

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

+ WRIT APPEAL No.1432 of 2016, W.P.Nos.23242 of 2008
and 19205 of 2019

% Date: 04.12.2023

Telangana State Waqf Board

... Appellant

v.

\$ M/s.Solithro Private Limited, Rep. By its Director
And others

... Respondents

! Counsel for the appellant in W.A.No.1432 of 2016:

Mr. B.Mayur Reddy,
learned Senior Counsel,
for Mr. Mohd. Ismail

^ Counsel for the respondent No.1 in W.A.No.1432 of 2016:

Mr. Vedula Venkata Ramana,
learned Senior Counsel, for
M/s.Bharadwaj Associates

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (2006) 3 SCC 354
2. (2020) 8 SCC 129
3. (2017) 13 SCC 174
4. (2022) 4 SCC 414
5. (1998) 2 SCC 642
6. W.A.No.318 of 2021
7. S.L.P. Nos.4166-4175 of 2022
8. (1995) 1 SCC 104
9. (2001) 8 SCC 528
- 10.(2018) 17 SCC 106
- 11.2021 SCC OnLine TS 1449
- 12.2022 SCC OnLine TS 1073
- 13.2022 SCC OnLine SC 1653
- 14.1955 (1) SCR 893 : AIR 1955 SC 84
- 15.(2017) 9 SCC 463
16. (2008) 9 SCC 306
- 17.(2021) 5 SCC 1
- 18.AIR 1951 SC 128
- 19.AIR 2007 SC 232
- 20.(1992) 2 SCC 598
- 21.(2013) 1 SCC 353
22. (2022) 2 SCC 25
23. 2022 SCC OnLine SC 159
- 24.(1998) 8 SCC 1
- 25.(2003) 2 SCC 107
- 26.(2021) 6 SCC 771

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT APPEAL No.1432 of 2016, W.P.Nos.23242 of 2008
and 19205 of 2019

COMMON ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

The intra-court appeal has been filed by Telangana State Wakf Board (hereinafter referred to as 'Wakf Board') against an order dated 22.09.2016 passed by the learned Single Judge by which writ petition preferred by M/s.Solithro Private Limited (hereinafter referred to as 'company') had been allowed and the notification dated 15.11.2001 notifying the list of properties situated at Narsapur and Siddipet Taluks of Medak District as properties belonging to the Wakf has been quashed. In W.P.No.23242 of 2008, the petitioner therein has assailed the validity of notification dated 15.11.2001 declaring the properties to be wakf property and has sought relief of de-notification of the land in survey Nos.33 to 38, 40, 42 to 70, 72 to 74 and 76 to 87 of Sikindlapur Village, Shivampet Mandal, Medak District. In W.P.No.19205 of 2019, the petitioner seeks a direction to Inam Tribunal cum Revenue Divisional Officer to decide file No.H/5652/98 by issuing

pattadar pass book and title in favour of the petitioner in respect of the land measuring Acas.11.00 bearing Survey Nos.60 and 65 situated at Sikindlapur village, Shivampet Mandal, Medak District.

2. Similar issues arise for consideration in the writ appeal as well as the writ petitions. Therefore, the writ appeal and the writ petitions were heard analogously and are being decided by this common order. For the facility of reference, facts from W.A.No.1432 of 2016 are being referred to.

(i) FACTS:

3. One Smt. Azeez Bee and others filed applications before the Revenue Divisional officer seeking Occupancy Rights Certificate. The aforesaid applications were rejected by an order dated 18.12.1998. Being aggrieved, an appeal was filed which was also dismissed by an order dated 21.06.2001 by Joint Collector. The orders passed by the Revenue Divisional Officer and the Joint Collector were challenged by Smt. Azeez Bee and others in a writ petition, namely W.P.No.6107 of 2003, which was dismissed on 28.03.2006. The aforesaid order was

upheld in a writ appeal, namely W.A. (SR) No.63303 of 2026, which was dismissed for default on appearance on 01.09.2006.

4. It appears that one Axis Engineers and others had purchased lands under various sale deeds measuring Acs.23.08 guntas in survey Nos.136, 137, 227 and 228 of Shabhaspally Village, Shivampet Mandal of Medak District (hereinafter referred to as 'subject land'). The aforesaid lands were mortgaged to ING Vysya Bank Limited and State Bank of India. The subject land was sold in auction held on 26.12.2013 and 13.08.2014, which was conducted by ING Vysya Bank. The company purchased the subject land in the said auction and on 07.02.2014 and 16.08.2014 sale certificates were issued in their favour.

5. On the basis of the survey conducted in the year 1963 under the Wakf Act, 1954 (hereinafter referred to as 'the 1954 Act'), a notification dated 15.11.2001 under Section 5 of the Wakf Act, 1995 (hereinafter referred to as 'the 1995 Act') was issued by the State Government by which the subject land was declared to be wakf property.

(ii) ORDER OF LEARNED SINGLE JUDGE:

6. The company thereupon, filed a writ petition in which the validity of the notification issued under Section 5 of the 1995 Act, dated 15.11.2001 was challenged. The learned Single Judge by an order dated 22.09.2016 *inter alia* held that writ petition does not suffer from delay and laches and the rule of exhaustion of alternative remedy is a rule of discretion and not a compulsion. It was further held that survey conducted under Section 4 of the 1954 Act is not saved under Section 112(2) of the 1995 Act. The learned Single Judge, therefore, quashed the notification dated 15.11.2001 and allowed the writ petition. In the aforesaid factual background, the Wakf Board has filed this appeal.

(iii) SUBMISSIONS ON BEHALF OF WAKF BOARD:

7. Learned Senior Counsel for the Wakf Board has submitted that the survey carried out under Section 4 of the 1954 Act is saved under Section 112(2) of the 1995 Act. It is further submitted that the rights and obligations accrued to the parties were not obliterated while repealing the 1954 Act. It is also submitted that the survey got merged with the

notification and therefore, the question of delay and laches in issuing the impugned notification dated 15.11.2001 under Section 5 of the 1995 Act does not arise. It is contended that notification declaring the property as wakf property was issued on 15.11.2001, whereas the writ petition was filed belatedly on 05.11.2014. Learned Single Judge, therefore, ought to have appreciated that the writ petition suffers from delay and laches and merely because the company purchased the subject land under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') in the year 2013 and 2014, the same cannot be a ground to hold that the writ petitions filed by the company does not suffer from delay and laches.

8. It is also urged that the company ought to have approached the Wakf Tribunal under Section 6(1) of the 1995 Act instead of filing the writ petition. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Gammon India Limited vs.**

Special Chief Secretary¹, Indore Development Authority vs. Manohar Lal², Madanuri Sri Rama Chandra Murthy vs. Syed Jalal³, Rashid Wali Beg vs. Farid Pindari⁴, Sayeed Ali vs. Andhra Pradesh Wakf Board⁵, Telangana State Wakf Board vs. P.Radha Madhavi⁶ and Telangana State Wakf Board vs. P.Radha Madhavi⁷.

(iv) SUBMISSIONS ON BEHALF OF COMPANY:

9. On the other hand, learned Senior Counsel for the company has submitted that notification dated 15.11.2001 has been published under Section 5 of the 1954 Act which has been repealed by the 1995 Act. Therefore, the notification issued under repealed provision of law is void and the question of its invalidity can be set up at any stage. It is further submitted that since the notification is null and void, the doctrine of delay and laches does not apply. It is contended that the company is the purchaser of the subject land in the auction held on 26.12.2013 and 13.08.2014. It is also argued

¹ (2006) 3 SCC 354

² (2020) 8 SCC 129

³ (2017) 13 SCC 174

⁴ (2022) 4 SCC 414

⁵ (1998) 2 SCC 642

⁶ W.A.No.318 of 2021

⁷ S.L.P. Nos.4166-4175 of 2022

that the provisions of SARFAESI Act have an overriding effect over the other provisions of law. It is further contended that the issue whether or not the survey conducted under the 1954 Act is saved under the 1995 Act, may not arise for consideration in the facts of the case, as the notification itself has been issued under the Repealed Act. It is argued that only upon publication of notification under Section 5(2) of the 1954 Act, the proprietary rights of a person are affected. In support of the aforesaid submissions, learned Senior Counsel has placed reliance on **D.C.Bhatia vs. Union of India**⁸, **Tamil Nadu Wakf Board vs. Hathija Ammal**⁹, **Roma Sonkar vs. Madhya Pradesh State Public Service Commission**¹⁰, **Telangana State Wakf Board vs. L.Srinivasa Reddy**¹¹, **Kailash Singh Rajpurohit vs. State of Telangana**¹² and **Maharashtra State Board of Wakfs vs. Shaikh Yusuf Bhai Chawla**¹³.

⁸ (1995) 1 SCC 104

⁹ (2001) 8 SCC 528

¹⁰ (2018) 17 SCC 106

¹¹ 2021 SCC OnLine TS 1449

¹² 2022 SCC OnLine TS 1073

¹³ 2022 SCC OnLine SC 1653

(v) RELEVANT PROVISIONS:

10. We have considered the submissions made on both sides and perused the record. Before proceeding further, it is apposite to take note of relevant statutory provisions. The Wakf Act, 1954 was enacted to provide for better administration and supervision of wakfs. The 1954 Act was repealed by the Wakf Act, 1995 which was enacted with an object to provide for better administration of wakfs and matters connected therewith.

11. Section 4 of the 1954 Act deals with survey, whereas Section 5 provides for publication of list of wakfs. Section 6 deals with disputes regarding wakfs. The relevant provisions of the 1954 Act and the 1995 Act prior to its amendment by Act No.27 of 2013 dated 01.11.2013 are extracted below for the facility of reference:-

Wakf Act, 1954	Wakf Act, 1995
1. Section 4 – “4.Preliminary survey of wakfs. (1) The State Government may, by notification in the Official Gazette, appoint for the State	1. Section 4 – 4. Preliminary survey of Wakfs-- (1) The State Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional or

<p>a Survey Commissioner of Wakfs and as many Additional or Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act.</p> <p>(2) All Additional and Assistant Survey Commissioners of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.</p> <p>(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely, (a) the number of wakfs in the State, or as the case may be, any part thereof, showing the Shia</p>	<p>Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of Wakfs existing in the State at the date of the commencement of this Act.</p> <p>(2) All Additional and Assistant Survey Commissioners of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.</p> <p>(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of Wakfs existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:--</p> <p>(a) the number of Wakfs in the State showing the Shia Wakfs and Sunni Wakfs separately;</p> <p>(b) the nature and objects of each Wakf;</p> <p>(c) the gross income of the property comprised in each Wakf;</p> <p>(d) the amount of land revenue, cesses, rates and taxes payable in</p>
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<p>wakfs and Sunni wakfs separately; (b) the nature and objects of each wakf; (c) the gross income of the property comprised in each wakf; (d) the amount of land revenue, cesses, rates and taxes payable in respect of such property; (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf; and (f) such other particulars relating to each wakf as may be prescribed.</p> <p>(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:—</p> <p>(a) summoning and examining any witness; (b) requiring the discovery and production of any document; (c) requisitioning any public record from any court or</p>	<p>respect of each Wakf;</p> <p>(e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each Wakf; and</p> <p>(f) such other particulars relating to each Wakf as may be prescribed.</p> <p>(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:--</p> <p>(a) summoning and examining any witness;</p> <p>(b) requiring the discovery and production of any document;</p> <p>(c) requisitioning any public record from any court or office;</p> <p>(d) issuing, commissions for the examination of any witness or accounts;</p> <p>(e) making any local inspection or local investigation;</p> <p>(f) such other matters as may be prescribed.</p> <p>(5) If, during any such inquiry, any dispute arises as to whether a</p>
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<p>office; (d) issuing commissions for the examination of any witness or accounts; (e) making any local inspection or local investigation; (f) any other matter which may be prescribed. (5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.</p>	<p>particular Wakf is a Shia Wakf or Sunni Wakf and there are clear indications in the deed of Wakf as to its nature, the dispute shall be decided on the basis of such deed.</p> <p>(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of Wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1):</p> <p>Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3):</p>
<p>2. Section 5 - Publication of list of wakfs.— (1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.</p>	<p>2. Section 5 - 5. Publication of list of Wakfs:--(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.</p>

<p>(2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of wakfs existing in the State, or as the case may be, the part of the State ----- ----- 1. Subs. by Act 38 of 1969, s.4, for “in the State” (with retrospective effect). 2. Subs. By s.5, ibid., for “existing in the State” (with retrospective effect). 108 to which the report relates, and containing such particulars as may be prescribed.</p>	<p>(2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni Wakfs or Shia Wakfs, in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.</p>
<p>3. Section 6 - 6. Disputes regarding wakfs.— (1) If any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in</p>	<p>3. Section 6 - 6. Disputes regarding Wakfs.--(1) If any question arises whether a particular property specified as Wakf property in the list of Wakfs is Wakf property or not or whether a Wakf specified in such list is a Shia Wakf or Sunni Wakf, the Board or the Mutawalli of the Wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the</p>

<p>a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final: Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of wakfs under sub-section (2) of Section 5: Provided further that in the case of the list of wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969, (38 of 1969.) Such suit may be entertained by the civil court within the period of one year from such commencement.</p> <p>(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or</p>	<p>Tribunal in respect of such matter shall be final:</p> <p>Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of Wakfs:</p> <p>Explanation: For the purposes of this Section and Section 7, the expression “any person interested therein”, shall, in relation to any property specified as Wakf property in the list of Wakfs published after the commencement of the Act, shall include also every person who, though not interested in the Wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant enquiry under Section 4.</p> <p>(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any Wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of</p>
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<p>of any appeal or other proceeding arising out of such suit.</p> <p>(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.</p> <p>(4) The list of wakfs published under sub-section (2) of Section 5 shall, unless it is modified in pursuance of a decision of the civil court under sub-section (1), be final and conclusive.</p>	<p>such suit.</p> <p>(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.</p> <p>(4) The list of Wakfs shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.</p> <p>(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).</p>
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12. The Supreme Court in **Madanuri Sri Rama Chandra Murthy** (supra) has considered Sections 4, 5 and 6 of the 1954 Act as well as the 1995 Act and has held that Sections 4 to 6 contained in both the Acts are almost *pari materia* with each

other. Paras 12, 13 and 16 are extracted below for the facility of reference:

12. Section 4 of the 1954 Act, empowered the State Government to appoint a State Commissioner, and as many Additional and Assistant Survey Commissioners of Wakf as may be necessary, by a notification in the Official Gazette for the purpose of making survey of wakf properties existing within the State. The Survey Commissioner after making a survey of wakf properties would submit his report to the State Government containing various particulars as mentioned in sub-sections (3) and (4) of Section 4 of the Act. Section 5 of the 1954 Act mandated that on receipt of such report from the Survey Commissioner made under sub-section (3) of Section 4, the State Government should forward a copy of the same to the Wakf Board. The Wakf Board would examine the report forwarded to it and publish in Official Gazette, the list of wakfs in the State. For resolving the disputes regarding wakfs, Section 6 of the 1954 Act, provided jurisdictional civil court as a forum and decision of civil court in respect of such matters should be final. It was also clarified that no such suit should be entertained by the civil court, after the expiry of one year from the date of publication of the list of wakfs as per sub-section (2) of Section 5. Sub-section (4) of Section 6 stated that the list of wakfs published under sub-section (2) of Section 5 shall be final and conclusive unless such list is modified on the direction of the civil court.

13. The provisions found in Sections 5 and 6 of the Wakf Act, 1995 and the 1954 Act are almost akin to each other. However, the change brought in by Parliament

under the 1995 Act is that, in the case of dispute regarding wakfs, the aggrieved party needs to approach the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and consequently, the jurisdiction of the civil court is taken away. Except the aforesaid change, no other substantial modification is found in those provisions. Section 7 of the 1995 Act empowers the Tribunal to determine the disputes, regarding auqaf/wakfs, the particulars of which are specified therein.

16. Thus, it is amply clear that the conducting of survey by the Survey Commissioner and preparing a report and forwarding the same to the State or the Wakf Board precedes the final act of notifying such list in the Official Gazette by the State under the 1995 Act (it was by the Board under the 1954 Act). As mentioned supra, the list would be prepared by the Survey Commissioner after making due enquiry and after valid survey as well as after due application of mind. The enquiry contemplated under sub-section (3) of Section 4 is not merely an informal enquiry but a formal enquiry to find out at the grass root level, as to whether the property is a wakf property or not. Thereafter the Wakf Board will once again examine the list sent to it with due application of its mind and only thereafter the same will be sent to the Government for notifying the same in the Gazette. Since the list is prepared and published in the Official Gazette by following the aforementioned procedure, there is no scope for the plaintiff to get the matter reopened by generating some sort of doubt about Survey Commissioner's Report. Since the Surveyor's Report was required to be considered by the State Government as well as the Wakf Board (as the case

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

(vi) ISSUES:

13. After noticing the provisions of the 1954 Act and the 1995 Act, we may advert to the issues which arise for consideration in this appeal. The following issues arise for consideration in this appeal and the writ petitions:

(i) Whether the survey conducted under Section 4 of the Wakf Act, 1954, is saved under Section 112(2) of the Wakf Act, 1995?

(ii) Whether the notification dated 15.11.2001 has been issued under Section 5(2) of the Wakf Act, 1954 and is therefore nullity?

(iii) Whether the writ petition filed by the company suffers from delay and laches? and

(iv) Whether the Wakf Tribunal is the only authority under Section 6(1) of the Wakf Act, 1995 to examine the validity of the impugned notification dated 15.11.2001 and the

same cannot be examined in a proceeding under Article 226 of the Constitution of India?

(vii) ANALYSIS:

(i) *Whether the survey conducted under Section 4 of the Wakf Act, 1954, is saved under Section 112(2) of the Wakf Act, 1995?*

14. The making of survey under Section 4 of the Act is not a mere administrative act but it is to be informed by a quasi-judicial inquiry. The surveyor has the power to find out whether a particular property is a wakf and Commissioner has to determine the aspects which have been mentioned in Section 4 of the Act (see **Maharashtra State Board of Wakfs** (supra)). The effect of repeal of a statute is to destroy all inchoate rights and all causes of action which may have arisen under the provisions of repealed statute. When repeal is followed by a fresh legislation on the same subject, the Court undoubtedly has to look into the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities, but

whether it manifests an intention to destroy them (see **State of Punjab vs. Mohar Singh**¹⁴). The aforesaid view was reiterated with approval in **Gammon India** (supra) and it was held that the issue with regard to the continuation of pending proceedings under a repealed statute depends either under the savings contained in the Repeal Act or under Section 6 of the General Clauses Act. It was further held that question whether a right was acquired or a liability incurred under a statute before its repeal in each case depends on the construction of a statute and the facts of a particular case. It was also held that when there is a repeal of an enactment and simultaneous re-enactment, the re-enactment has to be considered as reaffirmation of the old law and the provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly unless the re-enacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. The aforesaid view was again reiterated with approval in **State of Haryana vs. Hindustan Construction Company Limited**¹⁵.

¹⁴ 1955 (1) SCR 893 : AIR 1955 SC 84

¹⁵ (2017) 9 SCC 463

15. Section 112 of the 1995 Act, which deals with repeal and savings, is extracted below for the facility of reference:

112. Repeal and savings:- (1) The Wakf Act, 1954 (29 of 1954) and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

16. In the instant case, the repeal of an enactment, namely 1954 Act is accompanied with simultaneous re-enactment namely the 1995 Act. In **Madanuri Sri Rama Chandra Murthy** (supra), the Supreme Court has held that the provisions of Sections 4, 5 and 6 of the 1954 Act as well as the 1995 Act are substantially similar. Therefore, the legislative intention can safely be inferred as re-affirmation of the old law.

17. It is pertinent to note that scope and effect of Section 112(2) of the 1995 Act was considered by the Supreme Court in **T.Kaliamurthi v. Five Gori Thaikkal Wakf**¹⁶ and it was held that Section 112 of the Act is in conformity with Section 6 of the General Clauses Act, which also provides that a repeal shall not affect any right, privilege, obligation or liability acquired or incurred under the repealed enactment unless a contrary intention appears. Thus, under Section 6 of the General Clauses Act and Section 112 of the Wakf Act, prior operation of the repealed enactment or the legal proceedings or remedies instituted, continued or enforced are saved.

18. On perusal of Section 112(2) of the 1995 Act, the legislative intent to save anything done or any action taken under the 1954 Act is manifest. Therefore, anything done or any action taken under the 1954 Act is saved and shall be deemed to have been done or taken under the corresponding provisions of the 1995 Act. The re-enacted enactment i.e., the 1995 Act does not contain any intention incompatible with or contrary to the provisions of the Repealed Act. Therefore, the

¹⁶ (2008) 9 SCC 306

survey conducted under Section 4 of the 1954 Act is saved under Section 112(2) of the 1995 Act. The first issue is, therefore, answered in the affirmative.

(ii) Whether the notification dated 15.11.2001 has been issued under Section 5(2) of the Wakf Act, 1954 and is therefore nullity?

17. A survey made in exercise of powers under Section 4(2) of the 1954 Act can be made the basis for issuing the notification under Section 5(2) of the 1995 Act as the same is saved under Section 112(2) of the 1995 Act. Before proceeding further, it is apposite to take note of the impugned notification dated 15.11.2001 which reads as under:

SUPPLEMENT TO PART II
OF
THE ANDHRA PRADESH GAZETTE
PUBLISHED BY AUTHORITY

No.46-A HYDERABAD, THURSDAY, NOVEMBER 15, 2001.

NOTIFICATIONS BY HEADS OF DEPARTMENTS, ETC.

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REVENUE NOTIFICATIONS

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ANDHRA PRADESH STATE WAKF BOARD

LIST OF WAKF PROPERTIES (REGISTERED AND UNREGISTERED) IN NARSAPUR AND SIDDIPET TALUKS OF MEDAK DISTRICT OF TELANGANA REGION SURVEYED UNDER SECTION 4(3) OF THE WAKF ACT, 1954 AND PUBLISHED UNDER SECTION 5(2) IBID.

Thus, it is evident that the notification under Section 5(2) has been issued under the 1954 Act.

18. The Supreme Court in **D.C.Bhatia** (supra) has held that the provisions of the repealed statute cannot be relied upon after it has been repealed. It has further been held that what has been acquired under the repealed act, cannot be disturbed, but if any new or further step is needed to be taken under the Act that cannot be taken even after the Act is repealed. The aforesaid view has been reiterated with approval by a three-Judge Bench of the Supreme Court in **Manish Kumar vs. Union of India**¹⁷ and it has been held that rights which have accrued are saved unless taken away expressly. It is well settled legal proposition that except the cases where the proceedings were commenced, prosecuted and brought to a finality before the repeal, no proceeding under the repealed statute can be commenced or continued after the repeal (see

¹⁷ (2021) 5 SCC 1

Keshavan Madhava Menon vs. State of Bombay¹⁸ and Mohan Raj vs. Dimbeswari Saikia¹⁹).

19. The notification in the instant case has not been issued under Section 5(2) of the 1995 Act, but has been issued under Section 5(2) of the 1954 Act. The 1954 Act has been repealed and therefore, in view of well settled legal position referred to in preceding paragraph, the powers under Section 5(2) of the 1954 Act cannot be invoked to issue the notification. Therefore, the second issue is answered in the affirmative by stating that the notification dated 15.11.2001 has been issued under Section 5(2) of the 1954 Act and the same is, therefore, nullity.

(iii) Whether the writ petition filed by the company suffers from delay and laches?

20. It is trite law that extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is discretionary in nature and question of delay and laches in all kinds of cases would not disentitle a party to invoke the jurisdiction under Article 226 of the Constitution of India. It is well settled legal

¹⁸ AIR 1951 SC 128

¹⁹ AIR 2007 SC 232

principle that if an order is a nullity, its validity could be set up whenever and wherever it is sought to be enforced or relied upon. It is equally well settled legal position that test while ascertaining the delay, is not of physical running of time and when circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches (see **M/s.Dehri Rohtas Light Railway Company Limited vs. District Board, Bhojpur**²⁰). In **Tukaram Kana Joshi vs. Maharashtra Industrial Development Corporation**²¹, the Supreme Court dealing with the issue of delay in approaching the Court under Article 226 of the Constitution of India has held as under:

13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter

²⁰ (1992) 2 SCC 598

²¹ (2013) 1 SCC 353

within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide *P.S. Sadasivaswamy v. State of T.N.* [(1975) 1 SCC 152 : 1975 SCC (L&S) 22 : AIR 1974 SC 2271] , *State of M.P. v. Nandlal Jaiswal* [(1986) 4 SCC 566 : AIR 1987 SC 251] and *Tridip Kumar Dingal v. State of W.B.* [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])

14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners. (Vide *Durga Prashad v. Chief Controller of Imports and Exports* [(1969) 1 SCC 185 : AIR 1970 SC 769] , *Collector (LA) v. Katiji* [(1987) 2 SCC 107 : 1989 SCC (Tax) 172 : AIR 1987 SC 1353] , *Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur* [(1992) 2 SCC 598 : AIR 1993 SC 802] , *Dayal Singh v. Union of India* [(2003) 2 SCC 593 : AIR 2003 SC 1140] and *Shankara Coop. Housing*

Society Ltd. v. M. Prabhakar [(2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56 : AIR 2011 SC 2161] .)

The principle laid down in **Tukaram Kana Joshi** (supra) has been quoted with approval in **Union of India vs. N.Murugesan**²². Thus, the issue of delay has to be decided on the basis of facts and circumstances of each case.

21. In the instant case, in reply to paragraphs 12 and 13 of the affidavit filed in support of the writ petition, the Wakf Board has taken an objection with regard to delay and laches. The relevant extract of the aforesaid reply reads as under:

Since the period of one year has been elapsed it is for the Wakf Tribunal to adjudicate the suit challenging the notification on merits. The petitioner instead of approaching to Wakf Tribunal established under Section 83 of the Wakf Act, 1995 directly approached this Hon'ble Court under Article 226 of the Constitution of India after more than 14 years from the date of publication of Gazette on the ground of alleged violation of principles of natural justice which is hit by delay and laches, as such it is not open to the petitioner to invoke the extraordinary special original jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India after more than 14 years from the date of publication of Gazette, further the issues involved in the present case are disputed question of fact to be decided and proved at the appropriate forum, the Wakf Tribunal. As such, the petitioner has got alternative

²² (2022) 2 SCC 25

remedy under Section 83 of the Wakf Act, 1995, as held by the Hon'ble Supreme Court in Board of Wakf, West Bengal vs. Anis Fatima Begum [(2010) 14 SCC 588], as such the above writ petition is liable to be dismissed.

22. The company had purchased the subject lands in an auction held on 26.12.2013 and 13.08.2014. The sale certificates were also issued in favour of the company. Thereupon, it initiated attempts to seek mutation of its name in the revenue records and learnt about the notification dated 15.11.2001. Thereafter, the writ petition was filed on 05.11.2014. Therefore, in the facts and circumstances of the case, we hold that the writ petition does not suffer from delay and laches disentitling the petitioner to invoke the jurisdiction under Article 226 of the Constitution of India. Accordingly, the third issue is answered.

(iv) Whether the Wakf Tribunal is the only authority under Section 6(1) of the Wakf Act, 1995 to examine the validity of the impugned notification dated 15.11.2001 and the same cannot be examined in a proceeding under Article 226 of the Constitution of India?

23. Before proceeding further, it is apposite to take note of Section 6 of the 1995 Act as it stood prior to Amendment by Amendment Act No.27 of 2013 dated 01.11.2013.

6. Disputes regarding Wakfs:- (1) If any question arises whether a particular property specified as Wakf property in the list of Wakfs is wakf property or not or whether a Wakf specified in such list is a Shia Wakf or Sunni Wakf, the Board or the Mutawalli of the Wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final;

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of Wakfs:

Explanation:- For the purposes of this section and section 7, the expression “any person interested therein”, shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under Section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him

in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(4) The list of Wakfs shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

24. Thus, it is evident that dispute whether or not property is a wakf property in the list of wakfs and whether the same belongs to Shia or Sunni wakf, the Board or the Mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for adjudication of the aforesaid question. Section 6 has to be read with Section 3(k) of the Act which defines the expression 'person interested in a wakf' and reads as under:

3 (k) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefit from the wakf and includes-

(i) any person who has a right to workshop or to perform any religious rite in a mosque, idgah, imambara, dargah, khanqah, peerkhana and karbala, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;

(ii) the wakif and any descendant of the wakf and the Mutawalli;

25. Thus, if provisions of Section 6 and 3(k) of the Wakf Act, 1995, prior to its Amendment, are read in conjunction, it is evident that a person interested in the wakf alone could have resorted to the remedy under Section 6 of the 1995 Act. However, subsequently by Amendment Act No.27 of 2013 dated 01.11.2013, the words 'any person interested' had been substituted by 'any person aggrieved'. The Supreme Court in **Rashid Wali Beg** (supra) dealt with the issue whether suit seeking the relief of perpetual and mandatory injunction in respect of a property admitted to be the wakf property before the civil court is maintainable. The aforesaid issue was answered in the negative and in paragraph 47 and 68, it was held as under:

47. The upshot of the above discussion is that the basis of *Ramesh Gobindram* [*Ramesh Gobindram v. Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] now stands removed through Amendment Act 27 of 2013. In fact, when *Ramesh Gobindram* [*Ramesh Gobindram v. Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] was decided, Sections 6(1) and 7(1) enabled only three categories of persons to approach the Waqf Tribunal for relief. They are, (i) the Board; (ii) the mutawalli of the waqf; or (iii) any person

interested therein. However, the Explanation under Section 6(1) clarified that the expression “*any person interested therein*” shall include every person, who, though not interested in the waqf, is interested in the property. But by Act 27 of 2013 the words, “*any person interested*” were substituted by the words, “*any person aggrieved*”, meaning thereby that even a non-Muslim is entitled to invoke the jurisdiction of the Tribunal. Due to the substitution of the words “*any person aggrieved*”, Act 27 of 2013 has deleted the Explanation under 6(1). This amendment has also addressed the concern expressed in *Ramesh Gobindram* [*Ramesh Gobindram v. Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] (in para 21 of the SCC report) whether a non-Muslim could be put to jeopardy by the bar of jurisdiction, merely because the property is included in the list of waqfs. We must point out at this stage that the Explanation under sub-section (1) of Section 6, as it stood at the time when *Ramesh Gobindram* [*Ramesh Gobindram v. Sugra Humayun Mirza Wakf*, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] was decided, already took care of this contingency, but was omitted to be brought to the notice of this Court.

68. 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.

26. The decision in **Rashid Wali Beg** (supra) was considered by the Supreme Court in **State of Andhra Pradesh (Now State of Telangana vs. Andhra Pradesh State Wakf Board**²³.

The relevant extract of paragraph 105 reads as under:

105. In **Rashid Wali Beg**, this Court examined all the previous judgments on the question as to whether any property is a wakf property or not is triable exclusively by the Wakf Tribunal but the judgments discussed therein pertained to the invocation of the jurisdiction of the Civil Court or of the Wakf Tribunal. None of the judgments dealt with the invocation of the jurisdiction of the writ court. Board of Wakf, West Bengal vs. Anis Fatma Begum ((2010) 14 SCC 588) is again not a judgment arising out of a writ petition filed before the High Court. It was a case of a suit filed before the Civil Court, though in para 7, there is an observation that all matters pertaining to wakf should be filed in the first instance before the Tribunal and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution. The observation made by this Court in respect of invocation of the jurisdiction of the writ court is clearly obiter as that was not the question arising for consideration.

Thus, it is evident that the decision of Supreme Court in

²³ 2022 SCC OnLine SC 159

Rashid Wali Beg (supra) does not deal with the invocation of jurisdiction of a writ court.

27. However, the alternative remedy has been held by Supreme Court not to operate as a bar in at least three contingencies, namely (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged (see **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai**²⁴ and **Harbanslal Sahnia vs. Indian Oil Corporation**²⁵). The Supreme Court in **Radha Krishan Industries vs. State of Himachal Pradesh**²⁶, while dealing with exercise of jurisdiction under Article 226 of the Constitution, when an alternative remedy is available to a party, held as under:

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

²⁴ (1998) 8 SCC 1

²⁵ (2003) 2 SCC 107

²⁶ (2021) 6 SCC 771

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

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

The aforesaid view was reiterated with approval in **Maharashtra State Board of Wakfs** (supra).

27. In the case in hand, the impugned notification dated 15.11.2001 is void as the same has been issued under the provisions of the repealed Act. Therefore, the instant case falls within the exceptions carved out by the Supreme Court in **Whirlpool Corporation** (supra) and **Harbanslal Sahnia** (supra) and the writ petition has rightly been entertained, notwithstanding the availability of an alternative remedy. Therefore, in the facts of the case, it is not necessary to relegate the petitioner to alternative remedy. Accordingly, the fourth issue is answered in the affirmative by stating that notwithstanding the alternative remedy, the writ petition can be entertained.

28. Even otherwise, the scope of an intra-court appeal is well defined. This Court in appeal against an order of learned Single Judge does not act as Court of regular appeal.

29. For the aforementioned reasons, the finding recorded by learned Single Judge that survey conducted under Section 4 of the 1954 Act is not saved under Section 112 of the 1995 Act is

set aside. However, we agree with the conclusion of the learned Single Judge. The notification dated 15.11.2001 assailed in W.P.No.23242 of 2008 and W.P.No.19205 of 2019 insofar as it pertains to subject matter of the said writ petitions is quashed. The Inam Tribunal cum Revenue Divisional Officer, Medak shall decide File No.H/5652/98 in accordance with law.

(viii) CONCLUSION:

30. In the result, W.A.No.1432 of 2016 is dismissed, whereas W.P.Nos.23242 of 2008 and 19205 of 2019 are allowed.

Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

ALOK ARADHE, CJ

N.V.SHRAVAN KUMAR, J

04.12.2023

Note: LR copy be marked.
(By order)
Pln