

Waqf boards perform secular functions, false narrative being created on waqf-by-user: SG to top court

No basis to say that govt can take over waqf land, Act only provides for change in revenue records: Tushar Mehta

The Union government on Wednesday told the Supreme Court that waqf, though an Islamic concept, is not an essential feature of the religion and that waqf boards are performing secular functions.

Solicitor General (SG) Tushar Mehta, appearing for the government, also told a bench of Chief Justice of India B R Gavai and Justice Augustine G Masih that a "false narrative" was being created that documents would be demanded to prove waqfs established by long use (waqf-by-user).

The court is hearing the challenge against the amendments to the Waqf Act.

Mehta said: "Waqf is an Islamic concept. But it is not an essential part of Islam. Waqf is nothing but just charity in Islam. Charity is recognised in every religion, and it cannot be regarded as an essential tenet of any religion."

"Even certain practices adopted by the person professing a particular religion may not have anything to do with the religion itself. I am posing a question to myself. Suppose a majority of the Muslims, who are not financially sound, if they do not create a waqf, would they cease to be Muslims? That's the test the Supreme Court has laid down," the SG argued. "Charity is a part of every religion, but not an essential part of any religion. And therefore, waqf per se is not an essential religious practice."

On the Act providing for non-Muslim members in Waqf Boards, Mehta argued that these bodies performed secular functions. "Secular function means in every state they would see that if there are hundred waqfs, those are properly maintained... The functions of the waqf board, it's purely secular."

Mehta said the law provides for a maximum of two non-Muslim members on a board, whose majority would still be Muslim. He added that unlike Hindu endowments, the work of Waqf Boards does not touch upon any religious activity.

The SG said that Article 25 allows the state to make any law regulating or restricting any economic, financial, political or other secular activities that may be associated with religious practice.

"So administration of property will have to be in accordance with law. In other words, the competent legislature has the competence to enact the law with regard to administration of such property without touching upon the religious part of it," he said.

The SG also referred to the top court permitting the Tamil Nadu government to appoint priests in temples calling it a secular activity, and said many such provisions enacted by states are under challenge before the court.

Mehta also spoke on the apprehensions raised by the petitioners about Section 3C of the Act, which says that a "property shall not be treated as waqf property" till a designated officer completes an inquiry on whether it encroached upon government land. The SG said this Section only provides for an entry to be made in revenue records as the question of title can be determined only by a court of law.

There is no basis, therefore, to say that the government can unilaterally take over waqf land, he said.

“The only consequence is that revenue records will be corrected... The argument repeated by them is that this provision allows the wholesale takeover of the waqf. It is misleading. Designated Officer is not making a final determination of property — only the revenue records will be updated. It is only that through revenue records, it will come to notice that the property belongs to the government... It will be open for affected parties to approach the waqf tribunal. Final determination of title would be decided by tribunal or on appeal by the High Courts,” he said.

He denied that Section 3C enabled the government to act as a judge in its own cause, saying the government is not the owner of any property but only holds it in trust for 140 crore Indians.

On the need to register waqf-by-user properties, the SG said that even the Mussalman Wakf Act of 1923 had a provision (Section 3) mandating such registration of waqfs. “Now it is not open for anyone to say waqf need not be registered,” he said.

Mehta will continue his arguments on Thursday.