

Rashid Wali Beg vs Farid Pindari on 28 October, 2021

Author: V. Ramasubramanian

Bench: V. Ramasubramanian, Hemant Gupta

REPO

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 6336 of 2021
(Arising out of Special Leave Petition (C) No.9733 of 2015)

RASHID WALI BEG

... APPEL

Versus

FARID PINDARI & ORS.

... RESPONDEN

JUDGMENT

V. Ramasubramanian, J.

1. Aggrieved by the Judgment of the High Court of Judicature at Allahabad, Lucknow Bench, holding that a suit for a permanent injunction before a civil court is not barred by Section 85 of the Waqf Act, 1995 (for short “the Act”), the defendant has come up with the above appeal.

2. We have heard Mr. Pradeep Misra, learned counsel for the appellant and Mr. Pradeep Kant, learned senior counsel for the first respondent.

3. The first respondent herein filed a suit in R.S. No.137 of 2011 against the appellant herein as defendant No. 1 and impleading the respondents 2 to 5 herein as defendants 2 to 5. The suit was for a mandatory injunction directing the defendants to remove the encroachment made by them and for a permanent injunction restraining the defendants from interfering with the plaintiff’s possession of a piece of land situated at Mirzaganj, Pargana and Tehsil Malihabad, Lucknow. The suit was filed in

the Court of Civil Judge, Senior Division, Malihabad. The case of the first respondent herein/plaintiff was that the suit property originally belonged to one Mirza Abid Ali Beg; that during his life time he created a Waqf \square al \square Aulad; that during his life time, Mirza Abid Ali Beg was the mutawalli;

that after his life time, his elder daughter became the mutawalli; that thereafter, the younger daughter Smt. Afzal Jahan Begum became the mutawalli; that the said Afzal Jahan Begum was the grandmother of the plaintiff; that the father of the plaintiff led a wayward life, forcing the grandmother to deliver possession of the property to the plaintiff, authorizing him to maintain the properties and utilize the income thereof for the maintenance of the family; that after taking possession, the plaintiff constructed shops on the land and let them out to tenants; that after sometime, the grandmother of the plaintiff appointed the father of the plaintiff as the mutawalli; that there were criminal proceedings between the plaintiff and his father; that on 18.12.2010, the defendants brought building materials and started digging foundation in the land behind the shops, at the instigation of the father of the plaintiff; that though the plaintiff gave a police complaint, they were indifferent, emboldening the defendants to raise a boundary wall in a portion of the land and that, therefore, the plaintiff was constrained to file a suit for mandatory and perpetual injunction.

4. After entering appearance in the suit, the appellant herein who was the first defendant, filed a written statement admitting the existence of the waqf and waqf property. Thereafter, he took out an application under Order VII, Rule 11 CPC for rejection of plaint, on the simple ground that the Civil Court has no jurisdiction to try a suit relating to what is admittedly a waqf property. The said application was allowed by the Civil Judge, Senior Division, Malihabad and the suit was dismissed.

5. Challenging the aforesaid judgment, the first respondent herein/ plaintiff filed a regular appeal under Section 96 CPC, but the first Appellate Court dismissed the appeal.

6. However, the second appeal filed by the first respondent \square plaintiff was allowed by the High Court on the short ground that since the dispute does not involve either a question as to the nature of the property or the question whether the suit schedule property is a waqf property or not and also since the suit is only for injunction, the Civil Court was not barred from entertaining the suit, under Section 85 of the Act. It is against the said judgment of the High court that the first defendant in the suit has come up with the above appeal.

7. Therefore, the only question that arises for our consideration in this appeal is as to whether a suit for permanent injunction in respect of a waqf property is maintainable in a civil court or not.

8. The question of jurisdiction of civil courts to adjudicate upon disputes, for the determination of which special tribunals are constituted under special statutes, has been a vexed question which has turned, over a period of time, into a seesaw battle. This is especially so particularly in respect of waqfs. But there is a historical background to this.

1913 Act

9. The earliest enactment to come up, relating to waqfs, was the Mussalman Waqf Validating Act, 1913 (6 of 1913). This Act recognised the right of muslims to make settlement of properties by way of waqf in favour of their families, children and descendents. This Act declared that no waqf shall be deemed as invalid merely because it postponed the religious and charitable benefit confirmed therein, until the extinction of the family of the founder. The reason why this Act was legislated, was to overcome the decision of the Privy Council in Abdul Jata Mohammed Ishak vs. Russomoy Dhur Choudhary¹, which declared as invalid, a waqf created for the benefit of the family, though coupled with a gift to charity on the failure of the line of descendents.

1 [1894 (22) Calcutta (PC)] This Validating Act of 1913 was given retrospective application by Act 32 of 1930.

1923 Act

10. Then came the Mussalman Waqf Act 1923, which can be called the precursor of Waqf Legislation, dealing with the creation, maintenance and administration of waqf and waqf property. This Act required the mutawalli of every waqf to furnish to the Court within whose jurisdiction the waqf property was situate, a statement of particulars. The Act also mandated the mutawalli of every waqf to furnish a full and true statement of accounts to the Court, after it is audited. The Court was empowered under this Act to hold an inquiry to ascertain: (i) Whether the waqf exists (ii) Whether any property is a waqf property and (iii) Who is the mutawalli of the waqf. The 1923 Act contemplated the creation of a Register of waqfs and the Court was conferred with the power to record entries in the said Register. The 1923 Act contained a provision in Section 6N, empowering the Court to authorise any one or more of the members of the waqf committee to institute or defend any Suit or proceeding for the protection or recovery of waqf property or for the application of a waqf property in any public charitable or religious purpose. This power of the Court under Section 6N, was notwithstanding anything contained in Section 92 of CPC.

11. Thus the 1923 Act specifically provided a role for the civil court in the matter of recognition and registration of waqfs, protection of waqf properties and the oversight of the management of the waqfs. In fact, the court had enormous powers under the 1923 Act, including the power to order a special audit.

1954 Act

12. After India attained Independence, the Parliament enacted the Waqf Act 1954, with the professed object of providing for better administration and supervision of waqfs. The statements of Objects and Reasons of the 1954 Act, recorded that the 1923 Act was not of much practical value and that therefore the provincial governments of Bombay, Bengal and the United Provinces introduced amendments respectively in 1934, 1935 and 1936 to the 1923 Act.

13. Sections 6, 27, 36A, 43, 55, 56, 57, 60 and 61 of the 1954 Act recognised the Civil Court as the forum for the resolution of various disputes relating to waqfs and waqf properties as could be seen from the following :□

(i) Section 6 enabled the Board or mutawalli or any person interested to institute a suit in a Civil Court of competent Jurisdiction, wherever any question arose as to (A) Whether a particular property specified in the list published under Section 5 is a waqf property or (B) Whether the waqf is a Shia waqf or a Sunni waqf.

(ii) Though Section 27(1) of the Act, authorised the waqf Board also to decide the question whether a particular property is a waqf property or not, the decision of the Board on the question, was made subject to jurisdiction of the Civil Court as seen from Section 27(2).

(iii) Section 36A (1) provided for the remedy of a requisition by the waqf Board to the Collector, whenever any immovable property of a waqf was transferred without the previous sanction of the Board. The Collector was empowered under this provision to pass an order directing the person in possession of the said property, to deliver it to the Board. The order so passed by the Collector was appealable to the District Court under Section 36A (4).

(iv) Section 43(5) of the 1954 Act made the order of the Waqf Board removing the mutawalli and directing him to deliver possession of the waqf property, deemed to be a decree of the Civil Court, executable by the Civil Court, as if it was a decree passed by it.

(v) Section 55 enabled the Waqf Board to institute a suit to obtain any of the reliefs mentioned in Section 92, CPC relating to any waqf, without obtaining the consent referred to in Section 92, CPC. Section 56 contained a provision similar to Section 80 of CPC and Section 57 laid down the procedure to be followed by the Civil Court, in every suit or proceeding relating to title to waqf property or the right of a mutawalli or any sale of waqf property in execution of a decree of Civil Court.

(vi) Section 60 imposed a bar on the rights of the parties to a suit, to enter into a compromise without the sanction of the Board. The Waqf Board was empowered by Section 61 to make an application to the Court in case of failure of mutawalli to discharge his duties.

Waqf Inquiry Committee and 1984 Amendment Act

14. The 1954 Act, went through some amendments in 1959, 1964 and in 1969. But by and large, the working of the Waqf Boards was found to be unsatisfactory and hence with a view to tone up the administration of waqfs, the Central Government constituted a committee known as Waqf Inquiry Committee. The Committee made a large number of recommendations and its Report, after consultation with all stake holders, led to comprehensive amendments to the Act, under the Waqf (Amendment) Act, 1984. One of the important amendments made by this Amendment Act, was the substitution of the existing Section 55 of the principal Act with a new provision. The newly substituted Section 55(1) provided for the constitution of special tribunals for the determination of any dispute, question or other matter relating to a waqf or waqf property. But the right to invoke the jurisdiction of the Waqf Tribunal was made available under Section 55(2) of the Act, only to, (i) any mutawalli of the waqf; (ii) a person interested in the waqf; or (iii) any other person aggrieved by any order made under the Act or Rule or any order made there under. Section 55(5) declared that the

Tribunal shall be deemed to be a civil court, having the same powers as may be exercised by a civil court under the CPC, while trying a suit or executing a decree. However, the Tribunal was given the freedom to follow its own procedure as may be prescribed, notwithstanding anything contained in the CPC. Though the decision of the Tribunal was declared to be final under sub section (7) of Section 55, and though no appeal would lie against a decision of the Tribunal by virtue of sub section (9), the High Court was conferred a power of revision under the proviso to sub section (9) of Section 55.

15. Section 55C barred the jurisdiction of 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 the Act to be determined by a Tribunal. But at the same time, Section 55D contained a provision enabling the court to appoint a Receiver under certain circumstances. Section 55D reads as follows: “55D. Notwithstanding anything contained in the Code of Civil Procedure, 1908, or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced

(a) by or on behalf of a Board –

(i) to set aside the sale of any immovable property, which is waqf property, in execution of a decree or order of a civil court;

(ii) to set aside the transfer of any immovable property, which is waqf property, made by the mutawalli thereof, whether for valuable consideration or not, without, or otherwise than in accordance with, the sanction of the Board;

(iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the mutawalli of the concerned waqf; or

(b) by a mutawalli to recover possession of immovable property, which is waqf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board and which is in the possession of the defendants, the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

The Waqf Act, 1995

16. But it appears that the Amendment Act of 1984 came under severe criticism and hence only two provisions of the 1984 Act came to be enforced because of strong opposition from the community.

Therefore, a comprehensive bill on waqf matters incorporating the features of the 1954 Act and such provisions of the 1984 Act in respect of which there was near consensus, was introduced. This became the Waqf Act, 1995. This Act provided for the setting up of waqf tribunals to consider questions and disputes pertaining to waqfs.

An important feature of the 1995 Act is that it was made applicable to the whole of India except the State of Jammu and Kashmir, though the Waqf Act, 1954 was not applicable to Uttar Pradesh, West Bengal, parts of Gujarat, parts of Maharashtra and some of the North Eastern states³.

² See paragraph 3 of the Statement of Objects and Reasons of 1995 Act ³ See paragraph 6 (h) of the Statement of Objects and Reasons of 1995 Act

16. Sections 83 and section 85 of the Waqf Act, 1995 (as they originally stood before amendment in 2013) read 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 under this Act of each 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 interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of—

(a) 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, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member, and the appointment of every such person may be made either by name or by designation.

(4A) The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.

(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.

(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 (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.

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.

17. It is relevant to note at this stage that the words “eviction of tenant or determination of rights and obligations of the lessor and the lessee of such property” were inserted in sub-section (1) of Section 83, after the words “waqf property”, by Amendment Act 27 of 2013.

18. Similarly, the words, “civil court” were substituted by the words “civil court, revenue court and other authority”, in Section 85, by Amendment Act 27 of 2013.

19. Thus, Act 27 of 2013 did 2 things. First it expanded the jurisdiction of Waqf Tribunal even to cover landlord-tenant disputes and the rights and obligations of lessor and lessee. Second, the Amendment Act enlarged the bar of jurisdiction, to cover even revenue courts and other authorities.

20. Subsection (2) of Section 83 of the 1995 Act indicates the persons who are entitled to invoke the jurisdiction of the Tribunal.

They are, (i) any mutawalli of the waqf; (ii) a person interested in the waqf; or (iii) any other person aggrieved by any order made under the Act or Rules or any order made there under.

21. Dehors the jurisdiction conferred upon the Tribunal under Section 83(1) and dehors the bar of jurisdiction of the civil court, revenue court and any other authority under Section 85, the 1995 Act contains a special provision in Section 86 for the appointment by the civil court, of a Receiver, in certain cases. Section 86 reads as follows:

86. Appointment of a receiver in certain cases—Notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced

(a) by or on behalf of a Board

(i) to set aside the sale of any immovable property, which is waqf property, in execution of a decree or order of a civil court;

(ii) to set aside the transfer of any immovable property, which is waqf property, made by the mutawalli thereof, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;

(iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the mutawalli of the concerned waqf; or

(b) by a mutawalli to recover possession of immovable property, which is waqf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant, the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

22. Section 86 thus recognises the right of the Board to institute or commence any suit or other legal proceeding, (i) to set aside the sale of a waqf property in execution of a decree of civil court; (ii) to set aside the transfer of any waqf property made by the mutawalli, without the sanction of the Board or otherwise than in accordance with the sanction of the Board; and (iii) to recover and restore possession of such property to the mutawalli. Clause (b) of Section 86 recognises a similar right for the mutawalli to recover possession of waqf property, which has been transferred by the previous

mutawalli or any other person without the sanction of the Board.

23. It is therefore clear from Section 86, that in suits or other proceedings instituted by the Board falling under clause (a) or those instituted by the mutawalli falling under clause (b) of Section 86, the civil court will have jurisdiction to appoint a receiver. As a corollary, the bar under Section 85 will have no application to cases covered by Section 86.

24. Apart from the bar of jurisdiction of civil courts under Section 85, the Act envisages yet another bar under Section 88. Section 88 excludes the jurisdiction of a civil court to entertain a challenge to any notification or order or decision made, proceeding or action taken by the Central Government or the State Government under the Act.

Section 88 reads as follows: “88. Bar to challenge the validity of any notification, etc.— Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made thereunder shall be questioned in any civil court.”

25. Section 89 of the Waqf Act, 1995 contains a rule similar to Section 80 CPC, in respect of suits instituted against the Board.

Interestingly, Section 90 which regulates the procedure for the issue of notice of suits, refers both to courts and tribunals. It reads as follows: “90. Notice of suits, etc., by courts.— (1) In every suit or proceeding relating to a title to or possession of a waqf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any waqf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, notice shall be given to the Board by the court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

26. It is seen from sub-section (1) of Section 90 that it uses the words, “the court or Tribunal” and it refers to suit or proceeding relating to title to or possession of a waqf property or the right of the mutawalli or beneficiary.

27. A cumulative reading of Sections 86, 89 and 90 would show that the bar of jurisdiction under Section 85 is not total and omnipotent and that there may be cases which could still be entertained by civil courts. In fact, Section 93 which prohibits the mutawalli from entering into a compromise with the opposite party in any suit, also refers to “court”. Section 93 reads as follows: “93. Bar to compromise of suits by or against mutawallis.—No suit or proceeding in any court by or against the mutawalli of a waqf relating to title to waqf property or the rights of the mutawalli shall be compromised without the sanction of the Board.”

28. We have seen elsewhere that Section 83(2) specifically enables, (i) any mutawalli; (ii) any person interested in a waqf; and (iii) any other person aggrieved by an order made under the Act, to invoke the jurisdiction of the Tribunal for the determination of any dispute, question or other matter relating to the waqf. Section 83(2) does not make any reference to the Waqf Board. However, Section 94(1) enables the Board to apply to the Tribunal, for appropriate orders, whenever a mutawalli fails to perform an act recognized by Muslim Law as pious, religious and charitable. Under Section 61 of the 1954 Act, such an application can be made by the Board only to the court, but now it can be made to the Tribunal under Section 94(1).

29. In view of the language employed in Sections 83 and 85, coupled with the reference to civil courts in Sections 86, 90 and 93, it appears that the question of bar of jurisdiction of the civil court, has been left by the law makers to the vagaries of judicial opinion and this has given rise to conflicting decisions, to some of which, we shall now turn our attention.

30. Some of the decisions of this Court, in which this controversy was addressed, are presented in the form of a table, for the purpose of easy appreciation. Apart from the cause title and citation, the table below gives an indication of the forum from which the original proceedings emanated in those cases, the reliefs sought by the plaintiff/applicant in those original proceedings and a summary of facts and the ratio laid down in each of them.

S.No Cause Title & Emanating Reliefs sought in Opinion of this court on the Case No. from Civil the original question of Jurisdiction of Court / Waqf proceeding civil court/Tribunal Tribunal 1 Sayed Civil Court Declaration of Title 1. The matter arose out of a civil Muhammed and Recovery of suit filed in 1984, before the Mashur Kunhi possession of the advent of the Waqf Act, 1995. Koyal Thangal Plaintiff Schedule 2. The trial court decreed the vs. Property. suit, but the first appellate court Badagara reversed it. In the second appeal Jumayath Palli filed in 1988 which came up for Dharas hearing in 2001 after the advent Committee of the 1995 Act, the High Court (2004) 7 SCC framed a question with reference 708 to Section 85 and held that the civil court had jurisdiction to try the suit.

3. Though this Court reversed the judgment of the High Court, the same was not on the question of maintainability of the suit. The net result is that the opinion of the High court on the question of jurisdiction was left untouched.

2 Sardar Khan Civil Court Not clear from the 1. The suit was filed in December, vs. narration of facts in 1976, and the trial (civil) court Syed Najmul the judgment. dismissed the suit on merits on Hasan

23.01.1996. The Waqf Act, 1995 (2007) 10 SCC came into force w.e.f. 01.01.1996.

727 2. The plaintiff filed an appeal before High court on 1st 3rd 1996 and contended that the civil court ceased to have jurisdiction after the coming into force of the 1995 Act. High court agreed and relegated the parties to the Waqf Tribunal. This was challenged in this court.

3. This Court referred to Section 7(5) of the Waqf Act, 1995 and held that the tribunal will have no jurisdiction to decide any matter which is the subject matter of any suit instituted or commenced in a civil court before commencement of the 1995 Act.

4. So holding, this Court reversed the judgment of the High Court which relegated the parties to the Waqf tribunal.

3 Ramesh Waqf Tribunal Suit for Eviction of 1. Suits for eviction of tenants Gobindram tenants occupying filed before the Waqf Tribunal vs. Waqf properties. were decreed. The tenants filed Surgra revision petitions before the High Humayun Court but the High Court Mirza Waqf dismissed the revision petitions.

(2010) 8 SCC Hence the tenants were on 726 appeal.

2. This Court held that the Waqf Act, 1995 does not provide for any proceedings before the tribunal for determination of a dispute concerning the eviction of a tenant in occupation of Waqf property or the rights and obligations of the lessor and lessees of such property.

3. Holding that a suit for eviction of tenants from what is admittedly a waqf property could be filed only before the civil court and not before the tribunal, this Court overruled the views of the High Courts of Andhra Pradesh, Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana.

The views taken by the High Courts of Allahabad, Karnataka, Madras and Bombay were affirmed. It was further held that the interest of those uninterested in the waqf (non-muslims) will be put in jeopardy if Section 6(1) is limited to only the muttavalli, board and those interested in waqf, hence the special limitation imposed by Section 6(1) is inapplicable to strangers.

4 Board of Waqf Civil Court Questions raised 1. While the single judge of the vs. were: (i) whether the High Court held that the Waqf Anis Fatma division of Act is applicable for the property Begum immovable property earmarked for waqf al-aulad, (2010) 14 SCC into two distinctive the Division Bench of the High 588 parts, one for waqf al-aulad Court reversed it.

al-aulad, and 2. While reversing the decision of another for pious the Division Bench of the High and religious Court, this Court held that the purposes is in words, “any dispute, question or accordance with the other matters” are words of very wide connotation and that the Act; and (ii) whether the Waqf Act is tribunal has all the powers of the applicable for the civil court including the power to portion of grant the temporary injunctions property earmarked under Order XXXIX, CPC.

3. This Court further held that for waqf \square al \square al \square aulad.

though Section 83(2) refers to orders passed under the Act, Sections 83(1) and 84 are independent provisions and that they do not require an order passed under the Act for invoking the jurisdiction of the Waqf Tribunal. Even if no order has been passed under the Act, the party can approach the Waqf Tribunal.

4. The decision in Ramesh Gobindram was distinguished, on the ground that the same related to an eviction dispute.

5 Punjab State Waqf Tribunal Suit for possession 1. A suit for possession and Waqf Board and mesne profits. mesne profits was decreed by the vs. Waqf Tribunal. But on a writ Pritpal Singh petition, the High Court set aside 2013 SCC the judgment of the Waqf Online SC Tribunal on the ground that the 1345 Tribunal had no jurisdiction to entertain a suit for ejection.

2. However, this Court set aside the judgment of the High Court holding that the suit was maintainable before the Waqf Tribunal. This Court pointed out that the High Court mistook the suit to be one for eviction, though in fact, it was for possession and mesne profits.

6 Akkode First filed Suit for permanent 1. A suit for permanent Jumayath Palli before Civil injunction injunction was first filed before Paripalana Court, but the civil court, but it was Committee later transferred to the waqf tribunal.

vs. transferred to 2. The waqf tribunal decreed the P.V. Ibrahim Waqf Tribunal suit and granted a decree of Haji and Ors. perpetual injunction, restraining (2014) 16 SCC the defendants from interfering in 65 the administration, management, peaceful possession and enjoyment of the mosque, the madarassa run by it and all the assets attached to the mosque.

3. On revision under Section 83(9) of the Act, the Kerala High Court set aside the judgment of the waqf tribunal holding that a suit for perpetual injunction is not maintainable before the waqf tribunal. The High Court relied upon the decision of this Court in Ramesh Gobindram. This judgment of the High Court was challenged before this Court.

4. This Court allowed the appeal by relying upon the decision in W.B. Waqf Board v. Anis Fatma Begum, (2010) 14 SCC 588, in which Ramesh Gobindram was distinguished.

5. In other words a suit for perpetual injunction was held to be maintainable before the waqf tribunal.

7. Bhanwar Lal Civil Court Suit was first filed 1. A suit was filed in the civil vs. (filed in 1980) for possession and court for possession and Rajasthan rendition of accounts rendition of accounts way back in Board of but subsequently the year 1980. During the Muslim Waqf amended to include pendency of the suit, the property (2014) 16 SCC a prayer to declare was sold in 1983 and hence the 51 the sale deed as plaint was amended for invalid. additional relief of declaration that the sale deed

was invalid.

2. During the pendency of the suit, the 1995 Act came into force and hence the plaintiffs themselves (State Waqf Board and Muslim Board Committee) filed an application under Section 85 of the 1995 Act seeking return of the plaint to enable them to resubmit the same before the waqf tribunal.

3. The Trial court allowed the application on the ground of bar of jurisdiction and the defendants filed a revision before the High Court. The revision was dismissed by the High Court and the defendant was before this Court.

4. After taking note of Section 7(5) and Section 85 as well as the decision in Sardar Khan, this Court held that those matters which are already pending before the civil court, would continue to be adjudicated by the civil court, even after if the subject matter is covered by Section 6(1).

5. The decision in Ramesh Gobindram, was extensively referred to and it was held that a suit for possession and rent is to be tried by the civil court, but a suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the tribunal.

6. It was further held that the relief of cancellation of sale deed is not covered by Section 6 or 7 and that therefore it is to be tried by the civil court.

8 Haryana Waqf Civil Court Suit for possession 1. A suit for possession was filed Board by the Waqf Board before the civil vs. court on the ground that the Mahesh property involved was notified as Kumar a waqf property under Section (2014) 16 SCC 5(2).

2. The trial court decreed the suit but the first appellate court reversed it on the ground that a question has arisen as to whether the suit property is a waqf property or not and that the said question has to be decided only by the tribunal. So holding, the first appellate court set aside the judgment of the trial court and ordered the return of the plaint under Order VII, Rule 10. The High Court confirmed the said judgment on a second appeal.

3. Relying upon the decision in Bhanwar Lal, this Court dismissed the SLP, thereby confirming the view of the first appellate court and the High Court that the waqf tribunal alone had jurisdiction.

9 Faseela M Waqf Tribunal For eviction of the 1. The Madarssa Committee filed vs. tenant, filed by an application before the waqf Munnerul Madrasa Committee tribunal for the eviction of a Islam Madrasa person on the ground that he was Committee a tenant in respect of a waqf (2014) 16 SCC property. The respondent denied 38 that the subject property is a waqf property and he also challenged the jurisdiction of the tribunal.

2. The waqf tribunal first ordered the return of the plaint for presentation before a civil court but later recalled the previous order on the ground that the issue whether the subject property is a waqf property or not has arisen for consideration.

3. The said order of the waqf tribunal was challenged in a revision before the High Court.

The High Court confirmed the second order of the waqf tribunal.

4. Holding that the issue relating to eviction of tenant is squarely covered by the decision of this Court in Ramesh Gobindram, and that Bhanwar Lal is not inconsistent with Ramesh Gobindram, this Court allowed the appeals and restored the first order of the tribunal directing the return of the plaint.

10 Rajasthan Waqf Tribunal Suit for declaration 1. The suit was filed by the Waqf Board that the sale of the mutawalli of a masjid before the vs. subject Property was waqf tribunal. Devki Nandan void as it was a Waqf 2. The tribunal held the suit Pathak. Property. There was property to be a waqf property (2017) 14 SCC also an alternative and hence decreed the suit.

561 prayer to prevent the 3. The High Court set aside the opponents from judgment of the waqf tribunal on taking forceful a revision filed by the persons possession of the who purchased the property from property from the a private individual as though it waqf. was a private property. The High Court held that the remedy would lie before the civil court.

4. This court allowed the appeal holding that the main controversy in the suit was whether the subject property is a waqf property or not and that the same could be tried only by the waqf tribunal. The decisions in Ramesh Gobindram and Bhanwar Lal, were relied upon.

5. This Court also relied upon Section 51 which declares the sale of any waqf property, made without the prior sanction of the board as void and pointed out that under Section 52(2), the right of appeal was only to the tribunal in such matters.

11 Dharampal Civil Court Suit was for 1. The State Waqf Board filed a v. Possession and suit for possession and Punjab Waqf injunction restraining injunction before the civil court in Board the defendants from the year 1991 (before the advent (2018) 11 SCC changing the nature of the 1995 Act), against persons 449: of the land and who continued to occupy a land making any even after the expiry of the lease and who also encroached upon construction over it additional land.

2. Defendant no.1 filed a counter claim to the effect that he has perfected title by adverse possession.

3. By a judgment delivered in 1998 (after the advent of the 1995 Act), the suit was dismissed, but the counter claim was allowed holding that defendant no.1 had perfected title by adverse possession.

4. The first appellate court reversed the judgment and decree of the trial court, dismissing the counter claim and decreeing the suit of the waqf board for possession.

5. The High Court affirmed the judgment of the first appellate court on a second appeal and the dispute landed up before this Court.

6. This Court addressed several issues, one of which was the bar of jurisdiction. Since the suit had been filed before the advent of the 1995 Act, this Court referred to Section 55C of the Waqf Act, 1954 inserted by way of Amendment Act 69 of 1984.

7. But this court took note of the fact that the aforesaid amendment under Act 69 of 1984 was never notified and that therefore, Section 55C had no application. As a consequence this Court held that the civil court had jurisdiction to decide the suit by virtue of Section 6 of the 1954 Act.

12 Punjab Waqf There were two The relief sought in 1. There were two civil appeals Board civil appeals one proceeding was before this Court. vs. before this for a permanent 2. Facts in one appeal Sham Singh Court, one injunction and the * Suit for permanent injunction Harike arising out of a relief sought in the was filed by the waqf board before (2019) 4 SCC suit filed before second proceeding the civil court seeking to restrain 698 the civil court was for possession the respondents from raising any for permanent and permanent construction and changing the injunction, but injunction. nature of the property from which got agricultural to residential.

transferred to the waqf * The respondent denied the title tribunal and of the waqf board and raised the the other question of maintainability of the arising out of a suit.

suit filed before * The suit was transferred to the the waqf waqf tribunal but an application tribunal for for rejection of plaint was filed possession and before the tribunal on the ground permanent that the tribunal had no injunction. jurisdiction.

* The tribunal dismissed the application for rejection of plaint, holding that the waqf tribunal had jurisdiction. But the judgment of the tribunal was reversed by the High Court on a revision, by relying upon the judgment of this Court in Ramesh Gobindram. The High Court also held that the person against whom reliefs were sought, was a non-Muslim.

3. Facts in next appeal * The Waqf Board filed a suit for possession and injunction before the Waqf Tribunal. The defendant admitted tenancy and claimed readiness to pay the rent. The waqf tribunal decreed the suit.

* The High Court on a revision set aside the judgment of the waqf tribunal on the basis of the decision in Ramesh Gobindram.

4. The judgment of the High Court in both the matters came up for consideration before this Court in the two appeals.

5. OPINION OF THIS COURT * After taking note of Section 55 of the Waqf Act, 1954, as it stood prior to the 1984 amendment, the amendments sought to be made by the 1984 Act and the provisions of the 1995 Act, this Court dealt in extenso with the reasoning of this Court in Ramesh Gobindram.

* This Court also took note of the decisions in Bhanwar Lal, Sardar Khan, Faseela, Anis Fatma Begum, Mahesh Kumar and Akkode Jumayath Palli Paripalana Committee. The provisions of Sections 6(1), 7(1), 33(4), 51(5), 52(4) and 54(4) as well as the amendment to Section 83(1) under Act 27 of 2013 were also referred to.

* Thereafter this Court held at the outset that the High Court's view that the right of a non-Muslim cannot be jeopardized under the Act, is contrary to the statutory scheme contained in Section 6.

* After holding so, this Court allowed the 1st civil appeal which arose out of a suit for permanent injunction, earlier filed before the civil court and later transferred to the waqf tribunal. The reason given by this court was that the question whether the subject property is a waqf property or not has arisen for consideration in the said suit and hence the Tribunal had jurisdiction.

* However, this Court dismissed the 2nd civil appeal on the ground that it was a suit for possession and permanent injunction where the property was admitted to be a waqf property and that therefore the issue arising therein was fully covered by the decision in Ramesh Gobindram.

13 Kiran Devi Instituted before The suit was for 1. The suit was originally v. the civil court declaration that the instituted before the civil court Bihar State but it was plaintiff had but it was transferred to the waqf Sunni Waqf transferred to succeeded to the tribunal on an application taken Board waqf tribunal on tenancy rights, as a out by the waqf board and 2021 SCC an application member of joint another. The transfer of the suit Online SC 280 filed by the waqf Hindu family and to the tribunal was challenged board and the that therefore the but in vain. Therefore, the parties tenant newly plaintiff is entitled to went to trial before the waqf inducted into continue as tenant. tribunal. the premises by 2. The tribunal dismissed the the waqf board. suit, but on a writ petition filed against the said order, the High Court reversed the same.

Actually, the judgment was on merits.

3. Before this Court it was contended that the tribunal had no jurisdiction in view of the decision in Ramesh Gobindram.

4. Though this Court found that in terms of Ramesh Gobindram, the waqf tribunal could not grant a declaration as claimed by the plaintiff, this Court held that it cannot entertain such an objection especially after the order of transfer of the suit from the civil court to the waqf tribunal had attained finality. It was argued that the parties cannot confer jurisdiction upon a tribunal by consent. But that argument was repelled on the ground that it was not a case where jurisdiction was conferred by consent of parties, but a case where proceedings were transferred by a judicial order to a tribunal.

14 Telangana Waqf Tribunal For the eviction of 1. The waqf tribunal decreed the State Waqf the tenant, both suit and directed the defendants Board from the tenanted to vacate the suit property. vs. portion as well as the 2. But on a revision, the High Mohamed encroached portion. Court set aside the judgment of Muzafar the tribunal on the ground that in 2021 SCC view of the decision in Ramesh Online SC 537 Gobindram the suit was not maintainable before the Waqf Tribunal.

3. However, this Court distinguished Ramesh Gobindram on the ground that a suit for ejectment of a person from what is admittedly a waqf property would stand on a different footing from a suit for ejectment of a person from a property which is disputed to be a waqf property.

4. This Court noted the decision in Faseela, Anis Fatma Begum, Mahesh Kumar and Sham Singh Harike, and eventually came to the conclusion that the facts and circumstances of each case will have to be taken note of in the background of the legal framework contained in the Waqf Act, to determine jurisdiction.

This Court reiterated that wherever the subject property is disputed to be a waqf property, the issue would fall squarely within the jurisdiction of the waqf tribunal.

30. It can be seen from the table given above that the original proceedings from out of which the decisions at Sl.No.1 and 2 (Syed Muhammed Mashur Kunhi Koyal Thangal & Sardar Khan) arose, were instituted long before the advent of the Waqf Act, 1995 and hence the ratio laid therein on the basis of Section 7(5) of the Act does not throw any light upon the actual controversy on hand. The decision of this Court in Ramesh Gobindram included at Sl.No.3 in the table above, is the one, which, ironically, attempted to settle the controversy on hand, but has produced conflicting results in the subsequent decisions. The only question that arose in Ramesh Gobindram, as seen from paragraph 2 (of the SCC report), is as to whether or not, the Waqf Tribunal is competent to entertain and adjudicate upon disputes regarding eviction of persons occupying what are admittedly waqf properties. For finding an answer to this question, this Court started its discussion with the well established rule that the ouster of jurisdiction of the civil court is not to be readily inferred and that the bar of jurisdiction should be express or implied. After laying such a foundation, this Court started building mainly upon Sections 6 and 7.

This was perhaps due to the caption given to Sections 6 and 7. While Section 6 is given the caption, “Disputes regarding waqfs”, Section 7 is given the caption “Power of Tribunal to determine disputes regarding waqfs”. Sections 6 and 7 as they stood when Ramesh Gobindram was decided, read as follows:□

6. Disputes regarding waqfs.—(1) If any question arises whether a particular property specified as waqf property in the list of waqfs is waqf property or not or whether a waqf specified in such list is a Shia waqf or Sunni waqf, the Board or the mutawalli of the waqf 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 waqfs:

Explanation.—For the purposes of this section and section 7, the expression “any person interested therein”, shall, in relation to any property specified as waqf property in the list of waqfs published after the commencement of this Act, shall include also every person who, though not interested in the waqf 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 waqf 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 waqfs 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).

7. Power of Tribunal to determine disputes regarding waqfs.—(1) If, after the commencement of this Act, any question arises, whether a particular property specified as waqf property in a list of waqfs is waqf property or not, or whether a waqf specified in such list is a Shia waqf or a Sunni waqf, the Board or the mutawalli of the waqf, 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:

Provided that—

(a) in the case of the list of waqfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of waqfs; and

(b) in the case of the list of waqfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement:

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any waqf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application or appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of waqfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject-matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of the Act or which is the subject-matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

31. A bare reading of Sections 6 and 7 extracted above, shows that the language employed therein appears to have deflected the attention of many a court without exception. The reason why we say so, is this.

A careful look at the scheme of the Act would show that the Act is divided into 9 chapters. Chapter II which contains Sections 4 to 8, is primarily concerned with the survey of waqfs. Sections 6 and 7 are incidental to the scheme of Chapter II alone, which is why they speak only about two questions namely, (i) whether a particular property specified as a waqf property in the list of waqfs is actually a waqf property or not; and (ii) whether a waqf specified in such list is a Shia waqf or Sunni waqf. While Section 4 contemplates a preliminary survey of all waqfs in the State, Section 5(2) speaks about publication of the list of waqfs (separately for Shia and Sunni) in the official gazette. Since Sections 6 and 7 follow Sections 4 and 5, they refer only to the aforesaid two questions. In other words, the questions relevant for the purposes of Sections 4 and 5 alone, are dealt with in Sections 6 and 7 and hence the discussion regarding the jurisdiction of the Waqf Tribunal should not start and end with Sections 6 and 7.

32. Sections 83 and 85, as well as Sections 86, 90 and 93, which use the word “court”, are to be found in Chapter VIII of the Act. The heading given to Chapter VIII is “Judicial Proceedings”. Therefore, for 4 The words “waqfs”, has been substituted with the word “auqaf”, by the Amendment Act 27 of 2013.

finding an answer to the question relating to the bar of jurisdiction under Section 85, it is not enough merely to refer to Section 6(5) or Section 7(2). The language of Section 85 is clearly in contrast to the language employed in Section 6(5) and Section 7(2).

33. A conjoint reading of Sections 6, 7 and 85 would show that the bar of jurisdiction of civil court contained in Section 6(5) and Section 7(2) is confined to Chapter I, but the bar of jurisdiction under Section 85 is all pervasive. This can be seen from the following distinguishing features:

(i) Section 6(5) bars the institution or commencement of a suit or other legal proceeding in a court “in relation to any question referred to in sub-section (1)”. Sub-section (1) of Section 6 speaks only about two questions namely, whether a particular property specified as a waqf property in the list of waqfs is a waqf property or not and whether a waqf is Shia waqf or Sunni waqf;

(ii) Section 7(2) bars any court, tribunal or other authority from staying any proceeding before the Waqf Tribunal, in respect of a waqf, on the only ground of pendency of any suit, application or appeal or other proceeding. Section 7(2) specifically relates to the proceedings under Section 7 and not to any other proceeding. This is clear by the use of the words, “no proceeding under this Section”. Section 7(1) again deals only with two questions namely, whether a particular property specified as waqf property in the list of waqfs is a waqf property or not and whether a waqf specified in the list is a Shia waqf or Sunni waqf. Therefore, the bar under Section 7(2) is also confined only to these two questions, on account of the use of the words, “no proceeding under this Section”.

(iii) While Sections 6(1) and 7(1) speak only about two questions which are germane to the matters covered by Chapter I of the Act alone, Section 85 speaks (i) about any dispute, question or other matter relating to any waqf or waqf property and (ii) about “other matter which is required by or under this Act to be determined by a Tribunal”.

(iv) A major distinguishing feature between Sections 6(1) and 7 (1) on the one hand and Section 83 on the other hand is that the dispute, question or other matter referred to in Sections 6 and 7 are confined only to what is included in the list of waqfs prepared under Section 4 and published under Section 5. The words “specified ... in the list of waqfs” found in sections 6 (1) and 7(1), are conspicuous by their absence in section 83 (1). Therefore, it is clear that Sections 6 and 7 speak only about two categories of cases, but Section 83 covers the entire gamut of possible disputes in relation to any waqf or waqf property.

34. It is seen that there are 2 limbs to Section 85. The words, “any dispute, question or other matter relating to any waqf or waqf property” used in the first limb of Section 85, provide a clear indication that the Tribunal would have jurisdiction to adjudicate upon any dispute and answer any question relating to a waqf or waqf property, including the two questions mentioned in Sections 6(1) and 7(1). The words in the second limb of Section 85 namely, “other matter which is required by or under this Act to be determined by a Tribunal”, seek to cover matters which have no relevance to the two questions covered by Section 6(1) and 7(1).

35. Unfortunately, many courts were misled by the reference to two specific questions in Sections 6(1) and 7(1), to come to the conclusion that the bar of jurisdiction was confined only to disputes revolving around those two questions.

36. Interestingly, the basis of the decision in Ramesh Gobindram was removed through an amendment under Act 27 of 2013. As we have stated elsewhere, Ramesh Gobindram sought to address the question whether a Waqf Tribunal was competent to entertain and adjudicate upon disputes regarding eviction of persons in occupation of what are admittedly waqf properties. Since this Court answered the question in the negative, Section 83(1) was amended by Act 27 of 2013 to include the words, “eviction of tenant or determination of rights and obligations of the lessor and lessee of such property”.

37. Simultaneously, sub-section (6) was inserted in Section 7 by Act 27 of 2013. This sub-section (6) of Section 7 states that the Tribunal shall have the power of assessment of damages by unauthorized occupation of waqf property and to penalize such unauthorized occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector.

It reads as follows:

(6) The Tribunal shall have the powers of assessment of damages by unauthorised occupation of waqf property and to penalise such unauthorised occupants for their illegal occupation of the waqf property and to recover the damages as arrears of land revenue through the Collector:

Provided that whosoever, being a public servant, fails in his lawful duty to prevent or remove an encroachment, shall on conviction be punishable with fine which may extend to fifteen thousand rupees for each such offence.

Ideally, the provisions of sub-section (6) should have found a place somewhere in Section 83, since what is sought to be covered by sub-section (6) of Section 7 has no correlation to the two questions about which Section 7(1) speaks. But the reason why the Parliament thought fit to include something in Section 7, which has no correlation to sub-section (1) of Section 7, is perhaps the fact that Ramesh Gobindram turned primarily on the language of Sections 6 and 7.

38. The upshot of the above discussion is that the basis of Ramesh Gobindram now stands removed through amendment Act 27 of 2013.

In fact, when Ramesh Gobindram 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 (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 was decided, already took care of this contingency, but was omitted to be brought to the notice of this court.

39. Since Ramesh Gobindram, focused mainly upon the two questions indicated in Sections 6(1) and 7(1) and reached a conclusion that the Tribunal would have no jurisdiction to adjudicate upon disputes concerning properties which are admittedly waqf properties, some of the decisions which followed Ramesh Gobindram took to the extreme view that if a property is admitted to be a waqf property, by both parties, the Waqf Tribunal would not have jurisdiction to adjudicate upon a dispute concerning the said property. Such a conclusion led to an incongruity namely that the Tribunal would have jurisdiction to determine the larger question whether a property is a waqf property or not, but not smaller questions relating to what are admittedly waqf properties. Normally while interpreting a clause relating to bar of jurisdiction of civil courts in statutory enactments, this court would tend to think, depending upon the language employed, that larger questions could still be decided by civil courts, while smaller questions are to be decided by the special Fora constituted under the Act. But in the case of Waqfs Act, 1995, the reverse has happened, with the courts ruling that if a property is admittedly a waqf property, the Tribunal would have no jurisdiction, though it would have jurisdiction to decide whether or not a property is a waqf property at all.

40. The distinction sought to be drawn on the basis of admission or denial about a property being a waqf property, was also capable of another mischievous result. Take for instance a case where a property is disputed to be a waqf property. Then as per the decision in Ramesh Gobindram, the Waqf Tribunal would have jurisdiction to decide the question whether it is a waqf property or not. Suppose the Tribunal reaches the conclusion that the disputed property is a waqf property, would the Tribunal then continue to have jurisdiction to grant relief or would it be denuded of the jurisdiction, merely because the property was found to be a waqf property? This is a question for which no answer could be found if we adopt the restrictive interpretation. This is why the subsequent decisions of this Court found an easy way out by distinguishing Ramesh Gobindram. For instance, the decision in Anis Fatma Begum distinguished Ramesh Gobindram on the ground that Ramesh Gobindram was confined to an eviction dispute and that the words “any dispute, question or other matters” appearing in Section 83(1) are words of wide connotation. Similarly, Akkode Jumayath Palli Paripalana Committee, held a suit for permanent injunction to be maintainable before a Waqf Tribunal, on the ground that Ramesh Gobindram, was distinguished in Anis Fatma Begum. Likewise, the ratio in Ramesh Gobindram was held in Kiran Devi to be incapable of being invoked in a case where the original proceeding was first instituted before the Civil Court and it was later transferred to the Waqf Tribunal, which order of transfer had attained finality.

41. Having seen the extent to which this Court followed or distinguished Ramesh Gobindram in subsequent decisions and having seen that the basis of Ramesh Gobindram now stands removed by Act 27 of 2013, let us now turn our attention to the “other matters”, which are required by or under the Act to be determined by the Tribunal.

This is for reason that the second limb of Section 85, as we have seen earlier, bars the jurisdiction of any Civil Court, Revenue Court and any other authority, in respect of any dispute, question or other matter which is required by or under this Act to be determined by the Tribunal.

42. The various provisions of the Act which make a reference to the Tribunal and the subject matter in relation to which such a reference is made are presented in a tabular column as follows: □Sl.N
Provision of the Act Subject Matter o.

1. Section 32(3) Wherever the Waqf Board has settled any scheme of management or issued a direction, any person interested in the waqf or affected by the settlement of a scheme or directions may institute a suit before the Tribunal.

2. Section 33(4) A mutawalli or other person aggrieved by an order passed by the Chief Executive Officer under Section 33(3) directing such person to make payment of any amount misappropriated, misapplied or fraudulently retained and to restore the property of the waqf, may appeal to the Tribunal.

3. Section 35(1) The Tribunal is conferred with the power to order conditional attachment of any property, which, a mutawalli or any other person is likely to dispose of with intent to delay or defeat the execution of any order passed under Section 33.

4. Section 38(7) Any Executive Officer or a member of the staff who is aggrieved by an order of removal or dismissal passed by the Waqf Board under Section 38(6) has a right of appeal to the Tribunal.

5. Section 39(3) Whenever a building or other place which was earlier used for religious purpose or instruction or for charity, has ceased to be used for that purpose, the Board may make an application to the Tribunal for an order for recovery of possession.

6. Sections 40(2) and (4) The decision of the Board on the question whether a particular property is a waqf property or not or whether a waqf is a Sunni Waqf or Shia Waqf, is made subject to the decision of the Tribunal under sub□section (2). Similarly, a direction issued by the Board to any Trust or Society under Section 40(3) to get registered, is made subject to the decision of the Tribunal under sub□section (4)

7. Section 48(2) Whenever a Board examines the Auditor's report and passes orders on the basis of the report, directing the recovery of any amount certified by the Auditor, the mutawalli or any other person aggrieved by such order may apply to the Tribunal.

8. Section 52(4) Wherever an order is passed by the Collector under Section 52(2) directing the person in possession of a property to deliver the property to the Waqf Board, on the basis of a requisition made by the Board, the person aggrieved by such order may file an appeal to the Tribunal.

9. Section 54(3) Whenever the Chief Executive Officer is satisfied that there is an encroachment on a waqf property, he may make an application to the Tribunal for the removal of such encroachment.

10. Section 64(4) A mutawalli removed from office for the reasons contained in clauses (c) to (i) of sub-section (1) is entitled to file an appeal to the Tribunal.

11. Section 67(4) Any person aggrieved by an order passed by the Board superseding the Committee of Management may file an appeal to the Tribunal under the 1st proviso to sub-section (4) of Section 67.

12. Section 67(6) Whenever a member of a Committee of Management is removed by the Board, instead of exercising the option of superseding the Committee of Management, such removed member may file an appeal to the Tribunal under the 2nd proviso to sub-section (6) of Section 67.

13. Section 69(3) Whenever a scheme is framed by the Board for the administration of a waqf, which include a provision for the removal of the mutawalli and the appointment of his successor, a person aggrieved by the same may file an appeal to the Tribunal.

14. Section 73(3) Whenever a direction is issued by the Chief Executive Officer to any bank to pay out of the money belonging to the waqf, the contribution leviable under Section 72, the bank may file an appeal to the Tribunal.

15. Sections 94(1) & (2) Whenever a mutawalli who is under an obligation to perform a pious, religious or charitable act fails to perform such act or whenever a mutawalli willfully fails to discharge any other duties imposed on him under the waqf, an application could be made to the Tribunal for appropriate directions to the mutawalli. If it is a case covered by sub-section(1), the Tribunal may be moved by the Board. If it is a case covered by sub-section(2) the Tribunal may be moved by the Board or any person interested in the waqf.

43. In sum and substance, the Act makes a reference, to 3 types of remedies, namely that of a suit, application or appeal before the Tribunal, in respect of the following matters:□

(i) Any question or dispute whether a property specified as waqf property in the list of waqfs is a waqf property or not [Sections 6(1) & 7(1)];

(ii) A question or dispute whether a waqf specified in the list of waqfs is a Shia Waqf or Sunni Waqf [Sections 6(1) & 7(1)];

(iii) Challenge to the settlement of a scheme for management of the waqf or any direction issued in relation to such management [Section 32(3)];

(iv) Challenge to an order for restitution/restoration of the property of the waqf or an order for payment to the waqf of any amount misappropriated or fraudulently retained by the mutawalli [Section 33(4)];

- (v) Conditional attachment of the property of a mutawalli or any other person [Section 35(1)];
- (vi) Challenge to the removal or dismissal of an Executive Officer or member of the staff [Section 38(7)];
- (vii) Application by the Board, seeking an order for recovery of possession of a property earlier used for religious purpose but later ceased to be used as such [Section 39(3)];
- (viii) Challenge to a direction issued by the Board to any Trust or Society to get it registered [Section 40(4)];
- (ix) Challenge to an order for recovery of money from the mutawalli, as certified by the Auditor [Section 48(2)];
- (x) Challenge to an order for delivery of possession of a property issued by the Collector [Section 52(4)];
- (xi) Application by the Chief Executive Officer for the removal of encroachment and for delivery of possession of a waqf property (Section 54(3));
- (xii) Challenge to the removal of mutawalli from office [Section 64(4)];
- (xiii) Challenge to an order superseding the Committee of Management [Section 67(4)];
- (xiv) Challenge to the removal of a member of the Committee of Management [Section 67(6)];
- (xv) Challenge to any scheme framed by the Board for the administration of waqf, containing a provision for the removal of the mutawalli and the appointment of the person next in hereditary succession [Section 69(3)];
- (xvi) Challenge to an order for recovery of contribution payable by the waqf to the Board, from out of the monies lying in a bank [Section 73(3)];
- (xvii) any dispute, question or other matter relating to a waqf {section 83(1)} (xviii) any dispute, question or other matter relating to a waqf property {section 83(1)} (xix) eviction of a tenant or determination of the rights and obligations of lessor and lessee of waqf property {section 83(1) after its amendment under Act 27 of 2013 } (xx) Whenever a mutawalli fails to perform an act or duty which he is liable to perform [Section 94].

44. If the Waqf Act, 1995 had merely stopped with a reference to the matters listed above as capable of being adjudicated by the Tribunal, there would have been no scope for any confusion. But unfortunately, the Act makes a specific reference to court/civil Court also in certain places. We have already seen Sections 86, 90 and 93 making specific reference to “Court”. Section 68(6) goes a step further by making a reference to ‘civil court’ and it reads as follows: □“68. Duty of mutawalli or

committee to deliver possession of records, etc. (1) ... (2) ... (3) ... (4) ... (5) ... (6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by any Magistrate under sub-section (2)”

45. A combined reading of Sections 68(6), 86, 90 and 93 goes to show that the bar of jurisdiction under Section 85 does not apply at least to the following matters, covered by Sections 68(6), 86 and 90 :

(i) Whenever a District Magistrate passes an order directing the removed mutawalli or removed members of a Committee of Management to deliver possession of the records, accounts and properties of the waqf, to the successor or successor Committee of Management, any person claiming that he has right, title and interest in the properties specified in the order so passed by the Magistrate can approach a civil court;

(ii) The Board itself may approach a civil court either to set aside the sale in execution of a decree of civil court, of an immovable property which is a waqf property, or to set aside the transfer of any immovable property made by the mutawalli without the sanction of the Board or to recover possession of the property so sold or transferred, as the case may be;

(iii) The mutawalli is also empowered to approach the civil court to recover possession of any immovable property which is a waqf property, but which had been transferred by the previous mutawalli without the sanction of the Board (this is implicit in Section 86);

(iv) A waqf property can be brought to sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates or taxes due to the Government or any local authority, but such a proceeding will be void if no notice thereof is given to the Board [this is implicit in Sections 90(2) & (3)].

46. Thus the Act itself has created some confusion, leaving the rest to the courts to compound the conundrum. Sadly, the Amendment Act 27 of 2013 also did not address the problem fully.

The case on hand

47. Having thus seen the statutory scheme, including the confusion created seemingly or schemingly, let us now come back to the facts of the case on hand. As we have seen in paragraph 3 above, the 1 st respondent herein filed a suit on the file of a civil court praying for the following reliefs: □

(i) A mandatory injunction directing the defendants to remove the door and encroachment made by them behind the shops of the plaintiff and to repair the broken back wall of the plaintiff's shop; and

(ii) A perpetual injunction restraining the defendants from interfering with the plaintiff's possession of the property described therein.

48. Defendant No.1 who is the appellant herein filed a written statement, admitting that Khasra Plot No.135/3 in respect of which perpetual injunction was sought, was the property of Mirza Abid Ali Beg and that it is a waqf property, of which Riyaz Ahmad was the mutawalli.

49. After admitting the property to be a waqf property, the appellant herein (defendant no.1) filed an application under Order VII, Rule 11 on the sole ground that a suit for injunction could be filed only before the Waqf Tribunal. This application for rejection of plaint was allowed by the Trial Court and the suit was dismissed. The first appellate court confirmed the same but on a second appeal, the High Court set aside the judgments of the Trial Court and the first appellate court with a direction to the Civil Court to proceed in accordance with law.

The reasoning of the High Court was that there was no dispute with regard to the property being a waqf property or the nature of the property and that therefore Civil Court will have jurisdiction.

Curiously the High Court referred to the decisions in Ramesh Gobindram and Anis Fatma Begum, but held that all those decisions relied upon by the learned counsel for the Respondents were not fully applicable to the facts of the present case.

50. The approach of the High Court, in our considered view, is not in tune with the law. The question as to whether the suit for perpetual injunction is maintainable before the Waqf Tribunal or not, is already answered in Akkode Jumayath Palli Paripalana Committee. This Court, pointed out in the said decision that Ramesh Gobindram was distinguished in Anis Fatma Begum, and that therefore the Tribunal had jurisdiction to entertain a suit for perpetual injunction. But unfortunately, this decision rendered by this Court on 23.07.2013 does not appear to have been brought to the notice of the High Court.

51. It is true that in Punjab Waqf Board vs. Sham Singh Harike, a two member bench of this Court considered Ramesh Gobindram, Anis Fatma Begum as well as Akkode Jumayath Palli Paripalana Committee and doubted in paragraph 43 (of the SCC report) the correctness of the decision in Akkode Jumayath Palli Paripalana Committee on the ground that it was not in accord with the ratio of Ramesh Gobindram.

But the said conclusion was on the basis of the observations in Ramesh Gobindram to the effect that unless there is any provision in the Waqf Act to entertain the dispute, the Tribunal cannot have jurisdiction. The relevant portion of Paragraph 43 of Sham Singh Harike reads as follows: "43. The two Judge Bench of this Court in the above case held the suit to be maintainable in the Waqf Tribunal and noted that the ratio of Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] has been distinguished in Anis Fatma case [W.B. Waqf Board v. Anis Fatma Begum, (2010) 14 SCC 588 : (2012) 1 SCC (Civ) 773]. But as per ratio of Ramesh Gobindram [Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726 :

(2010) 3 SCC (Civ) 553] unless there is any provision in the Waqf Act, 1995 to entertain the said dispute only then the Waqf 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 [Ramesh Gobindram v. Sugra Humayun Mirza Waqf, (2010) 8 SCC 726 : (2010) 3 SCC (Civ) 553] .”

52. We have already seen that it is not as though there was no provision in the Waqf Act conferring jurisdiction upon the Tribunal in respect of the waqf property. We can break the first part of Section 83 into two limbs, the first concerning the determination of any dispute, question or other matter relating to a waqf and the second, concerning the determination of any dispute, question or other matter relating to a waqf property. After Amendment Act 27 of 2013, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of the Tribunal.

Though the proceedings out of which the present appeal arises, were instituted before the Amendment Act, the words “any dispute, question or other matter relating to a waqf or waqf property” are sufficient to cover any dispute, question or other matter relating to a waqf property. This is why Ramesh Gobindram was sought to be distinguished both in Anis Fatma Begum and Pritpal Singh and such distinction was taken note of in Akkode Jumayath Palli Paripalana Committee. Additionally, this Court in Kiran Devi, refused to apply the ratio of Ramesh Gobindram, on the ground that the suit was originally instituted before the Civil Court, but was later transferred to the Waqf Tribunal and that after allowing the order of transfer to attain finality, it was not open to them to resurrect the issue through Ramesh Gobindram.

53. It is well settled that the court cannot do violence to the express language of the statute. Section 83(1) even as it stood before the amendment, provided for the determination by the Tribunal, of any dispute, question or other matter (i) relating to a waqf; and (ii) relating to a waqf property. Therefore to say that the Tribunal will have jurisdiction only if the subject property is disputed to be a waqf property and not if it is admitted to be a waqf property, is indigestible in the teeth of Section 83(1).

54. In fact, Section 83(5) of the Act makes it clear that the Tribunal shall be deemed to be a Civil Court and shall have the same powers as may be exercised by a Civil Court under the CPC, while trying a suit or executing a decree or order. This is why this Court held in Syed Mohideen and Another vs. Ramanathapura Peria Mogallam Jamath and Others⁵ that the Waqf Tribunal will have power to issue temporary injunctions under Order XXXIX, Rule 1 CPC.

55. We must also point out at this stage that all the 14 decisions which we have tabulated in paragraph 13 above, except the one at Sl.No.13, namely Kiran Devi vs. Bihar State Sunni Waqf Board⁶, are decisions of two member benches. Kiran Devi was a decision of a three member bench of this Court. In Kiran Devi, an objection to the maintainability of the proceeding before the Waqf Tribunal was raised on the basis of the decision in Ramesh Gobindram. But this court refused to accept it on the ground that once the order of transfer of 5 (2010) 13 SCC 62 6 2021 SCC Online SC

280 the suit from the Civil Court to the Waqf Tribunal had attained finality, the question of jurisdiction cannot be raised. If Waqf tribunal had no jurisdiction at all, this court could not have held in Kiran Devi that the order of transfer already passed cannot be undone by accepting this plea. The decision of the three member bench in Kiran Devi is significant in the sense that it recognized the fact that Ramesh Gobindram cannot be used as a magic wand to toss the proceedings relating to a waqf property from one forum to another. The dichotomy created in some decisions of this court, between the properties which are admitted to be waqf properties and properties which are disputed to be so, is on account of the misapplication of the two limited questions in Sections 6(1) and 7(1) to the whole of the Act including section 83. At the cost of repetition we should point out that Section 83(1) provides for the determination of any dispute, question or any other matter, (i) relating to a waqf and (ii) relating to a waqf property.

This prescription cannot be taken to have been curtailed or circumscribed by Sections 6(1) and 7(1), to come to the conclusion that the Tribunal will assume jurisdiction only when a property is disputed to be a waqf property.

56. In the case on hand, the property is admitted to be a waqf property. Therefore, to allow the plaintiff to ignore the Waqf Tribunal and to seek a decree of permanent injunction and mandatory injunction from a civil court, would be ignore the mandate of section 83 and 85 which speak of any dispute, question or other matter relating to a waqf or a waqf property. There is also one more issue. In the written statement, the Defendant No.1 has admitted the existence of the waqf and also admitted that the father of the plaintiff by name Riyaz Ahmad is the mutawalli. But the claim of the plaintiff that he is the beneficiary of the waqf has been denied. Therefore, a question as to the nature of the waqf and whether the plaintiff is a beneficiary of the waqf, has also arisen in this case. This question has necessarily to be decided by the Tribunal and not the civil court.

57. In view of the above, the appeal is allowed and the judgment and decree of the High Court are set aside. The trial court shall return the plaint to the plaintiff, for presentation to the jurisdictional Waqf Tribunal. Since pleadings are complete, the Waqf Tribunal shall proceed from the stage of framing of issues and dispose of the suit within a period of 6 months. There will no order as to costs.

.....J. (Hemant Gupta)J. (V. Ramasubramanian) New
Delhi October 28, 2021