

## **Punjab Wakf Board vs Sham Singh Harike on 7 February, 2019**

**Equivalent citations: AIRONLINE 2019 SC 1684, 2019 (4) SCC 698, (2019) 1 ALL RENTCAS 511, (2019) 1 CLR 763 (SC), (2019) 1 WLC(SC)CVL 615, (2019) 200 ALLINDCAS 79, (2019) 2 RECCIVR 134, (2019) 3 ANDHLD 184, (2019) 3 SCALE 56**

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**Bench: K.M. Joseph, Ashok Bhushan**

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 92 OF 2019

PUNJAB WAKF BOARD

...APPELLANT(S)

SHAM SINGH HARIKE

...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 93 OF 2019

PUNJAB WAKF BOARD

...APPELLANT(S)

TEJA SINGH

VERSUS

...RESPONDENT(S)

JUDGMENT

ASHOK BHUSHAN, J.

These two appeals having been filed against two separate judgments of the Punjab and Haryana High Court allowing the Civil Revisions filed by the respondents have been heard together and are being decided by this common judgment.

Reason:

2. Brief facts giving rise to the above appeals which are necessary to be noticed for deciding these appeals are:

Civil Appeal No.92 of 2019(Punjab Wakf Board vs. Sham Singh Harike) The appellant, Pubjab Wakf Board, claimed to be owner of land measuring 269 kanals 7 marlas, comprising in khewat No.462, khatauni Nos.589, 593, 599 and 596 in khasra Nos.103, 105, 102 min, 104, 106, of village Birmi, Tehsil and District Ludhiana.

The appellant had let out the above-mentioned land to Sham Singh and his wife Kuldeep Kaur for cultivation of the land. The lessee deposited the rent for few years and thereafter initiated litigation against the interest of the Board which was decided in favour of the Board. The appellant filed Civil Suit No.250 of 2001 in the Court of Civil Judge, Senior Division for the grant of permanent injunction restraining the respondents from raising any construction and changing the position from agricultural to residential of the property in any manner. The respondents filed written statement challenging the maintainability of the suit. The title of the appellant was denied in the written statement. After the constitution of the Wakf Tribunal, the suit was transferred to the Wakf Tribunal and renumbered as RBT No.84/2006. The respondent filed an application before the Tribunal for rejection of the plaint on the ground that the Tribunal has no jurisdiction to entertain the suit and the Civil Court alone has jurisdiction to entertain the suit. The Wakf Tribunal by its order dated 17.04.2009 rejected the application of the respondent and held that after 01.01.1996 it is only the Wakf Tribunal which has jurisdiction to try the present suit.

3. The respondent aggrieved by the order dated 17.04.2009 filed Civil Revision in the High Court. The High Court relying on the judgment of Ramesh Gobindram(dead) through LRs. vs. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726, allowed the Revision. The High Court held that since the appellant is a non-muslim, the Wakf Tribunal has no jurisdiction in the matter and it is only the Civil Court which had the jurisdiction in the present dispute. The appellant aggrieved by the said judgment dated 20.09.2010 has come up in this appeal.

Civil Appeal No.93 of 2019(Punjab Wakf Board vs. Teja Singh)

4. The Punjab Wakf Board, the appellant claiming to be owner of the property measuring 29 Kanals 9 Marlas comprised in Khewat No.224, khatauni No.277, Khasra Nos.55, 56, 57 filed Suit No.2 of 2007 in the Court of Wakf Tribunal, Ludhiana for possession of above noted property and seeking relief for permanent injunction restraining the respondent from interfering and changing the nature of the property. Plaintiff's case in the suit was that the defendant, Taja Singh took suit property on yearly lease from Wakf Board till the year 1996-97 and paid lease money to the plaintiff Board. After 1996-97 lease was not renewed and defendant having committed certain illegalities, the Wakf Board cancelled the lease on 05.12.1998. Notice to this effect was served upon the defendant vide which a request was made to the defendant to handover the vacant possession of the leased-out property to the plaintiff Board. After cancellation of the lease, the possession of the defendant over the suit property became illegal.

5. The defendant had also filed suit for grant of injunction which was decreed by Civil Judge (Junior Division), Ludhiana, the Court restrained the Board from dispossessing the respondent forcibly and illegally except in due course of law. The defendant having failed to handover the possession, the appellant filed the suit for possession and the grant of permanent injunction. The defendant entered appearance and filed written statement. The defendant's case in the written statement was that the defendant always remained ready to pay the rent due to the plaintiff and is still ready to pay and tender the rent due to the plaintiff even in the Court but the plaintiff is not accepting the same intentionally just to seek possession of the tenanted premises in an illegal manner. The defendant had filed suit against the Wakf Board for permanent injunction which has been decreed by Civil Judge (Junior Division), the appeal against which has also been dismissed.

6. The Wakf Tribunal vide its judgment dated 03.06.2009 decreed the original suit. Following decree has been passed by the Tribunal:

“17. Keeping in view the findings on the above issues, the suit of the plaintiff is decreed for possession of the suit land and the same is also decreed for permanent injunction restraining the defendant from changing the nature of the suit land with costs of the suit. Decree sheet be drawn. File be consigned to the record room.”

7. Against the judgment of the Wakf Tribunal decreeing the suit, the defendant filed Civil Revision No.6157 of 2009, which has been allowed by the High court by following order:

“In view of the judgment delivered by the Apex Court in case Ramesh Gobindram (dead) through L.Rs. vs. Sugra Humayun Mirza Wakf, 2010(2) RCR(Rent) 266, the instant petition is accepted, impugned order is set aside and the plaint along with documents is returned to the Petitioner to be presented before the appropriate court.”

8. The appellant aggrieved by the judgment of the High Court dated 23.02.2011 has come up in this appeal.

9. We have heard Shri Salman Khurshid, learned senior counsel for the appellant. Shri Vineet Bhagat and Shri K.G. Bhagat, learned counsel and Shri S.B. Upadhyay, learned senior counsel appeared for the respondents.

10. Shri Salman Khurshid, learned senior counsel for the appellant submits that Wakf Tribunal was fully competent to entertain the suits filed by the appellant. The defendants in both the suits having been leased out the land which was Wakf property, the suit clearly lay before the Wakf Tribunal as per Section 83 of Wakf Act, 1995.

11. He submits that Wakf Tribunal was conferred jurisdiction of entertaining every dispute pertaining to Wakf in the Wakf Act, 1954. After the 1984 Amendment, under

Section 55 of Act, 1954 for any dispute pertaining to Wakf property suit has to be filed before the Tribunal and the jurisdiction of the Civil Court was barred by virtue of Section 55C of the Act, 1954, which statutory scheme has been continued under Sections 83 and 85 of Act, 1995. He submits that judgment of Ramesh Gobindram (*supra*) which has been relied by the High Court while allowing the revisions filed by the respondents was a case under Act, 1954 that too prior to 1984 Amendment. He, however, submits that suits filed by the appellant were suits for possession, hence, were fully maintainable before the Wakf Tribunal. Shri Salman Khurshid relies on the judgment of this Court in *Board of Wakf, West Bengal & another vs. Anis Fatma Begum & another, (2010) 14 SCC 588*, where suit filed before the Tribunal was held to be maintainable and the judgment of Ramesh Gobindram was distinguished.

12. Shri Khurshid has further relied on the judgment and Order of this Court dated 13.09.2013 in C.A. No.8194 of 2013 (Punjab Wakf Board vs. Pritpal Singh & Anr.) where a similar order passed by the High Court holding that suit of Punjab Wakf Board is not maintainable has been set aside. He submits that the present case is similar to the judgment of this Court in Pritpal Singh. Shri Khurshid has relied on other judgments which shall be referred to later.

13. Learned counsel for the respondent, Sham Singh Harike, refuting the submission of the counsel of the appellant contends that the judgment of this Court in *Anis Fatma Begum (supra)* does not overrule Ramesh Gobindram. The case of respondent is that he is in possession of property since 1967. In the year 1970 property was verified as Wakf property without any notice to the Central Government. The respondent has been opposing the move of appellant Board to seek mutation of its title over the property before the Revenue Authority. Punjab Wakf Board in the year 1970 got the suit land notified in the Wakf under the Wakf Act, 1954 without serving any notice on the respondent. The title of the appellant has been refuted by the respondent. The suit filed by the appellant was not maintainable before the Civil Court, hence, application was filed by the respondent under Order VII Rule 10 and 11 CPC for rejecting the plaint.

14. It is submitted by the learned counsel for the respondent that Sham Singh Harike and others have also filed a suit in the Court of Civil Judge, Senior Division against the Union of India and others including Punjab, Wakf Board seeking a declaration that suit land is not a Wakf property nor Wakf Board has right and any interest nor forcibly it can dispossess him.

15. Shri S.B. Upadhyay, learned senior counsel appearing for Teja Singh submits that a suit has been filed by the respondent being Suit No.265 of 1999 which has been decreed by the Civil Judge (Junior Division) restraining the defendants from dispossessing the plaintiff forcibly or illegally subject to payment of dues upto date against which appeal filed by the Punjab Wakf Board was also dismissed on 09.04.2005. Shri Upadhyay has heavily relied on Ramesh Gobindram case and he

submits that in view of the judgment of Ramesh Gobindram, the suit filed by the appellant was not maintainable and the plaint has rightly been returned to be presented before the Civil Court.

16. We have considered the submissions of the parties and perused the records.

17. The main issue which has arisen for consideration in these appeals is as to whether suit filed by the appellant before the Wakf Tribunal praying for decree of possession of suit property was maintainable in Wakf Tribunal or would lie only in a Civil Court. Although, the Wakf Tribunal has held that suit was maintainable before it, the High Court has reversed the order of the Tribunal holding that the suit is not maintainable before the Wakf Tribunal relying on the judgment of this Court in Ramesh Gobindram. Before we notice the judgment of this Court in Ramesh Gobindram and the judgments relied by the parties, the statutory provisions pertaining to Wakf and Wakf property need to be noted.

18. Before the enactment of Wakf Act, 1995 by the Parliament, the Wakf Act, 1954 was in force. Many deficiencies in Wakf Act, 1954 were found which led to comprehensive amendments made by Wakf Amendment Act, 1984 on the basis of recommendations of Wakf Inquiry Committee. However, many provisions of 1984 (Amendment) Act could not be enforced. Before we come to Act, 1995 it is relevant to notice the statutory regime which was prevalent prior to Act, 1995. The Wakf (Amendment) Bill, 1984 was moved with detail of Statement of Objects and Reasons. Paragraph 3(vii) which is relevant for the present purpose is as follows:

“3. The Bill seeks to make, inter alia, amendments to the Wakf Act, 1954, in relation to the following matters, namely:-

xxx xxx xxx

(vii) to provide for the appointment of Tribunals for the speedy determination of the disputes, question or other matters relating to wakfs; every such Tribunal is to consist of one person who shall be a member of the State Judicial Service holding a rank not below that of a District Judge or of a Civil Judge, First Class;

xxx xxx xxx”

19. Section 55 of Wakf Act, 1954 (prior to 1984 Amendment) was as follows:

“Section-55. Institution of suits under section 92 of the Code of Civil Procedure, 1908.-

(1) A suit to obtain any of the reliefs mentioned in section 92 of the Code of Civil Procedure, 1908, (5 of 1908.) relating to any Wakf may, notwithstanding anything to

the contrary contained in that section, be instituted by the Board without obtaining the consent referred to therein.

(2) No suit to obtain any of the reliefs referred to in section 92 of the Code of Civil Procedure, 1908, relating to any Wakf shall be instituted by any person or authority other than the Board without the consent in writing of the Board and for the institution of any such suit, it shall not be necessary to obtain the consent referred to in that section, notwithstanding anything contained therein:

Provided that nothing in this sub-section shall apply in relation to any such suit against the Board."

20. Comprehensive amendments were made in Wakf Act, 1954. Section 55 was substituted in the following manner:

"55. Appointment, powers and jurisdiction of tribunals.--(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 property which such Tribunal is, or may be, required to determine under this Act or any rule or order made thereunder, and may, by the same or subsequent notification in the Official Gazette, define the local limits of the area in relation to which each Tribunal appointed by it shall exercise jurisdiction under this Act.

(2) Any mutawalli of a wakf, person interested in a wakf or any other person aggrieved by any order made under this Act or any rule or order made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

(3) Where any application made under sub-

section (1) relates to any wakf property which falls within the territorial limits of the Jurisdiction of two or more Tribunals, such application, may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interests of the wakf or any other person interested in the wakf or the wakf property, to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with

the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District and Sessions Judge or of a Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) 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 Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed:

Provided that where any procedure, different from the prescribed procedure, is specified by this Act, the Tribunal shall follow the procedure specified by this Act.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) Execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.”

21. Section 55C was inserted relating to bar of jurisdiction of Civil Court which was to the following effect:

“55-C. Bar of jurisdiction of civil courts in respect of matters determined by Tribunal.  
-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.”

22. Chapter VIII of the Wakf Act, 1995 deals with Judicial Proceedings. Sections 83 and 85 which are relevant for this case are as follows:

“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 waqf or waqf property under this Act and define the local limits and jurisdiction of such Tribunals.

(2) Any mutawalli person interested in a waqf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the waqf.

(3) Where any application made under sub-

section (1) relates to any waqf property which falls within the territorial limits of the jurisdiction of two or more Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the waqf actually and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the waqf or any other person interested in the waqf or the waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such waqf or waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred, shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interest of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) 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 Code of Civil Procedure, 1908, while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a Civil Court.

(8) The execution of any decision of the Tribunal shall be made by the Civil Court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908. (9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

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 waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.”

23. Reverting back to the facts in these appeals, in C.A.No.93 of 2019(Punjab Wakf Board vs. Teja Singh), in the suit filed by the Punjab Wakf Board the plaintiff has claimed for the following reliefs:

“It is therefore, prayed that a decree for possession of property measuring 29K-9M comprised in Khewat No.224, Khatauni No.277, Khasra No.55, 56,57 as per the Jamabandi for the year 2000-2001 of Village Talwara, HB No.149, Tehsil Ludhana West, District Ludhiana;

AND For the grant of permanent injunction restraining the defendant, his agents, attorneys, associates from interfering and changing the nature of the property in any manner whatsoever, may kindly be passed in favour of the plaintiff.”

24. Plaintiff's case was that Teja Singh was let out the suit property, till the year 1996-97, neither lease was renewed nor lessee handed over the possession. Teja Singh committed illegalities, the lease had been cancelled on 05.12.1998 after legal notice. Thereafter, the suit has been filed.

Plaintiff had also stated that Teja Singh failed to get the lease renewed, and a suit against the Board was filed where Civil Judge (Junior Division) decreed the suit restraining the Board from evicting Teja Singh forcibly or illegally. The case of Teja Singh in his written statement was that defendant has not violated any terms and conditions of the allotment order and rent deed, defendant is still ready to pay the rent, the lease has not been terminated according to the provisions of the Wakf Act.

25. Coming to C.A.No.92 of 2019 (Punjab Wakf Board vs. Sham Singh Harike), the case of the plaintiff in the suit was that the suit land was let out to Sham Singh with his wife, Kuldip Kaur in the year 1972 for cultivation. Defendant deposited rent for some period and after that he acted against the interests of the Board and started a false litigation. The property was let out to the defendant for agricultural purposes having no right to raise construction over the property. Details of different litigations initiated by the defendant were given in the plaint. Defendant initiated various proceedings for allotment of the land from the Revenue Authority which were all dismissed. The property has been mutated in the name of Wakf Board. In the written statement filed by the defendant, Sham Singh, the title of Wakf Board itself was disputed, and it was pleaded that the suit is not maintainable and liable to be dismissed. Until and unless the suit property is declared to be that of the plaintiff no suit is maintainable. Mutation in the name of the plaintiff does not confer any title. Thus, in both the suits filed by the appellant, the maintainability of the suit in the Wakf Tribunal was questioned. In the written statement filed by Sham Singh the title of the appellant to the suit property was questioned and challenged.

26. Now, we need to notice the judgment of this Court in Ramesh Gobindram(supra) on which the High Court as well as learned counsel for the respondent have placed heavy reliance. In the above case, the Andhra Pradesh Wakf Tribunal has passed an order of eviction against the appellant. Revision Petition filed before the Andhra Pradesh High Court was dismissed against which the appeal was filed. The issue involved in that case has been noticed in paragraph 2 of the judgment which is to the following effect:

“2. The question is: whether the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 was competent to entertain and adjudicate upon disputes regarding eviction of the appellants who are occupying different items of what are admittedly wakf properties? The Wakf Tribunal before whom the suits for eviction of the tenants were filed answered the question regarding its jurisdiction in the affirmative and decreed the suit filed against the appellant.”

27. This Court noticed in the aforesaid judgment that there is a cleavage in the judicial opinion expressed on the question of jurisdiction of Wakf Tribunal by the different High Courts in the country. The view of the Andhra Pradesh High Court, Rajasthan High Court, Madhya Pradesh High Court, Kerala High Court and Punjab and Haryana High Court has been noticed where High Courts have taken the view that jurisdiction of the Wakf Tribunal is wide enough to entertain and adjudicate upon all kinds of disputes which relate to any Wakf Property. The contrary view of the High Court of Karnataka, High Courts of Madras, Allahabad and Bombay was also noticed. This Court proceeded to examine the scheme of Wakf Act, 1995. After noticing the scheme of Sections 6, 7, 25 and other provisions with respect to Section 85 of the Act, following was stated by this Court in paragraphs 24 and 28:

“24. ....A plain reading of the above would show that the civil court’s jurisdiction is excluded only in cases where the matter in dispute is required under the Act to be determined by the Tribunal. The words “which is required by or under this Act to be determined by a Tribunal” holds the key to the question whether or not all disputes

concerning the wakf or wakf property stand excluded from the jurisdiction of the civil court.

28. Section 85 of the Act clearly bars jurisdiction of the civil courts to entertain any suit or proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of the civil courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the civil court does not fall within the four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred.”

28. This Court noticing the provisions of Section 83 has observed that Section 83 does not deal with the exclusion of the jurisdiction of Civil Courts to entertain the civil suits generally or suit of any particular class or category. It interpreted Section 83 as a provision which does not exclude the jurisdiction of the Civil Court. Following was stated in paragraph 29:

“29. ....Section 83 of the Act, however, does not deal with the exclusion of the jurisdiction of the civil courts to entertain civil suits generally or suit of any particular class or category. The exclusion of the civil court’s jurisdiction is dealt with by Section 6(5) and Section 85 of the Act. To interpret Section 83 as a provision that excludes the jurisdiction of the civil courts is not, therefore, legally correct, for that provision deals with constitution of Tribunals, the procedure which the Tribunals would follow and matters relating thereto.”

29. On an interpretation of Section 83 following has been laid down by this Court in paragraphs 31, 32 and 33:

“31. It is clear from sub-section (1) of Section 83 above that the State Government is empowered to establish as many Tribunals as it may deem fit for the determination of any dispute, question or other matter relating to a wakf or wakf property under the Act and define the local limits of their jurisdiction. Sub-section (2) of Section 83 permits any mutawalli or other person interested in a wakf or any person aggrieved of an order made under the Act or the Rules framed thereunder to approach the Tribunal for determination of any dispute, question or other matter relating to the wakf. What is important is that the Tribunal can be approached only if the person doing so is a mutawalli or a person interested in a wakf or aggrieved by an order made under the Act or the Rules. The remaining provisions of Section 83 provide for the procedure that the Tribunal shall follow and the manner in which the decision of a Tribunal shall be executed. No appeal is, however, maintainable against any such order although the High Court may call for the records and decide about the correctness, legality or propriety of any determination made by the Tribunal.

32. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the civil courts extends (sic) beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the civil courts stands completely excluded by reasons of such establishment.

33. It is noteworthy that the expression “for the determination of any dispute, question or other matter relating to a wakf or wakf property” appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the civil courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the civil court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal.”

30. The ultimate conclusion by this Court has been recorded in paragraphs 34 and 35 which are as follows:

“34. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the civil court would stand excluded.

35. In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal.”

31. The crux of the judgment as noticed in paragraph 34 is that “whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.” Thus, the ratio of the judgment as noticed above is “as to whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought”.

32. After the judgment of this Court in Ramesh Gobindram, there are several two-Judge judgments of this Court either following Ramesh Gobindram’s judgment or distinguishing the same on one or other reasons. This Court in Bhanwar Lal and

another vs. Rajasthan Board of Muslim Wakf and others, (2014) 16 SCC 51, elaborately noticed the judgment of Ramesh Gobindram's case. This Court ultimately in the facts of that case held that since the suit was filed much before the enforcement of the Act i.e. 1.1.1996, in view of the dictum laid down in Sardar Khan & others v. Syed Nazmul Hasan (Seth) and others, (2007) 10 SCC 727, the Civil Court where the suit was filed shall continue to have jurisdiction. In paragraph 30 following has been laid down:

“30. The suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleadings in the suit are not filed before us and, therefore, the exact nature of relief claimed as well as the averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs the civil court would be competent. Going by the ratio of Ramesh Gobindram (2010) 8 SCC 726, suit for possession and rent is to be tried by the civil court. However, the suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal. Insofar as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by Section 6 or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decide such an issue. Moreover, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issues of sale deed and possession are inextricably mixed with each other. We have made these observations to clarify the legal position. Insofar as the present case is concerned, since the suit was filed much before the Act came into force, going by the dicta laid down in Sardar Khan case, it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and the civil court would be competent to decide the same.”

33. In Faseela M. vs. Munnerul Islam Madrasa Committee and another, (2014) 16 SCC 38, the Madrasa Committee filed suit for eviction of the appellant before the Wakf Tribunal with regard to a Wakf property. The Tribunal directed the plaint to be returned to the Civil Court which order was recalled on 18.09.2010. The appellant had filed revision before the High Court for declaration that the Wakf Tribunal has no jurisdiction in the matter which was dismissed by the High Court relying on Ramesh Gobindram. This Court held that suit for eviction against the tenant relating to a Wakf property is exclusively triable by the Civil Court. In paragraph 16 following has been held:

“16. The matter before us is wholly and squarely covered by Ramesh Gobindram. The suit for eviction against the tenant relating to a wakf property is exclusively triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act.”

34. There are few judgments of this Court in which Ramesh Gobindram has been distinguished and it was held that in those cases the suit was maintainable before the Wakf Tribunal. In Board of Wakf, West Bengal and another vs. Anis Fatma Begum and another, (2010) 14 SCC 588, a suit was filed in the Calcutta High Court in its original summons jurisdiction questioning the demarcation of the Wakf property. In Paragraph 4 of the judgment this Court noticed the issues raised before the High Court. It was contended before this Court that only the Wakf Tribunal has jurisdiction in the matter under Wakf Act, 1995 and the suit before the High Court was without jurisdiction. The said submission was accepted by this Court. In paragraphs 6 and 7 following has been laid down:

“6. It was submitted by Dr. Rajeev Dhavan, learned Senior Counsel appearing for the appellant, that only the Wakf Tribunal has jurisdiction in the matter under the Wakf Act, 1995 and hence the suit filed in the High Court was without jurisdiction. We agree.

7. The dispute in the present case relates to a wakf. In our opinion, all matters pertaining to wakfs should be filed in the first instance before the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and should not be entertained by the civil court or by the High Court straightforwardly under Article 226 of the Constitution of India. It may be mentioned that the Wakf Act, 1995 is a recent parliamentary statute which has constituted a Special Tribunal for deciding disputes relating to wakfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to wakfs were being filed in the courts in India and they were occupying a lot of time of all the courts in the country which resulted in increase in pendency of cases in the courts. Hence, a Special Tribunal has been constituted for deciding such matters.”

35. After noticing the provisions of Section 83 this Court held that words “any dispute, question or other matter relating to a Wakf or Wakf property” are words of wide connotation and any dispute, question or other matter whatsoever and in whatever manner which arises relating to a Wakf or Wakf property can be decided by the Wakf Tribunal. Following has been laid down in paragraph 10:

“10. 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.”

36. This Court also held that when there is special law providing for a special forum, then recourse cannot be taken to the general law. In paragraphs 14, 15 and 16 following was laid down:

“14. 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. 133-34).

15. In Chief Engineer, Hydel Project v.

Ravinder Nath, (2008)2 SCC 350, this Court held that when the matter fell in the area covered by the Industrial Disputes Act, the civil court would have no jurisdiction. In the above decision the Court has referred to several earlier decisions on this point.

16. In view of the above, we are of the opinion that since the matter fell under the purview of the Wakf Act, only the Wakf Tribunal has jurisdiction in the matter, and not the civil court. However, in view of the decision of this Court in Sardar Khan v. Syed Najmul Hasan (Seth), (2007) 10 SCC 727, the Wakf Act will not be applicable to suits/appeals/revisions/proceedings commenced prior to 1-1-1996 when the Wakf Act came into force.”

37. Distinguishing the judgment of this Court in Ramesh Gobindram (supra) following was stated in paragraph 17:

“17. Learned counsel for the respondent, however, relied on the decision of this Court in Ramesh Gobindram v. Sugra Humayun Mirza Wakf. In the aforesaid decision it was held that eviction proceedings can only be decided by the civil court and not by the Wakf Tribunal. The dispute in the present case is not an eviction dispute. Hence, the aforesaid decision in Ramesh Gobindram case is distinguishable.”

38. It is to be noticed that although two-Judge Bench in the above case has observed that judgment of Ramesh Gobindram is distinguishable but the ratio of the judgment of West Bengal Wakf Board as can be culled from paragraph 10 of the judgment, sounds a substantially different note from Ramesh Gobindram’s case. Two-Judge Bench in West Bengal Wakf Board case held “10. ....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.....”

39. In Haryana Wakf Board vs. Mahesh Kumar, (2014) 16 SCC 45, two-Judge Bench of this Court had occasion to consider again the provisions of Sections 7 and 85 of Wakf Act, 1995. In the above case suit was filed by Haryana Wakf Board seeking possession of property which was given on lease to different persons. It is alleged that earlier lessee illegally created a lease deed in favour of the respondent and treated it as illegal encroachment by the respondent. The appellant requested him to vacate the premises and when he did not do so, suit was filed in the Court of Civil Judge, Junior

Division, Karnal. The respondent appeared and raised various objections and one of the issues framed was that the suit is not maintainable in the present forum. The trial court decreed the suit against which appeal was filed before the Additional District Judge. The Additional District Judge held that since the claim of the suit by the Wakf Board was on the basis that suit property was Wakf property and since the respondent had denied it to be the Wakf property, such a question could be decided only by the Tribunal constituted under the Wakf Act. The appeal court, therefore, returned the plaint for presentation to the Court of competent jurisdiction, namely, the Tribunal. The decree by the trial court was set aside. The second appeal filed by the defendant was dismissed hence appeal was filed. This Court after examining Sections 7, 83 and 85 laid down 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 which has the exclusive jurisdiction to decide the same. In paragraph 13 following has been laid down:

“13. The present suit was instituted in the year 2000 i.e. after the Wakf Act, 1995 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 Bhanwar Lal v. Rajasthan Board of Muslim Wakf, (2014) 16 SCC 51, decided on 9-9-2013, this Court took the same view, after taking note of earlier judgments on the subject, namely, Sardar Khan v. Syed Najmul Hasan, (2007) 10 SCC 727, Ramesh Gobindram v. Sugra Humayun Mirza Wakf, (2010) 8 SCC 726. This view has been reaffirmed in Akkode Jumayath Palli Paripalana Committee v. P.V. Ibrahim Haji, (2014) 16 SCC 65.” The view of the High Court was approved upholding the jurisdiction of the Wakf Tribunal.

40. In Akkode Jumayath Palli Paripalana Committee vs. P.V. Ibrahim Haji and others, (2014) 16 SCC 65, this Court again had occasion to consider Sections 83 and 84 of the Wakf Act. The question which arose in the above case is whether the Wakf Tribunal has got jurisdiction to entertain a suit for injunction restraining the defendants from interfering with the administration, management and peaceful enjoyment of the mosque and madarsa run by it and all the assets attached to the mosque. The appellant had filed suit for injunction before the Court of Munsif. It was transferred to the Wakf Tribunal. The suit was decreed. Civil Revision was filed in the High Court challenging the decree of the Wakf Tribunal. The High Court setting aside the judgment and decree of the Wakf Tribunal held that suit for injunction is not maintainable before the Wakf Tribunal placing reliance on the judgment of this Court in Ramesh Gobindram(supra). Following was noticed in paragraph 3 of the judgment:

“3. The respondents herein filed a civil revision petition as CRP No. 1362 of 2004 under Section 83(9) of the Wakf Act before the Kerala High Court. The High Court vide its judgment dated 10-11-2010 set aside the judgment and decree passed by the Wakf Tribunal holding that a suit for injunction is not maintainable before a Wakf

Tribunal placing reliance on the judgment of this Court in Ramesh Gobindram v. Sugra Humayun Mirza Wakf. The Court also granted permission to the appellant to take back the plaint for presenting before the appropriate court. Later, the appellant preferred a review petition which was also dismissed by the High Court on 4-2-2011. The legality of the orders is under challenge in this appeal.”

41. This Court disapproved the view of the High Court and held that suit was maintainable. Two-judge Bench has further observed that the judgment in Ramesh Gobindram (supra) later came up for consideration before this Court in Board of Wakf, West Bengal v.

Anis Fatma Begum (supra) and the judgment in Ramesh Gobindram was held to be distinguishable. Following was laid down by this Court in paragraphs 5 and 6:

“5. The ratio laid down in the abovementioned judgment in Ramesh Gobindram case later came up for consideration before this Court in W.B. Wakf Board v. Anis Fatma Begum, (2010) 14 SCC 588 and the judgment in Ramesh Gobindram case was held distinguishable. That was a case where the dispute related to the wakf estate which was created by a registered deed of wakf dated 22-9-1936. The question raised was with regard to the demarcation of the wakf property, which this Court held is a matter which fell under the purview of the Wakf Act. The judgment of the Calcutta High Court which held otherwise was set aside and this Court held that the Wakf Tribunal has jurisdiction to decide those disputes.

6. We are of the view that the dispute that arises for consideration in this case is with regard to the management and peaceful enjoyment of the mosque and madarsa and the assets which relate to wakf. Nature of the relief clearly shows that the Wakf Tribunal has got jurisdiction to decide those disputes. We, therefore, find no error in the Wakf Tribunal entertaining OS No. 53 of 2003 filed by the appellant and the High Court has committed an error in holding otherwise. Consequently, the impugned order passed by the High Court is set aside and the matter is remitted to the High Court to consider the revision on merits. The appeals are disposed of as above, with no order as to costs.”

42. Two-Judge Bench of this Court in the above case held the suit to be maintainable in the Wakf Tribunal and noted that the ratio of Ramesh Gobindram has been distinguished in Anis Fatima case. But as per ratio of Ramesh Gobindram unless there is any provision in the Wakf Act, 1995 to entertain the said dispute only then Wakf Tribunal has jurisdiction, the suit filed for injunction was not maintainable in the above case. Thus, what is held in the above judgment by the two-Judge Bench is not in accord with the ratio of Ramesh Gobindram. Only one more judgment of two-Judge Bench of this Court be noticed, where the suit filed by the Punjab Wakf Board before the Wakf Tribunal praying for mesne profits and possession was held to be maintainable, i.e, judgment in Punjab Wakf Board vs. Pritpal Singh & Anr.(Civil Appeal No.8194 of 2013) decided on 13.09.2013. The facts of the case have been noticed in the following manner:

“Petitioner herein filed a suit before the Wakf Tribunal, Ludhiana, inter alia praying for possession as also for mesne profits. The Wakf Tribunal by its order dated

08.05.2009 decreed the suit for possession as also for recovery of mesne profits.

Aggrieved by the same, the respondents preferred a writ petition before the High Court for quashing the said order. By impugned order dated 16.12.2010, the Punjab & Haryana High Court had set aside the order of the Wakf Tribunal on its finding that the Wakf Tribunal had no jurisdiction to entertain a suit for ejectment. It is against this order that the petitioner has preferred this special leave petition.”

43. After considering the submissions, this Court laid down:

“Having heard learned counsel for the parties, we are of the opinion that the High Court had erred in holding that the suit was for ejectment and that being so the Wakf Tribunal has no jurisdiction. As we have observed earlier, the suit filed before the Wakf Tribunal was for possession and mesne profits and, therefore, the High Court had erred in setting aside the order of the Wakf Tribunal.”

44. Section 83 sub-section (1) has been substituted by Act 27 of 2013. Substituted sub-section (1) is as follows:

“Section 83(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 waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.”

45. Section 83 sub-section (1) specifically includes eviction of a tenant or determination of rights or obligations of the lessor and lessee of such property.

46. In both the suits giving rise to these appeals the suits were filed much before the amendment of Section 83 by Act 27 of 2013. We, thus, in the present case has to interpret Section 83 as it existed prior to the above Amendment, 2013.

47. In sub-section (1) of Section 83 the State Government shall by notification in the Official Gazette, constitute as many Tribunals as it may think fit. The words following the above sentence are “for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act....”. The Constitution of Tribunal is, thus, for the determination of any dispute, question or other matter relating to wakf or wakf property under the Act, 1995. The “dispute, question or other matter relating to wakf or wakf property”, thus, has to arise under the Act, 1995. Various provisions of the Act, 1995 refer to the Tribunal and the questions which are to be decided by the Tribunal. In this context sub-section (1) of Section 6 refers to the questions which are to be decided by the Tribunal. Sub-section (1) of Section 6 is as follows:

“Section 6(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.”

48. Similarly, sub-section (1) of Section 7 also refers to decision of the question by the Tribunal. Sub-section (1) of Section 7 is quoted below:

“Section 7(1).-If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakf, is wakf property or not or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final:”

49. Section 33 contemplates filing of an appeal before the Tribunal against orders passed under Section 33. Section 33 sub-section (4) is as follows:

“Section 33(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal:

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).”

50. Similar provision of appeal to Tribunal is also contained under Section 51 sub-section (5). Section 52 sub-section (4) is again a provision to file an appeal before the Tribunal. Section 54 deals with removal of encroachment from Wakf property. Under Section 54(4) any person aggrieved by an order passed by the Chief Executive Officer directing removal of encroachment and delivering possession of the land, building, space or other property can institute a suit in a Tribunal to establish his right, title or interest. Section 54(4) is as follows:

“Section 54(4) Nothing contained in sub- section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property:

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licence or mortgagee by the mutawalli of the wakf or by any other person authorised by him in

this behalf.”

51. Section 54(4) contemplates an appeal to the Tribunal by the mutawalli who is aggrieved by an order of removal. Sub-section (6) of Section 64 is again a power of the Tribunal to appoint a suitable person as receiver to manage the Wakf. On an application filed by the Board in an appeal challenging his removal order the Tribunal can appoint a receiver. These are provisions in the Act which refer to the Tribunal and refer to the subject matter which can be brought before the Tribunal by mutawalli or Board or any aggrieved person. The use of the word “under this Act”, under Section 83(1) relates to the words “for the determination of any dispute, question or other matter relating to a Wakf or Wakf property”. Section 83(1) provides for constitution of Tribunal. Other provisions of Section 83 deals with the procedure including bar of appeal against the order of the Tribunal except power of the High Court to revise the order of the Tribunal.

52. Coming to Section 83 which relates to bar of jurisdiction of Civil Court, the relevant words are “any dispute, question or other matter relating to a wakf or wakf property” which is required by or under this Act to be determined by the Tribunal. Thus, bar of jurisdiction of Civil Court is confined only to those matters which are required to be determined by the Tribunal under this Act. Thus, Civil Court shall have jurisdiction to entertain suit and proceedings which are not required by or under the Act, 1995 to be determined. Thus, answering the question of jurisdiction, question has to be asked whether the issue raised in the suit or proceeding is required to be decided under the Act, 1995 by the Tribunal, under any provision or not. In the event, the answer is affirmative, the bar of jurisdiction of Civil Court shall operate.

53. In the judgment in Ramesh Gobindram (supra) this Court after considering Sections 83 and 85 as noted above has explained the provisions. We now have to apply the proposition of the law as noted above in facts before us in both the appeals.

54. In Civil Appeal No.92 of 2019(Punjab Wakf Board vs. Sham Singh Harike) suit for injunction was initiated by the Board in the Civil Court against the defendant. In the written statement filed by Sham Singh Harike it was pleaded that suit property is not a Wakf property. In paragraph 2 of the written statement following was stated:

“2. Para 2 of the plaint is wrong and denied. It is wrong that land measuring 269K-7M is a Wakf property. Mutation does not confer any title on any person. Mutation is under challenge as detailed in the preliminary objections. Plaintiff has intentionally concealed the said fact. The plaintiff has also not disclosed the fact that the notification on the basis of which the alleged mutation has been sanctioned, does not confer any right, title or interest. The property can only be transferred by a registered instrument duly registered under the provision of Registration Act. Thus, plaintiff has no right, title or interest in the suit property nor is competent to file the present suit qua the said property.”

55. The suit was transferred to the Wakf Tribunal and the same was renumbered as RBT No.84/2006. An application was filed by the defendant for rejection of the plaint on the ground that the Tribunal has no jurisdiction to entertain the suit. The Tribunal rejected the application. Against the order of rejecting application, civil revision was filed by the defendant in the High Court. The High Court relying on judgment of this Court in Ramesh Gobindram has given the following reason for allowing the revision:

“In view of the aforesaid authoritative pronouncement by the Apex Court, where in it has been held that the right, title and interest of a non-muslim to the Wakf in a property cannot be put in jeopardy because that property is included in the list of Wakf, the impugned order cannot be sustained.

Thus, the present revision petition is allowed and the impugned order is set aside holding that since the Petitioner is a non-

muslim, the Wakf Tribunal has no jurisdiction in the matter and it is only the Civil Court which had the jurisdiction in the present dispute.”

56. The High Court had noticed that portion of judgment of Ramesh Gobindram where this Court had noticed an earlier judgment of this Court in Board of Muslim Wakfs, Rajasthan v. Radha Kishan and others, (1979) 2 SCC 468. Paragraphs 20 and 21 of the judgment of Ramesh Gobindram have been relied which are to the following effect:

“20. From a conjoint reading of the provisions of Sections 6 and 7 (supra) it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf rests entirely with the Tribunal and no suit or other proceeding can be instituted or commenced in a civil court in relation to any such question after the commencement of the Act. What is noteworthy is that under Section 6 read with Section 7 (supra) the institution of (sic a suit in) the civil court is barred only in regard to questions that are specifically enumerated therein. The bar is not complete so as to extend to other questions that may arise in relation to the wakf property.

21. We may at this stage usefully digress from the core issue only to highlight the fact that Section 6(1) and the proviso thereto have fallen for interpretation of this Court on a few occasions. In Board of Muslim Wakfs v. Radha Kishan,(1979) 2 SCC 468, one of the questions that fell for determination was, who are the parties that could be taken to be concerned in a proceeding under sub-section (1) of Section 6 of the Act. This Court held that under Section 6(1) the Board or the mutawalli of the wakf or any person interested therein is entitled to file a suit but the word “therein” following the expression “any person interested” must necessarily refer to the word “wakf” which immediately precedes it. The object underlying the proviso, observed this Court, was

to confine the power to file a suit to the mutawalli and persons interested in the wakf. It did not extend to persons who are not persons interested in the wakf.

Consequently, the right, title and interest of a stranger, (a non-Muslim), to the wakf in a property cannot be put in jeopardy merely because that property is included in the list of wakfs. The special rule of limitation prescribed by the proviso to Section 6(1) was itself held inapplicable to him and a suit for declaration of title to any property included in the list of wakfs held maintainable even after the expiry of the period of one year.”

57. This Court in Ramesh Gobindram has referred to earlier judgment in Board of Muslim Wakfs, Rajasthan v. Radha Kishan and others, (1979) 2 SCC 468. In the case of Board of Muslim Wakfs this Court had occasion to interpret sub-section (1) of Section 6 with proviso to sub-section (1) of Wakf Act, 1954. The questions which fell for consideration in the above case has been considered in paragraph 22 which is to following effect:

“22. The questions that fall for determination upon the appeal are two:

first, whether a Commissioner of Wakfs appointed under sub-section (1) of Section 4 of the Wakf Act, 1954, has the jurisdiction under sub-section (3) of Section 4 to enquire whether a certain property is wakf property or not when such a dispute is raised by a stranger to the wakf and second, if so, whether the failure of such a person to institute a suit in a civil court of competent jurisdiction for decision of such question within a period of one year, as provided for under sub-

section (1) of Section 6, makes the inclusion of such property in the list of wakfs published by the Board under sub- section (2) of Section 5 of the Act final and conclusive under sub-section (4) of Section 6.”

58. In the above case the respondents were mortgagee of property which under Section 5 of 1954, Act was published for inclusion in the list of Wakfs. The writ petition was filed by the respondents challenging legality and validity of the proceedings taken which was allowed by the High Court. The High Court held that where a person claiming title is a stranger to the Wakf, the inclusion of such property in the list of Wakfs by the Board under sub-section (2) of Section 5 of the Act shall not be final and conclusive. This Court noticed the contention of the respondents who contended that they being non-Muslims they are outside the scope of sub-section (1) of Section 6 and they have no right to file the suit contemplated by that sub-section, therefore, the list of Wakfs published under sub-section (2) of Section 5 cannot be final and conclusive against them under sub-section (4) of Section 6. The argument raised by the respondents was accepted by this Court and following was laid down in paragraph 33:

“33. The answer to these questions must turn on the true meaning and construction of the word “therein” in the expression “any person interested therein” appearing in sub-section (1) of Section 6. In order to understand the meaning of the word “therein” in our view, it is necessary to refer to the preceding words ‘the Board or the

mutawalli of the wakf'. The word 'therein' must necessarily refer to the "wakf" which immediately precedes it. It cannot refer to the "wakf property". Sub- section (1) of Section 6 enumerates the persons who can file suits and also the questions in respect of which such suits can be filed. In enumerating the persons who are empowered to file suits under this provision, only the Board, the mutawalli of the wakf, and "any person interested therein", thereby necessarily meaning any person interested in the wakf, are listed. It should be borne in mind that the Act deals with wakfs, its institutions and its properties. It would, therefore, be logical and reasonable to infer that its provisions empower only those who are interested in the wakfs, to institute suits."

59. This Court after holding that the word 'therein' used in sub-section (1) of Section 6 must necessarily refer to the 'wakf'. After holding the above following was laid down in paragraphs 39 and 42:

"39. It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to sub-section (1) of Section 6 is not applicable to him. In other words, the list published by the Board of Wakfs under sub- section (2) of Section 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year, if the necessity of filing such suit arises.

42. We must accordingly hold that the Commissioner of Wakfs acted within jurisdiction in holding the disputed property to be wakf property. It must, therefore, follow that the Board of Muslim Wakfs, Rajasthan was justified in including the property in the list of wakfs published under sub-section (2) of Section 5 of the Act. We must also hold, on a construction of sub-section (1) of Section 6 that the list of wakfs so published by the Board was not final and conclusive under sub-section (4) of Section 6 against the Respondents 1 and 2 due to their failure to bring a suit within one year as contemplated by sub-

section (1) of Section 6."

60. In the above sub-section (1) of Section 6 of Act, 1995 an explanation has been added which is to the following effect:

"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.” The explanation to sub-section (1) of Section 6 makes it clear that any person interested ‘therein’ who, though not interested in the Wakf concerned, is interested in such property. The above amendment of Section 6 sub-section (1) has made the interpretation of this Court in Board of Muslim Wakfs (*supra*) of Section 6 sub-section (1) inapplicable. Thus, the interpretation that the word ‘therein’ refers to only Wakf has been consciously departed with and any person interested therein is a person who is interested in Wakf as well as in Wakf property both.

61. In the above context it is relevant to notice another judgment of this Court in Punjab Wakf Board v. Gram Panchayat, (2000) (2) SCC 121, in which case the explanation which was inserted in Section 6(1) of the Wakf Act, 1954 by Central Act 69 of 1984 came to be considered. The explanation which was added in Section 6(1) by 1984 Amendment has brought almost the same statutory scheme which has been brought by explanation of Section 6(1) of Act, 1995. On explanation inserted by 1984 Amendment, this Court laid down following:

“24. Learned counsel for the appellant also referred to the explanation added below to sub-section (1) of Section 6 of the Wakf Act, 1954, by Central Act 69 of 1984. The explanation reads as follows:

“Explanation.—For the purpose of this section and Section 6-A, the expression ‘any person interested therein’ occurring in sub-section (1) of this section and in sub-section (1) of Section 6-A, shall, in relation to any property specified as wakf property in a list of wakfs published, under sub-section (2) of Section 5, after the commencement of the Wakf (Amendment) Act, 1984, 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.”

25. Obviously, the intention of Parliament was to say that if a suit was not filed within one year, the notification would be binding not only on those interested in the trust but even strangers, claiming interest in the property in question, provided they were given notice in the inquiry under Section 4 preceding the notification under Section 5(2).

26. In this connection, we have to point out that the Government of India has not issued any date for commencement of the explanation in Section 6 of the Wakf Act quoted above. Even if it is assumed that the explanation can be invoked, there is no material before us to show that any notice was issued to the Gram Panchayat before the issuance of the notification, as required by the explanation. If no notice was issued as required by the notification, the notification would not come in the way of a civil court to decide the question if raised between the Wakf and a third party, even if such a suit was filed beyond one year from the date of the notification.

Thus, once the Assistant Collector and the Collector had jurisdiction to decide, their decision became final and Section 13 of the Punjab Act barred the civil suit filed by the Wakf Board."

62. The judgment of this Court in Punjab Wakf Board v. Gram Panchayat interpreting the explanation, thus, held that the notification issued under Section 5 would be binding not only on those interested in the Wakf but even strangers, claiming interest in the property in question, provided they were given notice in the inquiry under Section 4 preceding the notification under Section 5(2). The interpretation put by this Court in Punjab Wakf Board Vs. Gram Panchayat to the explanation added by Amendment Act, 1984 can equally be applied to interpretation of explanation to sub-section (1) of Section 6 of Act, 1995. Applying the above ratio to the interpretation of explanation of Section 6(1) of Act, 1995 following two conclusions can be drawn:

- (a) Any person interested in the Wakf property which is specified as Wakf property in the list of Wakfs published under Section 5 can also raise the dispute regarding the Wakf property by instituting a suit in a Tribunal. Limitation for filing such suit by any person interested in the Wakf property is one year as per Section 6(1) proviso.
- (b) The finality of the Wakf property being included in the list of Wakfs published under Section 5(2) shall not be on a person to whom a reasonable opportunity had not been afforded to represent his case by notice served on him during the course of relevant inquiry under Section 4.

63. We may also notice the provision of Section 6 of sub-section (5) as it existed when suit was filed by Punjab Wakf Board against Sham Singh Harike. Section 6 sub-section (5) provided as follows:

"6(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commence in a Court in that State in relation to any question referred to in sub-section (1).

64. As per Section 6 sub-section (1) if any question arises as to whether a Wakf property in the list of Wakfs is wakf property or not, a suit can be instituted in a Tribunal for the decision of the question which decision shall be treated as final.

Limitation for such suit was also provided in proviso as one year from the date of the publication of the list of Wakfs. Sub-section (5) of Section 6 contained the provision barring a suit in any Court after the commencement of the Act in relation to any question referred to in sub-section (1). In Suit No.250 dated 10.09.2001 (RBT No.84 dated 09.10.2006, Punjab Wakf Board vs. Sham Singh) the question has arisen as to whether suit property is a Wakf property or not. We have noticed pleadings in written statement filed by the defendant in the above suit where it was specifically denied that suit property is a Wakf property. Thus, within the meaning of sub-section (1) of Section 6 question that whether a suit property is a Wakf property or not has arisen. Thus, the suit wherein the above question has arisen ought to be considered by the Tribunal and the High Court clearly erred in allowing the revision filed by the defendant by its order dated 20.09.2010.

65. Thus, the view of the High Court that right, title and interest of a non-Muslim to the Wakf in a property cannot be put in jeopardy is contrary to the statutory scheme as contained in Section 6 of the Act, 1995. Thus, the reason of the High Court to allow the revision petition is wholly unfounded. The defendant in written statement has pleaded that the suit property is not Wakf property. When issue in the suit is as to whether suit property is Wakf property or not it is covered by specific provision of Sections 6 and 7 of the Wakf Act, 1995, hence, it is required to be decided by the Tribunal under Section 83 and bar under Section 85 shall come into existence with regard to jurisdiction of Civil Court. In this context, in the judgment in Haryana Wakf Board vs. Mahesh Kumar, (2014) 16 SCC 45, this Court has laid down that the question as to whether the suit property is a Wakf property is a question which has to be decided by the Tribunal. In the above case plaint was returned by the Appellate Court under Order VII Rule 10 for presentation before the Tribunal which view was upheld by this Court. In paragraph 6 of the judgment following was laid down:

"6....Deciding the question of maintainability and locus standi, in

respect of which Issues 2 and 4 were framed, the first appellate court held that since the claim in the suit by the petitioner which is a Wakf Board, was on the basis that suit property was wakf property and since the respondent had denied it to be the wakf property, the question had arisen as to whether suit property is wakf property or not. Such a question, in the opinion of the learned Additional District Judge, could be decided only by the Tribunal constituted under the Wakf Act. The appeal court, therefore, returned the plaint to the petitioner under Order 7 Rule 10 CPC for presentation to the court of competent jurisdiction, namely, the Tribunal. The result was that the decree passed by the trial court was set aside and the plaint returned."

66. Civil Appeal No.92 of 2019 is, thus, fully covered by the judgment of this Court in Haryana Wakf Board vs. Mahesh Kumar. The defendant having pleaded that suit property is not a Wakf property, the question has to be decided by the Tribunal. Thus, the High Court has committed error in allowing the revision petition. Thus, this appeal deserves to be allowed.

67. One more question needs to be considered is as to whether a suit within the meaning of Section 6 sub-section (1) or Section 7(1) is to be filed within a period of one year of publication of list of Wakfs under Section 5.

68. The provision contained in proviso to Section 6(1) 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 shall be applicable to 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.

69. When Section 6 sub-section (1) provides for raising a dispute regarding Wakf property in a period of one year, it applies to every person who wants to dispute the list except those who have been not served notice under Section 4(1).

70. Now coming to Civil Appeal No.93 of 2019(Punjab Wakf Board vs. Teja Singh), the suit was filed by Wakf Board for possession of suit property and injunction in the Tribunal. The above suit was fully covered by the ratio laid down by this Court in Ramesh Gobindram (supra). The High court relying on Ramesh Gobindram case has allowed revision petition filed by the defendant. We do not find any error in the order of the High Court allowing the revision petition filed by the defendant directing the plaint along with documents was returned to be presented before the appropriate court i.e. Civil Court. We uphold the above order of the High Court. In the result, this appeal deserves to be dismissed.

71. In view of the foregoing discussions, we allow Civil Appeal No.92 of 2019 (Punjab Wakf Board vs. Sham Singh Harike) and set aside the order of the High Court dated 20.09.2010. Civil Appeal No.93 of 2019 (Punjab Wakf Board vs. Teja Singh) is dismissed. Parties shall bear their own costs.

.....J. ( ASHOK BHUSHAN ) .....J. ( K.M. JOSEPH ) New Delhi, February 07,2019.