as per the averments made by the petitioner in

the affidavit filed by the petitioner in support of the present writ petition, is as under:

a) The Petitioner is the absolute owner and possessor of the land admeasuring Ac. 00-24 Gts in survey No. 375, Ac00-25 Gts in survey No. 376, total admeasuring Ac. 01.09 Gts and Ac. 00-36 Gts in survey No. 5/A, Ac.00-24 Gts in survey No. 375 and Ac 00-24 Gts in survey No. 376, total land admeasuring Acres 02 Gts situated at Kongara Khurd "A" Village, Maheshwaram Mandal, Ranga Reddy District. The petitioner also got his name mutated in the revenue records as per the proceedings bearing No. D/3759/99.

b) It is the case of the petitioner that the Revenue Department has not issued e-pattadar passbook to the Petitioner and has not entered name of the Petitioners as Pattadars in the Dharani website as against the subject land in question, on the ground that the subject land in question is a wakf property and the same was published in the AP Gazette Notification dated 08.02.2007 as per the proceedings S4/RR/2006 as an addendum to the notification published in AP Gazette No.6 dated 09.02.1989 at page No.37 and its serial No. 2151.

c) However, in the Gazette Notification dated 09.02.1989 in serial No. 2151, there was no reference with regard to the Petitioners land i.e. land in survey No.375 and further in the said notification there is no mention that the said notification was issued after conducting the survey as contemplated under section 4 of the Wakf Act, further the Gazette Notification dated 08.02.2007 was also silent regarding the survey of the subject property.

d) Moreover, the Respondents in order to overcome their lapse, conducted a survey under the guise of issuing GOMs No. 7 dated 03.03.2001 and consequently a report was submitted to the 4th respondent by the 3rd respondent and in his proceedings dated 18.07.2004 it was specifically mentioned that the Petitioner and their vendor and other villagers have been in possession of the lands in question. While conducting the survey the authorities did not issue any notice to the petitioner nor his vendor, in fact the authorities did not conduct any survey or enquiry and simply prepared the report and based on the said report the 2nd Respondent issued the addendum which was gazette dated 08.02.2007.

e) Furthermore, in the Gazette dated 08.02.2007, it was mentioned that an addendum to the notification had been published in AP Gazette No.6 dated 09.02.1989 at page No.37 and its serial No.2151 in respect of Dargah Syed Shah Raju Hussaini situated at Kongara Khurd Village of Maheshwaram Mandal of Ranga Reddy District. In the gazette notification dated 09.02.1989, only about 12 Acres (60,597.8 square yards) land was notified as the property of Dargah, whereas in the addendum notification dated 08.02.2007 at about 500 to 700 Acres of property in various survey numbers of Kongara Khurd Village of Maheshwaram Mandal were included as a property of Dargah without any survey or notice to the interested persons and without following the procedure as contemplated under the Act.

f) Further, the list of Wakf published under sub Section (2) of Section 5 of the Act, are not even mentioned in the gazette notification, though they are mentioned in the annexure. Thus, the impugned gazette does not confirm to the annexure at all and several details which are required to be mentioned as per the annexure are not mentioned in the gazette. Also, the report dated 18.07.2004 addressed by the 3rd Respondent clearly indicates that the villagers are in possession of the land in

question for the last 50 years and also acknowledged issuance of passbooks and title deeds to them.

g) However, the 2nd Respondent without any basis, without any wakfnama simply included the Petitioners property and the property of other villagers in the notification and claimed the property as wakf property. Thus, the Gazette No.6 dated 08.02.2007 was issued without any preliminary survey as contemplated under section 4 of the Wakf Act, 1995, without any right as contemplated under section 3 (r) of the Wakf Act. There is no mention in the gazette notification regarding any survey having been conducted prior to the issuance of gazette notification dated 09.02.1989.

h) Moreover, the 2nd Respondent filed a suit in OS No. 16 of 1971, for recovery of possession of the lands covered under the impugned notification claiming to be the owners of the said land and the same was dismissed on 10.04.1974 for non-prosecution. Correspondingly, the impugned notification was issued after lapse of 30 years after the dismissal of the suit, therefore the said gazette notification has to be set aside. Hence, this Writ Petition.

7. The learned counsel appearing on behalf of the writ petitioners in W.P.No.18690 of 2018 and W.P.No.38740 of 2022 mainly put-forth the following submissions :

- i. The Petitioners had been in continuous possession and enjoyment of the subject lands for more than 60 years by virtue of Pattas/Registered Sale Deeds/Occupancy Rights Certificate.
- ii. At no point of time the name of the Dargah is recorded as owner or possessor of the subject lands hence the question of inclusion of subject lands as Dargah lands by the impugned Gazettee Notification is exfacie, illegal, arbitrary and unconstitutional and the same is liable to be set aside.
- iii. The report of the District Collector dated 18.07.2004 specifically mentions that the Petitioners and their vendors have been in possession of lands in question for the last 50 years and the Petitioners rights were crystallized by way of Sale Deeds, ORCs, and Pattadar Passbooks and Title Deeds. Based on the said survey report the 3rd Respondent issued Addendum which was Gazetted on 08.02.2007.
- iv. In the Gazette dated 09.02.1989 only about 12 acres of land was notified as the property of Dargah, but by way of Addendum the entire land situated in Kongra Khurdu Village i.e., 500-700 acres of property was notified as the land of the Dargah which is situated in Misrigunj, Hyderabad.

v. The Respondents while issuing the impugned Gazette included the private lands as property of Dargah, i.e., the 9th Respondent herein.

vi. Copy of the Sethwar and Pahanies of the various years shows that the property in question never belong to the Dargah.

vii. Respondents No.6 and 7 had issued Occupancy Rights Certificates and Pattadar Passbooks and Title Deeds in Petitioners favour either under the Inams Abolition Act, or under the Pattadar Passbook Act by conducting detailed enquiry, hence the Respondents have to take recourse under the provisions of respective Acts to get cancelled the said rights instead of issuing the impugned order including the entire property of Kongra Khrudu village i.e., 500-700 acres of property as the land of the Dargah which is situated in Misrigunj, Hyderabad.

viii. The impugned notification dated 08.02.2007 is silent with regard to the survey of the Petitioners subject property.

ix. The lands of the Petitioners in Sy. Nos. 2, 12, 17, 18, 19, 26, 27, 28, 29, 30, 54, 68, 69, 71, 72, 75, 95, 158, 179, 180, 181, 182, 183, 184, 187, 291, 292, 295, 338, 339, 364, and 365 situated at Kongara Khurd Village, Maheshwaram Mandal, Rangareddy District, had not been surveyed and the impugned Gazette Notification dated

08.02.2007 is silent with regard to the survey of the subject property.

x. Rule 5 of the A.P. Wakf Rules, 2000 states that the list of Wakf published under Sub-Sec.2 of Section 5 of the Wakf Act, 1995 should be as in the Annexure, but the impugned Gazette does not confirm to the Annexure at all and several details which are required to be mentioned as per the Annexure are not mentioned in the Gazette.

xi. The Respondent Telananga State Wakf Board without any basis, without any Wakfnama simply included the Petitioners property and the property of the other villagers in their Notification and claimed the property as Wakf property without conducting any preliminary survey as contemplated U/s.4 of the Wakf Act, 1995, prior to the issuance of Gazette No.6, dated 08.02.2007.

xii. The Respondent No.2 filed a suit in O.S.No.16 of 1971 on the file of Addl. Chief Judge, City Civil Court, Hyderabad for recovery of the possession of the lands covered under the impugned Notification claiming to be the owners of the said land, the said suit was dismissed on 10.04.1974 for non-prosecution and the impugned Notification had been issued after a lapse of 30 years after the dismissal of the said suit, hence the impugned Notification has no sanctity in the eye of law and it has to be set aside.

The learned counsel appearing on behalf of the Petitioners in both the writ petitions i.e., W.P.No.18690/2018 and W.P.No.38740/2022, basing on the aforesaid submissions contend that the Writ Petition should be allowed as prayed for.

8. Counter affidavit has been filed on behalf of Respondent Nos. 3, in W.P.No.18690 of 2018 and the relevant paragraphs 13, 14, 15, 31 to 36, read as under :

Para 13 : The history of the said Waqf Lands at Kongarakhur Village now in Maheshwaram Mandal (previously in Ibrahimpatnam Taluqa) of the composite Hyderabad District, dates back to the year 1086 Hijri i.e., about more than 350 years ago as detailed in the report dated 18.07.2004 of the Asst. Survey Commissioner of Waqf, R.R. District. It says that Sultan Abul Hassan Tanashah the Ruler of Golconda Empire, issued a Sanad (Royal Grant) dated 4th Rabi-ul-Alwal 1086 Hijri (about 1665 A.D.) in favour of Hazrath Syed Shah Raju Hussaini Qibla^{Rh} as per the judgment No.80, dated 30 Aban 1348 Fasli.

Para 14 : It further says that in the Inam Enquiry, the Jagir Kongar Khurd was released through a Firman of H.E.H. Nizam dated 20th Rabi-ul-Awal 1358 Hijri (about 1937 A.D.) in the name of Sri Syed Shah Hyderuddin Hussaini Qibla Mutawalli of the Dargah and a Muntakhab

was also issued with No.1680 dated 20th Rabi-ul-Awal 1358 Hijri (1937 A.D.).

Para 15 : It further says that after a detailed enquiry in Atiyath Court the service inam lands under the Jagir was released and implemented in Revenue Records through jama bandi in the faisal patti for the year 1965-66 in the name of Hazrath Syed Shah Raju Hussaini Qibla^{Rh} as service inam lands.

31. I further submit that the petitioners has concealed the judgement and decree passed by the District Munsif at Ibrahimpatnam Hyderabad District in OS.No.28 of 1971 dated: 30.06.1973. The said suit was filed by Rangamuni Jangaiah and 2 others against Syed Shah Mohammed Hyderuddin Hussaini (Died per Lrs) for perpetual injunction in respect of Survey No.311, 312 and 325 of Kongara Khurd Village. The Defendants therein were the LRs of Muthawalli. Though the said suit was perpetual injunction and decreed in favour of the plaintiff therein but in the said suit among other issue the Hon'ble Court framed the issue No.4 as

Whether the suit lands are Mushrutul- Khidmath Inam of Dargah Hzt Sha Raju Khattal Husaini and the defendant No.1 is Muthawalli of Dargah?

32. While discussing the above issue the Hon'ble District Munsif relied upon a certified copy of decree marked as Exhibit C1 passed by the 4th Assistant Judge City Civil Court Hyderabad on 29.08.1972 in OS.No.611 of 1972, which was filed by the defendant No.2 therein to substantiate his claim as Sajjada and Muthawalli. While discussing the said certified copy of decree dated:

29.08.1972 the Hon'ble District Munsif Ibrahimpatnam was pleased to hold the

"it is not disputed that D2 has succeeded D1 and he became Sajjada or Muthawalli...

33. From the above it is clearly evident that the said lands are Dargah lands (Service Inam Lands) belonging to Dargah Hazarat Shah Raju Khattal Hussaini Rh, and the petitioners have nothing to do with it, and their following claims made in the present Writ petition i.e.

1. The petitioner No.1 says that he is the absolute owner and possessor of lands bearing Sy.No.183, 184, 183/A and 184/A adm Ac:1-04 yts, Ac:2-00gts, Ac: 1-04gts and Ac:0-29gts respectfully of Kongarakhurd Village, stated to have purchased through sale deeds as documents No.1184/86 dated: 16.07.86 executed by Syed Madina Hussaini, Syed Mohammed Hussaini and document No. 278/1995 dated: 10.11.1995 executed by Syed Farathullah Hussaini. I submit that the said executants are third parties and they have no right to execute any sale deed in respect of waqf lands and the same is invalid.

2. I submit that the petitioner No.2 to 4 claimed to be the absolute and possessor of the Waqf lands in Sy.No. 181/A, 181/E, adm Ac:7-18gts of Kongara Khurd Village stated to have purchased through sale deeds documents No.3538/99 dated 14.09.1999 and document No. 4885/1999 dated: 21.12.1999 executed by K. Radhamma and K. Malla Reddy, who in term stated to have to

purchase through document No.5171/1992 dated: 12.03.1992 executed by Syed Waliullah Hussaini. I submit that the Waliullah Hussaini being the lineal descanted of Muthawali had no right to execute any sale deeds and the same is invalid.

2.1 Similarly the petitioners 2 to 4 also claimed as owner and possessors of Waqf lands bearing Sy. No.75/A and 76/A total adm Ac:1-32gts stated to have purchased from Auchini Malleshsha through sale deed document No.4884/1999 dated 21.12.1999. The said executant being a third party has no right to alienate the Waqf property and the same is in valid.

3. The Petitioners No. 5 to 7 have claimed as owners and possessors of the Waqf lands in Sy.No.187/A adm Ac:0-20gts stated to have purchased through sale deeds documents No.2946/99 dated: 14.07.1999 executed by Syed Shah Siraj Uddin who was not competent to execute any sale deed in respect of Waqf property. As such the same is in valid a Null and void.

3.1 The petitioners No. 5 to 7 also claimed to have purchased the Waqf lands bearing Sy. No. 180, 181/A, 182 and 187/E total Adm Ac: 6-04gts through document No.9171/1999 dated: 09.02.1999 executed by Syed Shah Waliullah Hussaini who was being a lineal descanted of Muthawali had no right to execute any sale deeds and the same is invalid.

3.2 The petitioners No. 5 to 7 also claimed to have sold an extent of Ac:4-00gts in Sy.No.180, 181/A, 182 and 187/E through document No.1434/2000 dated: 25.04.2000 to petitioner No.6 and the said sale is also in valid as the petitioners 5 to 7 have no right either to purchase or sale the Waqf lands and the same are in valid.

3.3 The petitioners No.4 to 6 claimed to have executed a sale deed as document No. 1680/2014 dated: 19.11.2014 in favour of petitioner No.8 in respect of Waqf lands in survey No. 75, 76 and 181 Ac:0-35gts and the same are invalid become null and void.

3.4 The petitioners No.5 to 7 also claimed to be the owners of Waqf lands in Sy.No.68, 69, 71, 72 and 179 total Adm Ac:4-02gts through Occupancy Right Certificate (ORC) No.J/1708/1999 dated: 23.01.2001 issued by the R.D.O. RR. East Division. I submit that the said ORC is issued in contravention of the provisions of Abolition of Inams Act 1955 (Act 19/94) under which ORC is to be issued in the name of Dargah as such the ORC is invalid and liable to be cancelled.

3.5 It is also claimed that father of petitioner No.9, 10 and 12 and Husband of petitioner No.12 are the owner of Waqf lands in Sy.No.2, 12, 17, 19, 27, 28, 29, 30, 54, 291 and 292 total Adm Ac:24-02 gts through ORC No.J/4041/1993 issued by the R.D.O. RR. East Division. I submit that the said ORC is issued in contravention of the provisions of Abolition of Inams Act 1955 (Act 19/94) under which ORC

is to be issued in the name of Dargah as such the ORC is invalid and liable to be cancelled.

3.6 It is also claimed that the petitioners No.13 to 15 are the owners of the Waqf lands in Sy. No.291, 292 and 295 total Adm Ac: 20-00gts through ORCS No.J/1780/2000, J/4703/1993 and J/5158/1993 issued by the RDO, RR. East Division. I submit that the said ORCs are issued in contravention of the provisions of Abolition of Inams Act 1955 (Act 19/94) under which ORCs are to be issued in the name of Dargah as such the ORCs are invalid and liable to be cancelled.

3.7 It is claimed that the petition No.15 is the owner and possessor of the Waqf land in Sy. No. 338, 339, 364 and 365 total Adm Ac: 10-06gts through ORC No.J/1732/2011 dated: 28.09.2011 issued by the RDO RR. East Division. I submit that the said ORC is issued in contravention of the provisions of Abolition of Inams Act 1955 (Act 19/94) under which ORC is to be issued in the name of Dargah as such the ORC is invalid and liable to be cancelled.

3.8 It is claimed that the petitioner No.16 is the owner and possessor of the Waqf lands in Sy.No.26 adm Ac:2-22 gts stated to have purchased through sale deed document No.1629/2000 dated: 25.05.2000 executed By Sri Nimma Goverthan Reddy. I submit that the said executant being a third party has no right to execute sale deed in respect of Waqf property and the same is in valid and liable to be cancelled. It is stated that the vendor of the petitioner No.

16 got ORC No.J/4232/1990 dated: 16.07.1993 issued by the RDO RR. East Division. I submit that the said ORC is issued in contravention of the provisions of Abolition of Inams Act 1955 (Act 19/94) under which ORC is to be issued in the name of Dargah as such the ORC is invalid and liable to be cancelled.

3.9 It is claimed that the petitioner No.17 is the owner and possessor of the Waqf lands bearing Sy.No.2, 16, 27, 28, 29 & 30 adm Ac:3-20gts through ORC No. J/5159/1993 dated: 05.01.2021 issued by the RDO RR East Division. I submit that the said ORC is issued in contravention of the provisions of Abolition of Inams Act 1955 (Act 19/94) under which ORC is to be issued in the name of Dargah as such the ORC is invalid and liable to be cancelled.

3.10 It is claimed that the petitioner No.18 is the owner and possessor of the Waqf lands in Sy.No. 12, 17, 18 and 19 adm Ac: 2-04gts through ORC No.J/1779/2000 dated: 05.01.2001 issued by the RDO RR East Division. I submit that the said ORC is issued in contravention of the provisions of Abolition of Inams Act 1955 (Act 19/94) under which ORC is to be issued in the name of Dargah as such the ORC is invalid and liable to be cancelled.

34. I further submit that the documents i.e. 1). Registered Sale Deeds relied upon by the petitioners, 2). ORCs issued under Abolition of Inams Act 1955, and relied upon by the petitioners, 3). Mutation orders passed by the MROs basing on the invalid sale deeds and ORCs, 4). Pattadar Passbooks and Tile Deeds issued in favour of the petitioners by the

Revenue Authorities under ROR Act 1971 (Since Repealed) and 5). Entries made in pahanies if any basing on the said invalid documents, are liable to be cancelled under the relevant provisions of the Act and Rules and this respondent is taking proper recourse for cancellation of the same.

35. I further submit that being Waqf Land as Mashruthul Khidmath (Service Inam lands) the said lands have been rightly included in the prohibitory list prepared U/Sec.22-A of the Registration Act 1908 and the Government of Telangana was pleased to Auto-lock registration to protect the Waqf lands through G.O. Ms. No. 15, Minorities Welfare Department, dated:22-09-2020 and issued direction to the Municipal and Panchayat Authorities not to accord any construction permission on Waqf lands.

36. In this regard this respondent most humbly and respectfully bring to the kind notice of the orders of our own High Court passed by His lordship Hon'ble Justice Sri P. Naveen Rao in a common orders dated 10-03-2020 in similar cases e. WP's No.7570/2019 and Batch (Total (27) Writ petition and reject the plea of the Writ petitioners who relied upon the said B. Gowra Reddy Case and dismissed all the (27) writ petitioners through a detailed orders dated: 10-03-2020 holding that, "Thus these cases are clearly distinguishable from the Gowra Reddy and view taken in those cases do not come to the said petitioners"

This case is reported in 2020 (4) ALD 569.

9. **Learned Senior Counsel Mr. B. Mayur Reddy appearing on behalf of the Respondent Telangana State Wakf Board in W.P.No.18690 of 2018 and W.P.No.38740 of 2022 placing reliance on the averments made in the counter affidavit filed on behalf of the 3rd Respondent mainly puts-forth the following submissions**

- i. As per Section 83 of the Wakf Act, the Wakf Tribunal is the proper forum
- ii. The procedural lacuna in the publication of the Notification does not adversely affect on the character of the Wakf.
- iii. Steps are being initiated stating that the Respondent Wakf Board is taking proper recourse for cancellation of Registered Sale Deeds, ORCs, Mutation Orders and Pattadar Passbooks and Title Deeds issued in favour of the Petitioners.
- iv. Referring to paras 31 and 32 of the Counter Affidavit filed by the 3rd Respondent the learned Senior Counsel contends that the subject lands are Dargah lands (Service Inam Lands) belonging to Dargah Hazart Shah Raju Khattal Hussaini Rh and the Petitioners have nothing to do with the said subject lands.

Basing on the aforesaid submissions the learned Senior Counsel appearing on behalf of Telangana State

Wakf Board, Nampally, Hyderabad, contends that the two Writ Petitions needs to be dismissed.

10. **DISCUSSION AND CONCLUSION:**

A. A bare perusal of the prayer as sought for by the Petitioners in W.P.No.18690/2018 and the Petitioner in W.P.No.38740/2022 clearly indicates that challenge in both the writ petitions pertains to the Addendum to Wakf properties in No.S4/RR/2006, published in the Andhra Pradesh Gazette No.6, dated 08.02.2007. Both the affidavits filed by the Petitioners in support of the writ petitions in W.P.No.18690/2018 and W.P.No. 38740/2022 are silent with regard to the delay in approaching the Court at this length of time.

B. **Section 83(1) even as it stood before the amendment, provides for the determination by the Tribunal of any dispute, question or other matter (i) relating to a Waqf and (ii) relating to a Waqf property.**

C) **The Apex Court in the judgment dated 28.10.2021 in Civil Appeal No.6336 of 2021 in Rashid Wali Beg Vs. Farid Pindari and Others at paras 52 and 53 observed as under:**

“52. We have already seen that it is not as though there was no provision in the [Waqf Act](#) conferring jurisdiction upon the Tribunal in respect of the waqf property. We can break the first part of [Section 83](#) into two limbs, the first concerning the determination of any dispute, question or other matter relating to a waqf and the second, concerning the determination of any dispute, question or other matter relating to a waqf property. After Amendment Act 27 of 2013, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of the Tribunal. Though the proceedings out of which the present appeal arises, were instituted before the Amendment Act, the words “any dispute, question or other matter relating to a waqf or waqf property” are sufficient to cover any dispute, question or other matter relating to a waqf property. This is why Ramesh Gobindram was sought to be distinguished both in *Anis Fatma Begum* and *Pritpal Singh* and such distinction was taken note of in *Akkode Jumayath Palli Paripalana Committee*. Additionally, this Court in *Kiran Devi*, refused to apply the ratio of *Ramesh Gobindram*, on the ground that the suit was originally instituted before the Civil Court, but was later transferred to the Waqf Tribunal and that after allowing the order of transfer to attain finality, it was not open to them to resurrect the issue through *Ramesh Gobindram*.

53. It is well settled that the court cannot do violence to the express language of the statute. [Section 83\(1\)](#) even as it stood before the amendment, provided for the

determination by the Tribunal, of any dispute, question or other matter (i) relating to a waqf; and (ii) relating to a waqf property. Therefore to say that the Tribunal will have

jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1).

54. In fact, Section 83(5) of the Act makes it clear that the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under [the CPC](#), while trying a suit or executing a decree or order. This is why this Court held in *Syed Mohideen and Another vs. Ramanathapura Peria Mogallam Jamath and Others* ((2010) 13 SCC 62) that the Waqf Tribunal will have power to issue temporary injunctions under Order XXXIX, Rule 1 CPC.

55. We must also point out at this stage that all the 14 decisions which we have tabulated in paragraph 13 above, except the one at Sl.No.13, namely *Kiran Devi vs. Bihar State Sunni Waqf Board* (2021 SCC Online SC 280), are decisions of two member benches. *Kiran Devi* was a decision of a three member bench of this Court. In *Kiran Devi*, an objection to the maintainability of the proceeding before the Waqf Tribunal was raised on the basis of the decision in *Ramesh Gobindram*. But this court refused to accept it on the ground that once the order of transfer of the suit from the Civil Court to the Waqf Tribunal had attained finality, the question of jurisdiction cannot be raised. If Waqf tribunal had no jurisdiction at all, this court could not have held in *Kiran Devi* that the order of transfer already passed cannot be undone by accepting this plea. The decision of the three member bench in *Kiran Devi* is

significant in the sense that it recognized the fact that Ramesh Gobindram cannot be used as a magic wand to toss the proceedings relating to a waqf property from one forum to another. The dichotomy created in some decisions of this court, between the properties which are admitted to be waqf properties and properties which are disputed to be so, is on account of the misapplication of the two limited questions in Sections 6(1) and 7(1) to the whole of the Act including section 83. At the cost of repetition we should point out that Section 83(1) provides for the determination of any dispute, question or any other matter, (i) relating to a waqf and (ii) relating to a waqf property. This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and 7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property.

D) The judgment of the Apex Court reported in (1998) 2 SCC 642 in Sayyed Ali and others v A.P. Wakf Board, Hyderabad and others and in particular, para 13 reads as under:

“It may be stated that a wakf is a permanent dedication of property for purposes recognized by Muslim law as pious religious or charitable and the property having been found as Wakf would always retain its character as a Wakf. In other words, once a Wakf always a Wakf and the grant of patta in favour of Mokhasadar under the Inams Act does

not, in any manner, nullify the earlier dedication made of the property constituting the same as Wakf. After a Wakf had been created, it continues to be so for all time to come and further continues to be governed by the provisions of the Wakf Act and a grant of patta in favour of Mokhasadar does not affect the original character of the Wakf property.

E) The judgment o the Apex Court reported in (2017) 14 SCC 561 in Rajasthan Wakf Board v Devki Nandan Pathak and others, it is observed as under :

23) [Section 83](#) of the Act empowers the Tribunal to determine any dispute, question or other matter relating to a Waqf or Wakf property under this Act. [Section 85](#) of the Act which deals with the Bar of jurisdiction of Civil Court provides that no suit or other legal proceedings shall lie in any civil court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by the Tribunal.

24) Reading the averments made in the plaint in the light of aforementioned sections, we are of the considered opinion that the Tribunal was right in its view in holding that it had the jurisdiction to try the suit on merits whereas the High Court was not so in holding the otherwise.

25) In other words, we are of the view that the Tribunal does have jurisdiction to decide the question arising in the suit filed by respondent No.6 and, therefore, the Tribunal rightly tried the suit on merits. The reasons are not far to seek.

26) In the first place, the main question involved in the suit was whether the suit land is a Wakf property or not. Plaintiff says that it is a Wakf property whereas the defendants say that it is not the Wakf property but it is their self property. This question, in our opinion, can be

decided only by the Tribunal and not by the Civil Court as has been decided by this Court consistently in Ramesh Gobindram vs. Sugra Hamayun Mirza Waqf, (2010) 8 SCC 726 and Bhanwar Lal & Anr. Vs. Rajasthan Board of Muslim Wakf & Ors., (2014) 16 SCC 51). Second, once the property is declared to be a Wakf property, a fortiori, whether the sale of such property is made by a person not connected with the affairs of the Wakf or by a person dealing with the affairs of the Wakf, the same becomes void by virtue of [Section 51](#) of the Act unless it is proved that it was made after obtaining prior permission of the Board as provided under the Act. One cannot dispute that the matters falling under [Sections 51](#) and [52](#) of the Act are also required to be decided by the Tribunal and hence jurisdiction of the Civil Court to decide such matters is also barred by virtue of provisions contained in [Section 85](#) of the Act.

27) In the light of foregoing discussion, we are unable to concur with the reasoning and the conclusion arrived at by the High Court as we find that the High Court while deciding the question did not examine the question in its proper perspective keeping in view the aforementioned provisions, their scope and the law [laid down in](#) the cases referred supra.

F). This vide its order dated 10.03.2020 in W.P.No.7570 of 2019 and batch in V.Aruna v The State of Telangana and others reported in 2020 SCC Online TS 3450, at paras 35 and 37 observed as under :

"35. In the cases on hand, petitioners can not claim themselves as persons interested by the time notification was issued as they claim to have purchased plots of land, out of larger extent much later to 09.02.1989. In the affidavits filed in support of the writ petitions, petitioners assert that it is patta land and not Wakf or Inam. In other

words, petitioners are disputing the status of land as Wakf land. Suffice to note that if a person is disputing the status of wakf land, he has to avail remedy under Section 83 of the Act, 1995. Both parties seek to rely on several documents in support of their claim. It requires leading of evidence. Writ Court in exercise of power of judicial review under Article 226 of the Constitution of India cannot enter into disputed questions of fact. In all such cases, parties must be relegated to civil law remedy. The Supreme Court in the Punjab Wakf Board held that whenever a party is disputing the status of land notified as wakf land, the remedy is to institute suit before the Wakf Tribunal. The wakf Tribunal is competent to adjudicate the dispute.

37. A person is entitled to enforce his right, including right to property by availing remedy under Article 226 of the Constitution of India. Judicial review of administrative action is an important facet, an essential feature, basic structure of the Constitution of India. It is the corner stone of our constitutional framework. However, such person cannot take his own time to assert his right. Though there is no limitation prescribed in the Constitution, such right has to be asserted within a reasonable time. Delay and laches in invoking extraordinary jurisdiction of this Court under Article 226 is as relevant as any other aspect. A title to property can validly pass on to subsequent purchaser only if the vendor has a valid title. Thus, by virtue of purchases made by these petitioners no new right accrued to them nor their right is affected by any decision of competent authority after such purchase. Thus, whatever

is asserted by petitioners relates to title claim of vendors/ vendors to vendors. The title of vendors/vendors to vendors is in cloud. Petitioners seek to clear this cloud by challenging the 1989 gazette. What appeals to their vendors on delay and laches would equally apply to petitioners and recent sale transactions cannot revive cause of action."

G) The Apex Court in its Judgment in Board of Waqf, West Bengal Vs. Anis Fatima Begum & Another at paras 10, 12 to 15 and 19 observed as under :

Para 10: In our opinion, all matters pertaining to Wakfs should be filed in the first instance before the Wakf Tribunal constituted U/s.83 of the Wakf Act, 1995 and should not be entertained by the Civil Court or the High Court straight away under Article 226 of the Constitution of India.

12. Section 83 (1) of the Wakf Act, 1995 states, "83. Constitution of Tribunals, etc. - (1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Wakf or Wakf property under this Act and define the local limits and jurisdiction under this Act of each or such Tribunals."

13. Section 84 of the Act states, "84. Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision - Whenever an application is made to a Tribunal for the determination of any dispute, question or other matter relating to a Wakf or Wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable on the conclusion

of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute".

14. Thus, the Wakf Tribunal can decide all disputes, questions or other matters relating to a Wakf or Wakf property. The words "any dispute, question or other matters relating to a Wakf or Wakf property" are, in our opinion, words of very wide connotation. Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. The word `Wakf' has been defined in [Section 3 \(r\)](#) of the Wakf Act, 1995 and hence once the property is found to be a Wakf property as defined in [Section 3 \(r\)](#), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

15. Under [Section 83 \(5\)](#) of the Wakf Act, 1995 the Tribunal has all powers of the Civil Court under [the Code of Civil Procedure](#), and hence it has also powers under Order 39 Rules 1, 2 and 2A [of the Code of Civil Procedure](#) to grant temporary injunctions and enforce such injunctions. Hence, a full-fledged remedy is available to any party if there is any dispute, question or other matter relating to a Wakf or Wakf property.

19. It is well-settled that when there is a special law providing for a special forum, then recourse cannot be taken to the general law vide Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn. 2004, pp 133-134).

H) The Apex Court in the judgment reported in (2014)

16 SCC 45 vide its judgment dated 21.11.2013 in Haryana

Wakf Board Vs. Mahesh Kumar observed at paras 10 to 13

as under :

"Para 10 : Section 85 of the Act bars the jurisdiction of the Civil Court to decide such issues. Section 85 reads as under:

85. Bar of Jurisdiction of Civil Courts. – No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal”.

Para 11 : As per Sub-section (1) and Section 7 of the Act, if a question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, it is the Tribunal which has to decide such a question and the decision of the tribunal is made final. When such a question is covered under sub-section (1) of Section 7, then obviously the jurisdiction of the Civil Court stands excluded to decide such a question in view of specific bar contained in Section 85. It would be pertinent to mention that, as per sub-section (5) of Section 7, if a suit or proceeding is already pending in a Civil Court before the commencement of the Act in question, then such proceedings before the Civil Court would continue and the Tribunal would not have any jurisdiction.

Para 12 : On a conjoint reading of Section 7 and Section 85, legal position is summed up as under:

12.1) In respect of the questions/ disputes mentioned in sub-section (1) of Section 7, exclusive jurisdiction vests with the tribunal, having jurisdiction in relation to such property.

12.2) Decision of the tribunal thereon is made final.

12.3) The jurisdiction of the Civil Court is barred in respect of any dispute/ question or other matter relating to any wakf, wakf property for other matter, which is required by or under this Act, to be determined by a tribunal

12.4) There is however an exception made under Section 7(5) viz., those matters which are already pending before the Civil Court, even if the subject matter is covered under sub section (1) of section 6, the Civil Court would not continue and the tribunal shall have the jurisdiction to determine those matters.”

Para 13 : Present suit was instituted in the year 2000 i.e. after the Wakf Act, 1985 came into force. Therefore, the present case is not covered by exception to Section 7(5) of the Wakf Act. Thus, on a plain reading of Section 7 read with section 85 of the Act, it becomes manifest that wherever there is a dispute regarding the nature of the property, namely whether the suit property is Wakf property or not, it is the Tribunal constituted under the Wakf Act, which has the exclusive jurisdiction to decide the same. We need not delve into this issue any longer, inasmuch as in a recent judgment by this very Bench of this Court in the case of Bhanwar Lal & Anr. vs. Rajasthan Board of Muslim Wakf & Ors. 2013 (11) SCALE 210 decided on 9th September 2013, this Court took the same view, after taking note of earlier judgments on the subject, namely, Sardar Khan & Ors. Vs. Syed Nazmul Hasan (Seth) & Ors. 2007 (10) SCC 727, Ramesh Gobindram (D) through LRs. Vs. Sugra Humayun Mirza Wakf 2010 (8) SCC 726. This view has been re-affirmed in Akkode Jumayath Palli Paripalana Committee vs. P.V.Ibrahim Haji & Ors. 2013 (9) SCALE 622.

11. Taking into consideration the observations of the Apex Court in the various judgments referred to and extracted above and duly taking into consideration that the subject issue involves serious disputed questions of facts which cannot be satisfactorily decided under Article 226 of the Constitution of India since it is not the appropriate proceeding for adjudication of disputes like the present, more so when an alternative and equally efficacious remedy is open to Petitioners, this Court opines that the Petitioners are required to pursue that

remedy and not invoke the special jurisdiction of this Court to issue a writ.

12. This Court opines that the judgments relied upon by the learned counsel appearing on behalf of the Petitioners do not apply to the facts of the present case.

13. Taking into consideration :

a) Section 83(1), 83(5) and 84 of the Wakf Act, 1995,

b) The observations of the Apex Court in the various judgments referred to and extracted above,

c) Duly considering the unexplained delay on the part of the Petitioners in challenging the Addendum to Wakf properties in No.S4/RR/2006 published in the Andhra Pradesh Gazette No.6 dated 08.02.2007 and the proceedings/report dated 18.07.2004 of the Respondent No.3 in the year 2018 and 2022,

d) Duly considering Sec.7 and Sec.85 of the Wakf Act, 1995 and on a conjoint reading of the same it is amply clear that in respect of the questions/disputes mentioned in Sub-Sec.1 of Sec.7 exclusive jurisdiction

vests with the Tribunal having jurisdiction in relation to such property,

e) In the light of discussion and conclusion as arrived at above, this Court is not inclined to grant the relief as prayed for in the W.P.No.18690 of 2018 and W.P.No. 38740 of 2022,

f) The W.P.No.18690 of 2018 and W.P.No.38740 of 2022 are however disposed of with a clear observation that there is no expression of opinion on merits and parties are left to urge all pleas as available in law in appropriate proceedings before appropriate forum. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA,J

Date: 03.06.2024

Note: L.R.Copy to be marked
b/o
Yvkr

HON'BLE MRS. JUSTICE SUREPALLI NANDA

WRIT PETITION No.18690 OF 2016
and
WRIT PETITION NO. 38740 OF 2023
(L.R.Copy to be marked)

Dated: 03.06.2024

Yvkr